



Civic San Diego is a California non-profit public benefit corporation.

**CONTRACT DOCUMENTS  
FOR  
PARK BOULEVARD AT-GRADE LINEAR PARK  
MODIFICATIONS**

**PROJECT NO: C-0006**

**November 2, 2020**

**BID SUBMISSION DEADLINE**

**December 8, 2020**

**3:00 PM**

**CIVIC SAN DIEGO'S PLANETBIDS ELECTRONIC BIDDING SITE**

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## NOTICE INVITING BIDS

### PARK BOULEVARD AT-GRADE LINEAR PARK MODIFICIATONS

1. **PUBLIC NOTICE IS HEREBY GIVEN** that the Civic San Diego, hereinafter referred to as "CivicSD", invites sealed bids for the above stated Project and will receive such bids EXCLUSIVELY through CivicSD's PlanetBids Portal at [www.civicsd.com](http://www.civicsd.com) under "Doing Business and Bid Opportunities" no later than 3:00pm on December 8, 2020. Be advised that the PlanetBids Portal does not accept late bids.
2. **DESCRIPTION OF WORK:** The work generally consists of removal the concrete walkway, relocate the ROW fence approximately 11' toward Harbor Drive, remove and deliver the benches and lighting, re-sod disturbed areas, and reinstall the irrigation.
3. **LOCATION OF WORK:** The work to be constructed is bounded by 5<sup>th</sup> Avenue and Park Boulevard (west to east), and Harbor Drive and the railroad right-of-way (south to north).
4. **ESTIMATED CONSTRUCTION COST RANGE:** The Engineer's estimated construction cost for this project is **\$354,480**.
5. **CONTRACT DURATION:** The estimated construction duration for this project is **240 working days**.
6. **LICENSE REQUIREMENTS:** Bidder shall be a licensed contractor pursuant to the Business and Professions Code and licensed in the appropriate classification(s) of contractor's license(s) for the work bid upon, and shall maintain the license throughout the duration of the Contract. Bidders must possess a current State of California Class A or B Contractor's License.
7. **GENERAL:** Bids must be submitted on CivicSD's Bid Forms, included in the Contract Documents available electronically, at no cost, through CivicSD's PlanetBids portal at [www.civicsd.com](http://www.civicsd.com) under "Doing Business and Bid Opportunities". To download the Contract Documents, the user must register for a free account on the site. It is the responsibility of each prospective bidder to download and print all Contract Documents for review and to verify the completeness of Contract Documents before submitting a bid. Any Addenda will be posted on CivicSD's PlanetBid Portal.

It is the responsibility of each prospective bidder to check PlanetBids through the close of bids for any applicable addenda or updates. CivicSD does not assume any liability or responsibility based on any defective or incomplete copying, excerpting, scanning, faxing, downloading or printing of the Contract Documents. Information on PlanetBids may change without notice to prospective bidders. The Contract Documents shall supersede any information posted or transmitted by PlanetBids. Bid sets will be available for review only at CivicSD's office, however sets will not be available for reproduction or purchase.

It shall be the responsibility of the prospective bidders to download and print the bid documents for review and bid. Addenda will be issued through PlanetBids. Bidders shall check the website for addends and are responsible for ensuring that they have received all addenda. The Bidder shall acknowledge each addendum by confirming receipt of the addenda, if any, in the Bid Proposal. Bids, which do not include the acknowledgement for each addendum, if any, may be rejected.

PRE-BID CONFERENCE - Due to the Covid-19 virus, there will be no Pre-Bid Conference. Representatives of CivicSD will answer any bidder questions online through PlanetBids. Prospective bidders **MAY** visit the Project Site without making arrangements through the designated CivicSD Project Manager, but are being made aware here to stay outside the railroad right-of-way fencing that is currently in place. Bids **WILL** be accepted from any bidder who did not attend the Pre-Bid Conference.

At the time of bid submission, bidders must upload and submit an electronic PDF copy of the Bid Security in an amount equal to ten percent (10%) of the total bid price. Whether in the form of a cashier's check, certified check or an approved corporate surety bond payable to Civic San Diego, the Bid Security must be uploaded to CivicSD's PlanetBids system. Within twenty-four (24) hours after the bid due date and time, the first five apparent low bidders must provide CivicSD with the original Bid Security. The successful bidder will be required to furnish and pay for performance and payment bonds equal to 100% of the Contract Price.

The Contractor awarded the Contract, and any subcontractor under such Contractor, shall hereby ensure that minority and women business enterprises will be afforded full opportunity to submit bids for subcontracts. Further, there shall be no discrimination in employment practices on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex in compliance with Government Code Section 12990.

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

This is a prevailing wage project pursuant to Section 1720 et seq. of the Labor Code. The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract which will be awarded to the successful bidder. Copies file and will be made available to any interested party upon request at 401 B Street, Suite 400, San Diego, CA 92101 or online at <http://www.dir.ca.gov/dlsr>. A copy of these rates shall be posted by the successful bidder at the job site. The successful bidder and all subcontractor(s) under him shall comply with all applicable Labor Code provisions, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them in the execution of the Contract, the employment of apprentices, the hours of labor and the debarment of contractors and subcontractors.

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No Bid will be accepted nor any contract entered into without proof of the successful bidder's and all subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the successful bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In bidding on this project, it shall be the Bidder's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this contract and applicable law in its bid.

CivicSD shall award the Contract for the Work to the lowest responsive, responsible bidder as determined from the BASE BID ALONE by CivicSD. CivicSD reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding process. This Notice Inviting Bids neither creates nor imposes any obligation upon CivicSD to enter into a contract. Bids shall be valid for 180 Days after the bid opening date.



# **INSTRUCTIONS TO BIDDERS**

## **1. AVAILABILITY OF CONTRACT DOCUMENTS**

Contract Documents may be obtained from CivicSD at the location(s) indicated in the Notice Inviting Bids.

CivicSD shall also make the Contract Documents available for review in electronic form at one or more plan rooms at no charge, as required by Public Contract Code section 20103.7. Please Note: Prospective Bidders who choose to review the Contract Documents at a plan room must contact CivicSD's PlanetBids Portal to obtain the required Contract Documents if they decide to submit a bid. CivicSD, does not warrant, represent, or guarantee the accuracy, completeness, or adequacy of information provided from any third party source.

Addenda, if any, issued during the bid period will also be posted on CivicSD's PlanetBids Portal. Failure to acknowledge Addenda may make a bid nonresponsive and not eligible for award of the contract.

## **2. EXAMINATION OF CONTRACT DOCUMENTS**

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

## **3. INTERPRETATION OF CONTRACT DOCUMENTS**

Discrepancies in, and/or omissions from the Plans, Specifications or other Contract Documents or questions as to their meaning shall be immediately brought to the attention of CivicSD by submission of a written request for an interpretation or correction to CivicSD. Such submission, if any, must be sent via Q&A section of CivicSD PlanetBid Portal no later than five (5) working days prior to the time of the bid opening. The Bidder shall be responsible for the prompt delivery of the request. No members of CivicSD's staff or Board of Directors should be contacted about this procurement during the bidding process. CivicSD may, in its sole discretion, disqualify any Bidder who engages in any prohibited communications.

Any interpretation of the Contract Documents will be made only by written addenda duly issued and posted on CivicSD's PlanetBid Portal. CivicSD will not be responsible for any explanations or interpretations provided in any other manner. No person is authorized to

make any oral interpretation of any provision in the Contract Documents to any Bidder, and no Bidder should rely on any such oral interpretation.

Bids shall include complete compensation for all items of work to be performed under the Contract Documents as the responsibility of the Contractor.

#### **4. INSPECTION OF SITE**

Each prospective Bidder is responsible for fully acquainting itself with conditions of the Site (which may include more than one location) and those relating to construction of the Work, fully understanding the facilities, difficulties and restrictions which may affect the cost or effort required to complete the Work.

#### **5. ADDENDA**

CivicSD reserves the right to revise the Contract Documents prior to the bid opening date. Revisions, if any, shall be made by written addenda. Any response by CivicSD to a request for clarification to the Contract Documents will be made by written addendum. All addenda will be available on PlanetBids. Failure of any Bidder to receive any addenda shall not relieve such Bidder from any obligations imposed by such addenda. All addenda so issued shall become part of the Contract Documents. Failure by the Bidder to include any addenda in its bid may render their bid non-responsive and result in its rejection.

Pursuant to Public Contract Code section 4104.5, if CivicSD issues an Addendum which includes material changes to the Work less than 72 hours prior to the deadline for submission of bids, CivicSD will extend the deadline for submission of bids. CivicSD may determine, in its sole discretion, whether an Addendum warrants postponement of the bid submission date.

It shall be the responsibility of all prospective Bidders to ensure that they have received any and all addenda. The Bidder shall acknowledge each addendum by confirming receipt of the addenda, if any, in the Bid. Bids, which do not include the acknowledgement for each addendum, if any, may be rejected.

#### **6. ADDITIVE AND ALTERNATIVE BIDS**

If an additive and/or alternate bid items are called for in the Contract Documents, the lowest bid will be determined on the basis of the base bid only unless otherwise specified in the Notice Inviting Bids or by Addenda if issued to supersede the Notice Inviting Bids on this issue. The time required for completion of the additive or alternate bid items has been factored into the Contract Time and no additional time will be allowed for performing any of the alternate bid items unless the Contract Documents address this issue specifically and allow for more or less time based on the additive and/or alternative bids. Regardless of whether the additive or alternates bid items will be considered in determining the low bid, CivicSD may elect to include any or none of the additive or alternate bid items, or to otherwise remove certain work from the scope of Work. Accordingly, each Bidder must ensure that

each bid item contains a proportionate share of profit, overhead and other costs and expenses, which will be incurred by the Bidder for the project.

## **7. WORK BY BIDDER'S OWN FORCES; SELF PERFORMANCE REQUIREMENT**

It is the intention and requirement of CivicSD to award a contract only to a Bidder who will perform with such Bidder's own forces (those who are in direct employment of the Bidder's organization) at least 30 percent (30%) of the work, exclusive of items designated on the Bid Schedule by CivicSD as specialty items, if any. The percentage of work which will not be performed by a Bidder's own forces will be determined by adding the dollar value of all contracts shown on the List of Subcontractors in the Bid Forms (excluding the dollar amount of the specialty bid items), and dividing this total by the Bidder's Total Bid Amount (excluding the dollar amount of Specialty bid items).

The requirement for the Contractor to perform at least 30% of the contract work with its' owns forces will be waived only for contracts where only a "B" License is required for the prime contractor.

## **8. LISTING OF SUBCONTRACTORS**

The Bidder shall comply with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100 et seq. ("Subcontracting Act"). The Bidder must designate the name and place of business, contractor license number, DIR public works contractor registration number unless exempt pursuant to Labor Code Sections 1725.5 and 1771.1, and portion of the work each subcontractor who will perform work in an amount in excess of one-half of one percent ( $\frac{1}{2}\%$ ) of the Bidder's total bid or, in the case of bids for the construction of streets or highways, including bridges, in excess of one-half of one percent (0.5%) of the Bidder's total bid or ten thousand dollars (\$10,000), whichever is greater.

The Bidder shall list only one subcontractor for each portion of the Work as is defined by the Bidder in the List of Subcontractors. Partial submittal or failure to include all required information as required by the Subcontracting Act may be cause for CivicSD to reject the Bid as non-responsive. If the Contractor fails to specify a Subcontractor, or specifies more than one Subcontractor for the same portion of the Work to be performed under the Contract (in excess of one-half of one percent of Bidder's total bid), the Bidder shall be qualified to perform that portion itself, and shall perform that portion itself.

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. Bidder shall furnish evidence of registration by listing each listed subcontractor's DIR registration number in the Designation of Subcontractors Form.

## 9. SUBCONTRACTING PARTICIPATION PERCENTAGES (SLBE-ELBE)

Civic San Diego has incorporated the City's **mandatory** SLBE-ELBE subcontractor participation percentages to enhance competition and maximize subcontracting opportunities. For the purpose of achieving the mandatory subcontractor participation percentages, a recommended breakdown of the SLBE and ELBE subcontractor participation percentages based upon certified SLBE and ELBE firms has also been provided to achieve the mandatory subcontractor participation percentages:

1. SLBE participation	<b>10.0%</b>
2. ELBE participation	<b>11.2%</b>
3. Total mandatory participation	<b>21.8%</b>

The Bidders are encouraged to attend the Pre-Bid Meeting to better understand the Good Faith Effort requirements of this contract. See the City's document titled "SLBE Program, Instructions for Bidders Completing the Good Faith Effort Submittal" available at: <http://www.sandiego.gov/eoc/>

The Bid will be declared non-responsive if the Bidder fails the following mandatory conditions:

1. Bidder's inclusion of SLBE-ELBE certified subcontractors at the overall mandatory participation percentage identified in this document; OR,
2. Bidder's submission of Good Faith Effort documentation, demonstrating the Bidder made a good faith effort to outreach, and include SLBE-ELBE Subcontractors as required in this document, by the bid closing date and time to the Front Desk, Attn: Daniel Kay, Principal Engineer at 8989 Rio San Diego Drive, Suite 100, San Diego, CA 92108, in an envelope clearly labeled with the Project Title, Bid No., Bidder's Name and Address, if the overall mandatory participation percentage is not met.

For additional Equal Opportunity Contracting Program requirements, see the Special Conditions.

## 10. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

## **11. BID GUARANTEE**

Bids shall be accompanied by cash, a certified check or a cashier's check made payable to the order of CivicSD, or bid bond, payable to CivicSD and executed by the Bidder as principal and surety as obligor, in an amount equal to at least ten percent (10%) of the total bid price. The Bid Security must be submitted in hard copy directly to CivicSD prior to the specified date and time for bid opening as set forth in the Notice Inviting Bids. A bid bond must be on the form provided and the surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120; personal sureties and unregistered surety companies are unacceptable. Said cash, check, or bond shall be given as a guarantee that the Bidder will enter a contract if awarded the work, and shall provide the required payment and performance bonds and insurance certificates and in case of within ten (10) working days after being requested to do so by CivicSD. Refusal or failure to enter into said contract and provide the required documents may be result in forfeiture of the Bidder's bid guarantee or bond to CivicSD and CivicSD may award the contract to another Bidder, or may call for new bids. A bid received and not accompanied by such cash, certified check, cashier's check, or approved bond will be rejected as non-responsive.

## **12. PREVAILING WAGES**

CivicSD has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract. These rates are on file and available at 8989 Rio San Diego Drive, Suite 100, San Diego, CA 92108 or may be obtained online at <http://www.dir.ca.gov/dlsr>. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s).

## **13. COMPLETION OF BID FORMS**

Bids shall only be prepared using the Bid Forms included in the Contract Documents. The use of Bid Forms other than clear and correct photocopies of those provided by CivicSD may be rejected by CivicSD as non-responsive.

Bidders shall fill in all blank spaces (including inserting "N/A" where applicable) and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall not delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. Deviations in the Bid Form may be rejected by CivicSD as non-responsive.

The signature of all persons signing the bid proposal shall be in longhand by an individual clearly authorized to bind the Bidder's company. The Bidder shall provide evidence that the individual(s) signing the Bid Forms are authorized to bind the legal entity of the Bidder. The notarization does not constitute such proof unless the legal entity of the Bidder is an individual.

## **14. BID SCHEDULE**

The Bid Schedule (schedule of pay items) is available on PlanetBids through the “Line Items” tab. Bidders must insert and submit its bid prices directly through PlanetBids by selecting “Place eBid” under the Line Items tab. The pricing provided in the electronic Bid Schedule will be the only valid bid pricing for determination of low bid and will be incorporated into the Contract Documents. Failure to submit the Bid Schedule will render a bid nonresponsive.

Bidders must provide pricing for every bid item.

The costs of any Work shown or required in the Plans and Specifications, but not specifically identified as a Pay Line Item are to be included in related Pay Items and no additional compensation shall be due Contractor by virtue of Contractor’s compliance with the Plans and Specifications.

The estimated quantities for unit price items are for purposes of comparing bids only and CivicSD makes no representation that the actual quantities of work performed will not vary from the estimates.

## **15.MODIFICATIONS OF BIDS**

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

## **16. BID SUBMITTALS**

Bids shall be submitted electronically through CivicSD’s PlanetBids website. No other method of submission will be accepted. Bidders may NOT submit bids by personal delivery, fax, telephone or other means; any bids received through any other means than PlanetBids will be returned unopened.

(1) The Bidder must enter pricing in the electronic Bid Schedule for any and all line items or a lump sum bid amount, as required.

(2) The Bidder must attach a pdf file(s) to the electronic bid submission containing all of the completed and signed Bid Forms. It is the Bidder’s responsibility to ensure that its bid documents are properly uploaded into PlanetBids. Bids that are missing pages, cannot be opened, etc., may be considered unresponsive.

Bidders are solely responsible for the “on time” submission of their electronic Bid. CivicSD will only consider Bids that have transmitted successfully and have been issued a confirmation number with a time stamp from PlanetBids indicating that the Bid was submitted successfully. No oral or telegraphic modifications will be considered.

Bidders shall be solely responsible for informing itself with respect to the proper utilization of the online bid management system, for ensuring the capability of their computer system to upload the required documents, and for their stability of their internet service. Failure of the Bidder to successfully submit an electronic Bid shall be the Bidder’s sole risk and no relief will be given for late and/or improperly submitted Bids.

Bidder experiencing any technical difficulties with the bid submission process may contact PlanetBids Support at 818-992-1771. Neither CivicSD nor PlanetBids make any guarantee as to the timely availability of assistance, or assurance that any given problem will be resolved by the bid submission date and/or time.

## **17. BID RESULTS**

Bid results will be available for viewing after the bid submission deadline. Upon request, a bid tabulation will be sent after verification of extensions. Bid results will not be provided over the telephone.

## **18. BASIS OF AWARD; BALANCE BID**

CivicSD shall award the Contract to the lowest responsible Bidder submitting a responsive Bid. The lowest Bid will be determined on the basis of the Total Bid Price.

CivicSD may reject any Bid, which in its opinion, compared to other Bids received or to CivicSD’s internal estimates does not accurately reflect the cost to perform the Work. CivicSD may reject as non-responsive any Bid, which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items.

## **19. AWARD PROCESS**

After review of all bids to determine the lowest responsive and responsible Bidder, CivicSD may award the contract or reject all bids. Once CivicSD notifies the Bidder of the award, the Bidder will have ten (10) calendar days from the date of the award to deliver to CivicSD the executed Contract, all of the required bonds, evidence of insurance and other materials. Upon receipt of the properly executed documents and certifications, CivicSD shall issue a Notice to Proceed. The apparent low bidder’s failure to submit the required documents within the stated time may result in loss of the Contract and forfeiture of its bid security. If CivicSD elects to accept bonds and insurance submitted late, the Contract Time will begin to run ten (10) calendar days from the date of the notification of award even if CivicSD has not issued a Notice to Proceed.

## **20. WORKERS COMPENSATION**

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

## **21. RETENTION AND SUBSTITUTION OF SECURITY**

CivicSD will make monthly progress payments based upon work performed in accordance with the Contract Documents. Unless otherwise specified in the Notice Inviting Bids, CivicSD will retain five percent (5%) of each progress payment as provided by the Contract Documents. At the request and expense of the successful Bidder, the Contractor may substitute securities for the amount so retained in accordance with Public Contract Code section 22300.

## **22. INSURANCE REQUIREMENTS**

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

## **23. IRAN CONTRACTING ACT CERTIFICATION**

In accordance with Public Contract Code section 2200 *et seq.*, CivicSD requires that any person that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the CivicSD with respect to goods or services of one million dollars (\$1,000,000) or more, certify at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

The certification is included in the Bid Documents and must be signed and dated under penalty of perjury.

## **24. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the successful bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. To this end, the Bidder shall sign and submit with its Bid the Public Works Contractor Registration Certification on the form provided, attesting to the facts contained therein. Failure to submit this form may render the Bid non-responsive.



## **25.PERFORMANCE BOND AND PAYMENT (LABOR AND MATERIALS) BOND REQUIREMENTS**

The successful bidder shall deliver to CivicSD two fully executed, identical counterparts of the Performance Bond and Payment (Labor and Materials) Bond in the form supplied by CivicSD and included in the Contract Documents. Each bond shall be for one hundred percent (100%) of the Contract Price. The surety insurer shall be admitted to transact surety business in the State of California, in accordance with Code of Civil Procedure section 995.120. Personal sureties and unregistered surety companies are unacceptable. Failure to furnish a bond within this time may, in the sole discretion of CivicSD, result in the forfeiture of the Bid Guarantee.

## **26. REQUEST FOR SUBSTITUTIONS**

The successful bidder shall comply with the substitution request procedures set forth in the Bid and Contract Documents. Any deadlines for substitution requests **that occur prior to the bid opening date** are set forth in the Special Conditions.

## **27. WITHDRAWAL OF BID**

Any proposal may be withdrawn prior to the hour and date set forth in the Notice Inviting Bids, provided that a request in writing, executed by the Bidder or his duly authorized representative, for the withdrawal of such proposal, is filed with CivicSD. The withdrawal of a proposal shall not prejudice the right of a Bidder to file a new proposal. Any request to withdraw a bid after bid opening must be made in accordance with Public Contract Code section 5100 et seq. and must be submitted in writing within five (5) working days, excluding Saturdays, Sundays and State holidays, specifying in detail how the mistake was made. Whether a bid is allowed to be withdrawn under Public Contract Code section 5100 et eq. shall be at CivicSD's sole discretion.

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

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

## **29. PENALTY FOR COLLUSION**

If at any time it is found that the person, firm, or corporation to whom the Contract has been awarded, has, in presenting any bid or bids, colluded with any other party or parties, then the Contract so awarded shall be null and void, and CivicSD may advertise for new bids and contract for such work. The Contractor and the Contractor's sureties shall be liable to CivicSD for all loss or damage, which CivicSD may suffer thereby.

### **30. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES**

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the work will be located, unless otherwise expressly provided by the Contract Documents. Bidders shall include all applicable taxes and fees that are in effect or reasonably anticipated on the bid date in their bid price.

### **31. EXECUTION OF CONTRACT**

As required herein the successful bidder shall execute the Contract included with the bid documents in the amount determined in accordance with the Contract Documents. CivicSD may require appropriate evidence that the persons executing the Contract are duly authorized to do so on the Contractor's behalf.

### **32. BIDDER INFORMATION AND EXPERIENCE FORM**

Each Bidder shall complete the questionnaire provided herein and shall submit the questionnaire along with its Bid. Failure to provide all information requested within the questionnaire along with the Bid may cause the bid to be rejected as non-responsive. The CivicSD reserves the right to reject any Bid if an investigation of the information submitted does not satisfy the Engineer that the Bidder is qualified to properly carry out the terms of the contract.

### **33. BID PROTEST PROCEDURE**

Any bid protest relating to the form or content of the Bid or Contract Documents must be submitted in writing to CivicSD's, Principal Engineer at least ten (10) business days before the original date set for the bid opening. Any Bidder who submits a bid without making a protest shall be deemed to have waived any objection to the form or content of the Bid or Contract Documents not previously stated in writing.

Submitted bids will be timely made available for review upon written request of any Bidder. Bidders may file a "protest" of a Bid with CivicSD's, Principal Engineer. The protest must:

- A. Be filed in writing not later than 5:00 p.m. on the fifth business day after the bid opening date;
- B. Clearly identify the specific alleged irregularity or other basis for the protest;
- C. Specify, in detail, the factual and legal grounds for the protest; and
- D. Include all relevant supporting documentation with the protest at time of filing.

If the protest does not meet all of these requirements, CivicSD may reject it without further review.

If the protest is timely and complies with all of the above requirements, CivicSD's Principal Engineer, or other designated CivicSD staff member, shall review the protest, any response from the challenged Bidder, and all other relevant information. CivicSD will provide a written response to the protestor.

The procedure and time limits set forth in this section are mandatory and are the sole and exclusive remedy in the event of a bid protest. Failure to comply with these procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

## BID FORMS

### 1. BID

FOR: PARK BOULEVARD AT-GRADE LINEAR PARK MODIFICATIONS

BIDDER: \_\_\_\_\_

**1.1** In response to the Notice Inviting Bids dated \_\_\_\_\_, the undersigned hereby proposes to furnish to CivicSD any and all labor, materials, and equipment for the Project and appurtenant work in connection therewith, said work to be done and materials to be furnished in strict conformity with the Contract Documents, all other referenced documents and all codes and regulations the prices shown in Bid Schedule.

**1.2** This Bid constitutes a firm offer to CivicSD which cannot be withdrawn for 120 days after the date set for opening of Bids, or until a Contract is executed by CivicSD and a third party, whichever is earlier.

**1.3** The undersigned certifies that it has examined the location of the proposed work, and is familiar with the provisions of the Contract Documents and any addenda thereto and the local conditions at the place the work is to be done; that it has carefully checked all of the words and figures shown in its Bid Schedule; that it has carefully reviewed the accuracy of all statements in this Bid and attachments hereto; and that it understands and agrees that CivicSD will not be responsible for any errors or omissions on the part of the undersigned in preparing this Bid.

**1.4** The undersigned has examined the current State of California schedule of prevailing wage rates for the types of work to be done on this project and agrees to pay not less than these rates.

**1.5** If awarded a Contract, the undersigned agrees to execute and deliver to CivicSD within 15 days after date of receipt of Notice of Award, a signed Contract in duplicate and the necessary Performance Bond, Payment Bond, and any additional documentation requested by CivicSD.

**1.6** Attached hereto and by this reference incorporated herein and made a part of this Bid are the following forms from the Contract Documents which have been completed and executed by undersigned Bidder:

BID SCHEDULE  
NONCOLLUSION DECLARATION  
INFORMATION REQUIRED OF BIDDERS  
DESIGNATION OF SUBCONTRACTORS  
CONTRACTOR'S CERTIFICATE OF WORKER'S COMPENSATION INSURANCE  
IRAN CONTRACTING ACT CERTIFICATION  
PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION  
BID SECURITY

**1.7** The undersigned acknowledges that the representations made herein are made under penalty of perjury under the laws of the State of California.

Legal name of the business \_\_\_\_\_

Business Type  
(Corporation, Partnership, Sole Proprietor) \_\_\_\_\_

Contractor License number(s): \_\_\_\_\_ Expires on: \_\_\_\_\_

Name and title of the owner \_\_\_\_\_

Name and title of second partner or officer \_\_\_\_\_

Business address \_\_\_\_\_

Telephone number \_\_\_\_\_

Facsimile number \_\_\_\_\_

Email address of primary contact \_\_\_\_\_

_____ Signature of Prime Contractor	_____ Date	_____ Signature of Prime Contractor	_____ Date
_____ Print Name and Title		_____ Print Name and Title	

*(If the Prime Contractor is a corporation, two signatures of corporate officers are required.)*

## **2. BID SCHEDULE**

Bidders are directed to PlanetBids for the Bid Schedule.

IMPORTANT:

THE ELECTRONIC BID SCHEDULE MUST BE COMPLETED BY EACH BIDDER AND PROPERLY SUBMITTED THROUGH PLANETBIDS.

FAILURE TO COMPLETE THE BID SCHEDULE WILL RESULT IN AN INCOMPLETE AND NON-RESPONSIVE BID.

THE ELECTRONIC BID SCHEDULE WILL BE INCORPORATED INTO THE CONTRACT DOCUMENTS.

### 3. NON-COLLUSION DECLARATION

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 \_\_\_\_\_[date], at \_\_\_\_\_[city], \_\_\_\_\_[state].

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

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

#### 4. INFORMATION REQUIRED OF BIDDERS

Failure to complete all information may render your bid non-responsive. (Indicate not applicable "N/A" where appropriate.)

##### 4.1 Information About Bidder.

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

4.1.1 Name of Bidder: \_\_\_\_\_

4.1.2 Type, if Entity: \_\_\_\_\_

4.1.3 Bidder Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
E-Mail

4.1.4 How many years has Bidder's organization been in business as a Contractor? \_\_\_\_\_

4.1.5 How many years has Bidder's organization been in business under its present name? \_\_\_\_\_

4.1.6 Under what other or former names has Bidder's organization operated? \_\_\_\_\_

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

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

Date of Incorporation: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

President's Name: \_\_\_\_\_

Vice-President's Name(s):

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

Secretary's Name: \_\_\_\_\_

Treasurer's Name: \_\_\_\_\_



If an individual or a partnership, answer the following:

Date of Organization: \_\_\_\_\_

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

<u>Name</u>	<u>Address</u>	<u>General/Limited</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

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

4.1.8 List other states in which Bidder's organization is legally qualified to do business:

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

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

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

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

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

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

4.1.12 List Trade References:

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4.1.13 List Bank References (*Bank and Branch Address*):

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

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## 4.2 Bidder's Reference List - Completed Projects

Attach to this bid a list of all similar projects completed by the Bidder in the last five years. Bidder must have completed at least three (3) similar projects in the past five (5) years on which the Bidder and his subcontractor(s) have successfully constructed and completed projects with the same type (elements), size and complexity of work. The Engineer will make the final determination as to whether the projects listed here are of the same type, size and complexity as this project.

Failure of Bidder to supply sufficient documentation of similar experience shall be considered grounds for finding the bid non-responsive.

**Project Name:** \_\_\_\_\_

Contract Price: \_\_\_\_\_ Date of Completion: \_\_\_\_\_

Name, Address, Telephone Number and Email Address of Client/Owner's Representative:

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

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

Telephone \_\_\_\_\_ Email Address: \_\_\_\_\_

Scope of the Project: \_\_\_\_\_

**Project Name:** \_\_\_\_\_

Contract Price: \_\_\_\_\_ Date of Completion: \_\_\_\_\_

Name, Address, Telephone Number and Email Address of Client/Owner's Representative:

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

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

Telephone \_\_\_\_\_ Email Address: \_\_\_\_\_

Scope of the Project: \_\_\_\_\_

**Project Name:** \_\_\_\_\_

Contract Price: \_\_\_\_\_ Date of Completion: \_\_\_\_\_

Name, Address, Telephone Number and Email Address of Client/Owner's Representative:

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

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

Telephone \_\_\_\_\_ Email Address: \_\_\_\_\_

Scope of the Project: \_\_\_\_\_

*(Attach additional pages as necessary)*

#### 4.3 Bidder's Current Projects

Bidder shall list all current projects:

Project Name	Description of Bidder's Work	Date of Completion	Cost of Bidder's Work	Client/Owner's Rep Name, Phone, and Email

Project Name	Description of Bidder's Work	Date of Completion	Cost of Bidder's Work	Client/Owner's Rep Name, Phone, and Email

*(Attach additional pages as necessary)*

#### 4.4 Experience And Technical Qualifications Questionnaire

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

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

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4.4.2 Summarize each person's specialized education:

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

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4.4.4 Summarize such experience:

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Bidder agrees that personnel named in this Bid will remain on this project in their designated capacities until completion of all relevant Work, unless replaced by personnel of equivalent experience and qualifications approved in advance by the CivicSD.

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

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#### **4.5 Verification And Execution**

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

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

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

## 5. DESIGNATION OF SUBCONTRACTORS

**5.1** In compliance with the provisions of the Subletting and Subcontracting Fair Practices Act (Section 4100 et seq of the Government Code of the State of California) the undersigned Bidder shall set forth below (a) the full name (b) the location of the place of business (c) the California contractor license number (d) the DIR public works contractor registration number unless exempt pursuant to Labor Code Sections 1725.5 and 1771.1 and (e) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price. Notwithstanding the foregoing, if the work involves streets and highways, then the Contractor shall list each subcontractor who will perform work or labor or render service to Contractor in or about the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's total Bid Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

**5.2** The Bidder understands that if he fails to specify a subcontractor for any portion of the work to be performed under the contract in excess of one-half of one percent of his bid, he shall be deemed to have agreed to perform such portion of the work with contractor's own forces. Substitution shall not be allowed, except in cases of public emergency or necessity, and then only after a finding, reduced to writing as a public record of the CivicSD, setting forth the facts constituting the emergency or necessity. If no subcontractors are to be employed on the project, enter the word "NONE".

**5.3** Duplicate page if necessary.

**5.4** As appropriate, Bidder shall identify Subcontractor as one of the following and shall include a valid proof of certification (except for OBE, SLBE and ELBE):

Certified Minority Business Enterprise	MBE	Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE	Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE	Certified Emerging Local Business Enterprise	ELBE
Certified Small Local Business Enterprise	SLBE	Small Disadvantaged Business	SDB
Woman-Owned Small Business	WoSB	HUBZone Business	HUBZone
Service-Disabled Veteran Owned Small Business	SDVOSB		



DESIGNATION OF SUBCONTRACTORS						
Subcontractor Name	Business Location	CSLB License Number	DIR Registration Number	Description of Work	Portion (%) of Work	Equal Opportunity Designation

\_\_\_\_\_  
(Name of Bidder)

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name & Title)

## 6. CONTRACTOR'S CERTIFICATE OF WORKER'S COMPENSATION INSURANCE

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract. I further certify that if I should contract or subcontract with any person, including firm or company, to do all or any part of the work for which this proposal covers, I shall assure compliance by that contractor or subcontractor with the provisions of Section 3700 of the Labor Code.

Bidder: \_\_\_\_\_  
*(Legal Name of Bidder)*

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

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

Date \_\_\_\_\_

## 7. IRAN CONTRACTING ACT CERTIFICATION

As required by California Public Contract Code section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code section 2200 *et seq.*) is true and correct:

☐ **The Contractor is not:**

- (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code section 2203; or
- (ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

☐ CivicSD has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, CivicSD will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

☐ The amount of the Contract payable to the Contractor for the Work does not exceed \$1,000,000.

Signed: \_\_\_\_\_

Titled: \_\_\_\_\_

Firm: \_\_\_\_\_

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

**Note:** In accordance with Public Contract Code section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract Price, termination of the Contract and/or ineligibility to bid on contracts for three years.

## 8. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.<sup>1</sup>

Name of Bidder: \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_

DIR Registration Expiration: \_\_\_\_\_

Small Project Exemption: \_\_\_\_\_ Yes or \_\_\_\_\_ No

Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contracts with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Dated: \_\_\_\_\_

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<sup>1</sup> If the project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

## 9. BID SECURITY FORMS

### 9.1 Bid Security Form For Check

NOTE: THE FOLLOWING FORM SHALL BE COMPLETED BY BIDDER WHEN SUBMITTING BID SECURITY IN THE FORM OF A CHECK

Accompanying this proposal is a Certified Check or Cashier's Check payable to the order of the Civic San Diego, hereinafter referred to as "Owner", for \_\_\_\_\_ dollars (\$\_\_\_\_\_), this amount being 10 percent (10%) of the total amount of the bid. This check shall be returned to the undersigned only if either of the following occur:

- A. If said Bid shall be rejected by the Owner, or, in the alternate
- B. If said Bid shall be accepted by the Owner and the Undersigned shall execute and deliver a Contract in the form attached hereto (properly completed in accordance with said Bid) and shall furnish bonds required for his/her faithful performance of said Contract and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the Contract created by acceptance of said Bid; otherwise, said check shall become the property of the Owner.

Said check shall also become the property of the Owner if the Undersigned shall withdraw his/her bid within the period of sixty (60) calendar days after the date set for the opening thereof, unless otherwise required by law, and notwithstanding the award of the Contract to another bidder.

_____ Signature of Prime Contractor	_____ Date	_____ Signature of Prime Contractor	_____ Date
_____ Print Name and Title		_____ Print Name and Title	

*(If the Prime Contractor is a corporation, two signatures of corporate officers are required.)*

## 9.2 BID SECURITY FORM FOR BOND

KNOW ALL PERSONS BY THESE PRESENTS that, \_\_\_\_\_ hereinafter called the Principal, and \_\_\_\_\_, a corporation duly organized under the laws of the State of \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ in the State of \_\_\_\_\_, and authorized to do business in the State of California, hereinafter call the Surety, are held and firmly bound unto Civic San Diego, hereinafter called the Obligee, on order, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (being at least ten percent (10%) of the total amount of Principal's Bid price) lawful money of the United States, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these present.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Principal has submitted its Bid for the project entitled \_\_\_\_\_ to the Obligee, the Bid, by reference thereto; being hereby made a part hereof.

NOW, THEREFORE, if Principal's Bid is rejected or, in the alternate, if the Bid is accepted and the Principal signs and delivers a Contract and furnishes a Performance Bond and Payment Bond, all in the form and within the time required by the Contract Documents, then this obligation shall become null and void, otherwise the same shall remain in full force and effect and upon default of the Principal shall be forfeited to the Obligee, it being expressly understood and agreed that the liability of the Surety for any and all default of the Principal shall be the amount of this obligation as herein stated, as liquidated damages.

The Surety, for value received, hereby agrees that its obligations and its bond shall not be impaired or affected by any extension of the time within which the Obligee may accept such Proposal, and the Surety hereby waives notice of any such extension.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay, in addition to the sum set forth above, all costs incurred by the Obligee in such suit, including reasonable attorney's fees and expert witness fees, to be fixed by the court, in addition to the penal sum of the Bond.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BY: SURETY

Seal:

BY: PRINCIPAL

Seal:

## Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited  
☐ General

Number of Pages

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Date of Document

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

Signer(s) Other Than Named Above

Note: Signature of person executing for Surety must be notarized and evidence of corporate authority attached.

## OWNER - CONTRACTOR AGREEMENT

THIS CONTRACT is made this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between Civic San Diego, a California Corporation ("CivicSD"), 8989 Rio San Diego Drive, Suite 100, San Diego, California 92108 and \_\_\_\_\_, ("Contractor"). CivicSD and Contractor agree, for valuable consideration, as follows:

**ARTICLE 1. SCOPE OF WORK.** The Contractor shall perform all Work and provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents (specified in Article 5 below) for the public work of improvement titled:

### PARK BOULEVARD AT-GRADE LINEAR PARK MODIFICATIONS, C-0006

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

**ARTICLE 2. CONTRACT TIME.** Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the CivicSD's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents 240 Working Days from the commencement date stated in the Notice to Proceed, hereafter the Contract Time. By its signature hereunder, Contractor agrees the Contract Time is adequate and reasonable to complete the Work.

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

**ARTICLE 4. LIQUIDATED DAMAGES.** Contractor acknowledges that CivicSD will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the CivicSD's actual damages. Accordingly, as provided in Government Code section 53069.85, it is agreed that the Contractor will pay the CivicSD the sum of \$250.00 for each and every Day of delay in completing the Work beyond the Contract Time, as Liquidated Damages and not as a penalty or forfeiture. In the event the Liquidated Damages are not paid, CivicSD may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not affect the CivicSD's rights to other damages or remedies specified in the Contract Documents or allowed by law.

Should Contractor be inexcusably delayed in the performance of the Work, CivicSD may deduct liquidated damages based on its estimate of when Contractor will achieve Final Completion or



other Milestones. CivicSD need not wait until Final Completion to withhold liquidated damages from Contractor.

Liquidated damages are not a penalty but an agreed estimate of the actual damages that would be sustained by the CivicSD for delay, including but not limited to loss of revenue, inconvenience to the CivicSD and the public, and increased Project administration expenses such as extra inspection, construction management, staff time, and architectural and engineering expenses. Liquidated damages do not include damages the CivicSD incurs on account of claims by third parties against the CivicSD on account of any delay.

Should money due or to become due to Contractor be insufficient to cover liquidated damages or other offsets due, then Contractor forthwith shall pay the remainder of the assessed liquidated damages to CivicSD.

**ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.** The “Contract Documents” include only the following documents, each of which is incorporated into this Contract for Construction by reference:

- Notice Inviting Bids
- Instructions to Bidders
- Contractor's Bid Forms
- Contractor's Certificate Regarding Workers' Compensation
- Bid Bond
- Designation of Subcontractors
- Information Required of Bidders
- Non-Collusion Declaration Form
- Iran Contracting Act Certification
- Public Works Contractor Registration Certification
- Performance Bond
- Payment (Labor and Materials) Bond
- General Conditions
- Special Conditions (or Special Provisions)
- Technical Specifications
- Standard Specifications for Public Works Construction (Greenbook) and all Regional Supplements (Excluding sections 1-9 in their entirety)
- Addenda
- Plans
- Change Orders executed by CivicSD

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of a

conflict, the various Contract Documents will be given effect in the order set forth in Article 2.b of the General Conditions.

This Contract constitutes the full and complete agreement between the parties with regard to the Project and the Work, and supersedes any prior agreement of the parties, whether written or oral. The Contract can be modified only by a written Change Order executed in accordance with the Contract Documents.

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

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

**ARTICLE 8. PREVAILING WAGES.** Contractor shall pay not less than the prevailing rate of wages in accordance with the Labor Code, which rates have been determined by the Director of the California Department of Industrial Relations and shall be made available at Civic San Diego's Office, 8989 Rio San Diego Drive, Suite 100, San Diego, CA, 92108, or may be obtained online at <http://www.dir.ca.gov/dlse>.

The wage rates must be posted at the job site

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

**ARTICLE 9. FALSE CLAIMS.** Contractor acknowledges that if a false claim is submitted to the Owner, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the Owner seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

I have read and understood all of the provisions of this Article: \_\_\_\_\_  
(initial) (initial)

IN WITNESS WHEREOF this Agreement is executed as of the date first written above.

**CIVIC SAN DIEGO:**

By: \_\_\_\_\_  
Andrew Philips  
President

**CONTRACTOR:**

By: \_\_\_\_\_  
(Owner/Officer Signature)

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

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

By: \_\_\_\_\_  
(2nd Officer Signature, if corporation)

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

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

\_\_\_\_\_  
(State Contractor's License No. & Class)

\_\_\_\_\_  
(Business Street Address)

\_\_\_\_\_  
(City, State and Zip)

## PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

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

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

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless CivicSD, its officers and agents, as stipulated in the Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Project, unless otherwise provided for in the Contract Documents, the guarantee obligation shall hold good for a period of one (1) year after the acceptance of the work by CivicSD, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect CivicSD from loss or damage resulting from or caused by defective materials or faulty workmanship the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit CivicSD's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by CivicSD in enforcing such obligation.

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

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

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

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract. including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Corporate Seal of Principal,  
if corporation)

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

\_\_\_\_\_  
Name

By \_\_\_\_\_

(Seal of Surety)

SURETY:

By: \_\_\_\_\_  
Attorney-In-Fact

Signatures of those signing for the Contractor and Surety must be notarized a Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached.

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

THE FOLLOWING INFORMATION IS MANDATORY:

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

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

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

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

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

## Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s)      ☐ Limited  
                         ☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

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

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

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

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

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

Note: Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

### END OF PERFORMANCE BOND

## **PAYMENT BOND (LABOR AND MATERIALS)**

KNOW ALL PERSONS BY THESE PRESENTS:

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

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

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by CivicSD in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any



terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between CivicSD and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract. including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

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

(Corporate Seal of Principal,  
if corporation)

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

\_\_\_\_\_  
Name

By\_\_\_\_\_

(Seal of Surety)

SURETY:

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

Attorney-In-Fact

Signatures of those signing for the Contractor and Surety must be notarized a Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached.

## Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s)      ☐ Limited  
                         ☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

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

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

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

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

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

Note: Signatures of those signing for the Contractor and Surety must be notarized and corporate authority attached.

### END OF PAYMENT (LABOR AND MATERIALS) BOND

## GENERAL CONDITIONS

### SECTION 1 - TERMS, DEFINITIONS

#### 1.1 GENERAL.

Unless otherwise stated, the words directed, required, permitted, ordered, instructed, designated, considered necessary, prescribed, approved, acceptable, satisfactory, or words of like meaning, refer to actions, expressions, and prerogatives of the Engineer.

#### 1.2 TERMS AND DEFINITIONS

**1.2.1 Acceptable, Acceptance** or words of similar import shall be understood to be the acceptance of the Engineer and/or CivicSD.

**1.2.2 Agreed Price** - The cost for new or unforeseen work, or for adjustments in the Contract Unit Price for changes in the character of the work as specified herein, established by mutual agreement between the Contractor and CivicSD.

**1.2.3 Applicable Laws** – The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.

**1.2.4 Assessment Act Contract** - A Contract financed by special assessments authorized under a State Act or procedural ordinance of a City or County.

**1.2.5 Board** - The officer or body constituting the awarding authority of CivicSD.

**1.2.6 Caltrans** - The State of California Department of Transportation.

**1.2.7 Cash Contract** - A Contract financed by means other than special assessments.

**1.2.8 Certificate of Compliance** - A written document signed and submitted by a supplier or manufacturer that certifies that the material or assembled material supplied to the Work site conforms to the requirements of the Contract Documents.

**1.2.9 City** – City of San Diego.

**1.2.10 Civic San Diego (“CivicSD”)** – A California non-profit public benefit Corporation

**1.2.11 Construction Manager** – CivicSD’s authorized representative for construction management.

**1.2.12 Contract** - The written agreement between CivicSD and the Contractor covering the Work.

**1.2.13 Contract Documents** - The Contract Documents include all documents listed in Article 5 of the Owner-Contractor Agreement.

**1.2.14 Contractor** - The entity identified in the Owner-Contractor Agreement with which CivicSD has contracted for performance of the Work. In the case of work being done under a permit issued by the CivicSD, the permittee shall be construed to be the Contractor. The term "prime contractor" shall mean the Contractor.

**1.2.15 Contract Price** - The total amount of money for which the Contract is awarded.

**1.2.16 Contract Unit Price** - The amount stated in the Bid for a single unit of an item of work.

**1.2.17 Days** - shall mean a 24 hour calendar day unless otherwise specifically designated

**1.2.18 Engineer** - The Principal Engineer of CivicSD, Director of Public Works, or other person designated by the Board, acting either directly or through authorized agents or consultants.

**1.2.19 Holiday** – Holidays observed by the City and Civic San Diego are listed below. If any holiday listed falls on a Saturday, the Saturday and the preceding Friday are both legal holidays. If the holiday falls on a Sunday, both Sunday and the following Monday will be legal holidays:

<b>Holiday</b>	<b>Observed On</b>
New Year's Day	January 1
Martin Luther King Day	3 <sup>rd</sup> Monday in January
President's Day	3 <sup>rd</sup> Monday in February
Caesar Chavez Day	March 31
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1 <sup>st</sup> Monday in September
Veteran's Day	November 11
Thanksgiving Day	4 <sup>th</sup> Thursday in November
Day After Thanksgiving Day	4 <sup>th</sup> Friday in November
Christmas Day	December 25

Do not work on holidays unless specified otherwise in the Contract Documents or authorized by the Engineer

**1.2.20 Limited Notice to Proceed** – A written notice given from CivicSD to you that authorizes you to start a limited amount of work that is not Construction Work, e.g. finalizing subcontract agreements, ordering materials, mobilization, furnishing a field office, Design Work, and any other preliminary work done prior to performing Construction Work.

**1.2.21 Material** – Includes machinery, equipment, manufactured articles, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract, whether or not it will become a permanent part of the Work. All material shall be new unless specified otherwise.

**1.2.22 Notice of Award** - The written notice by CivicSD to the successful Bidder stating that upon its compliance with the required conditions, CivicSD will execute the Contract.

**1.2.23 Notice to Proceed** - A written notice given by CivicSD to the Contractor fixing the date on which the Contract time will start.

**1.2.24 Owner** – See Civic San Diego.

**1.2.25 Plans** - The drawings, profiles, cross sections, Standard Plans, working drawings, and shop drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions, or details of the Work.

**1.2.26 Project** - The planning, design, development, financing, construction, and completion of the public work of improvement, which includes, but is not necessarily limited to, the Work. The Project may include construction that will be performed by others directly or through separate contracts.

**1.2.27 Reference Specifications** - Those bulletins, standards, rules, methods of analysis or testing, codes, and specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents. These shall refer to the latest edition, including amendments in effect and published at the time of advertising the Contract or issuing the permit, unless specifically referred to by edition, volume, or date.

**1.2.28 Shop Drawings** - Drawings showing details of manufactured or assembled products proposed to be incorporated into the Work.

**1.2.29 Specifications** – That portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work, including the most current edition at the time of bidding of the following:

- (a) Standard Specifications for Public Works Construction (Greenbook) and all Regional Supplements (Part 1 excluded).
- (b) City of San Diego Standard Specifications for Public Works Construction ("WHITEBOOK", Part 1 excluded).
- (c) Manual for Uniform Traffic Control Devices for the State of California (Current edition).
- (d) State of California Mechanical, Electrical and Plumbing Codes.
- (e) All local utilities' standards, regulations and codes.
- (f) CivicSD's Standard Drawings and supplements.

- (g) State of California Mechanical, Electrical and Plumbing Codes related drawings.
- (h) All local utilities' standard drawings.
- (i) State and Federal Standard Drawings.

**1.2.30 State** - State of California.

**1.2.31 Subcontractor**- An individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work.

**1.2.32 Successor Agency:** The City of San Diego, solely in its capacity as the designated Successor Agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic.

**1.2.33 Supervision** - Supervision, where used to indicate supervision by the Engineer, shall mean the performance of obligations, and the exercise of rights, specifically imposed upon and granted to CivicSD in becoming a party to the Contract. Except as specifically stated herein, supervision by CivicSD shall not mean active and direct superintendence of details of the Work.

**1.2.34 Utility** - Tracks, overhead or underground wires, pipeline, conduits, ducts, structures, sewers, or storm drains owned, operated, or maintained in or across a public right of way or private easement.

**1.2.35 Work** - The construction or related work that is to be performed under the Contract, including furnishing all labor, materials, equipment, and services. The Work may be all or a portion of the Project.

**1.2.36 Working Day** - Any day within the period between the date of the start of the Contract time and the date of field acceptance of the Work by the Engineer, other than:

- a. Saturday,
- b. Sunday,
- c. any day designated as a holiday by CivicSD and the City of San Diego,
- d. any other day designated as a holiday in a Master Labor Agreement entered into by the Contractor or on behalf of the Contractor as an eligible member of a contractor association,
- e. any day the Contractor is prevented from working at the beginning of the workday for cause as specified herein, or
- f. any day the Contractor is prevented from working during the first 5 hours with at least 60 percent of the normal work force for cause as specified herein.

**1.2.37 Working Drawings** - Drawings showing details not shown on the Plans which are required to be designed by the Contractor.

## SECTION 2 - SCOPE AND CONTROL OF WORK

### 2.1 GENERAL.

**2.1.1 Award and Execution of the Contract.** Award and execution of the Contract shall be as provided for in the Instructions to Bidders and Notice Inviting Bids.

**2.1.2 Successor's Obligations.** All grants, covenants, provisions and claims, rights, powers, privileges and abilities contained in the Contract Documents shall be read and held as made by and with, and granted to and imposed upon, the Contractor and CivicSD and their respective heirs, executors, administrators, successors, and assigns.

**2.1.3 Waiver of Legal Rights.** The failure of CivicSD to insist, in any one or more instances, upon the performance of any provision of the Contract, or to exercise any right therein, shall not be construed as a waiver or relinquishment of such provisions or rights. Any waiver of any breach of this contract shall not be held to be a waiver of any other or subsequent breach.

Any waiver issued by CivicSD of any provision of the Contract shall only be effective if issued in writing by CivicSD and shall be specific, shall apply only to the particular matter concerned and not to other similar or dissimilar matters.

**2.1.4 Cumulative Remedies.** The duties and obligations imposed by this contract and the rights and remedies available hereunder to the Parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the Contractor by this contract and all of the rights and remedies available to CivicSD thereunder; are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents.

**2.1.5 Pre-Construction Meeting.** CivicSD will schedule a Pre-Construction Meeting after the award and execution of the Contract and prior to construction. The Contractor (Principal and Project Superintendent) and any subcontractor for 5 percent or more of the Work shall attend and be prepared to provide or discuss the following information:

1. Contact names and numbers
2. Construction schedule, moratoriums and special events (if any)
3. Pre-NTP submittals as required
4. NTP issuance
5. Critical elements of the work
6. Project safety and emergency procedures
7. Prevailing Wage and DIR Requirements
8. Water quality control and/or SWPPP Requirements
9. Utility coordination

10. Required permits
11. Coordination with other agencies
12. Subcontractors
13. Submittals and potential substitutions
14. Schedule of values
15. Payment process
16. Survey requirements
17. Materials and delivery schedule
18. All other items identified in the Contract Documents

## **2.2 ASSIGNMENT.**

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

**2.2.2 Assignment of Antitrust Actions.** In accordance with §7103.5(b) of the California Public Contract Code, Contractor and Subcontractors must conform to the following requirements:

1. In entering into a public works contract or a Subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or Subcontractor offer and agree to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or the Subcontract.
2. This assignment must be made and become effective at the time the awarding body tenders to Contractor, without further acknowledgment by the Parties.

**2.2.3 Contractor Indebtedness.** Indebtedness incurred for any cause in connection with this work must be paid by the contractor and CivicSD is hereby relieved at all times from any indebtedness or claim other than payments under terms of the contract and the contractor will indemnify and hold harmless CivicSD and its officers and employees from any loss, demand, damages, claims or actions arising from or in connection with said indebtedness.



## 2.3 SUBCONTRACTS

**2.3.1 General.** The Contractor agrees to bind in writing all subcontractors and materials suppliers to the terms of the Contract Documents as far as such terms are applicable to subcontractor's portion of the work. Contractor shall be as fully responsible to CivicSD for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and CivicSD.

Subcontractors shall be qualified, sufficiently experienced, and appropriately licensed, and specifically qualified where required by the contract documents.

Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4100 et seq., before replacing a subcontractor listed in the bid or performing work with its own forces for which a subcontractor was listed.

## 2.4 PLANS AND SPECIFICATIONS

**2.4.1 General.** The Contractor shall keep at the Work site a copy of the Contract Documents and will provide the Engineer with access at all times.

The Contract Documents, reference materials, codes and regulations shall govern the Work. The Contract Documents are intended to be complementary and cooperative. Anything specified in the Specifications and not shown on the Plans, or shown on the Plans and not specified in the Specifications, shall be as though shown on or specified in both.

The Plans shall be supplemented by such working drawings and shop drawings as are necessary to adequately control the Work.

The Contractor shall, upon discovering any error or omission in the Plans or Specifications, immediately call it to the attention of the Engineer. If the Contractor fails to inform the Engineer in writing of any error or omission any costs incurred by the contractor or additional future costs resulting from the Contractor's action or inaction shall be borne solely by the Contractor and there shall be no costs to CivicSD.

**2.4.2 Review of Bid and Contract Documents.** The Contractor certifies that (i) the Contractor has carefully examined the Project Site, has taken steps to obtain all information concerning Site conditions and is familiar with all conditions that are observable, could be known by reasonable inference or through diligent research (including information that CivicSD made available to all bidders during the bid process, costs and physical conditions) affecting the performance of the Work; (ii) the Contractor has carefully examined the Bid and Contract Documents and the Bid and Contract Documents either (a) contain no significant error, inconsistency or omission or (b) the Contractor has requested additional information and

clarification from CivicSD in writing with respect to any such error, inconsistency or omission and has received such information and clarification from CivicSD; (iii) the Bid and Contract Documents are sufficient to have enabled the Contractor to determine the cost and duration of the Work and to enter into the Contract and the Bid and Contract Documents are sufficient to construct the Work in accordance with all applicable laws, statutes, buildings codes and regulations and otherwise to fulfill the Contractor's obligations under the Contract; and (iv) the Contractor has requested each Subcontractor to carefully examine the Project Site, information concerning Site conditions, and Bid and Contract Documents with respect to the portion of the Work to be performed by such Subcontractor and that each Subcontractor has certified to the Contractor that such Subcontractor requires no additional information or clarification to perform the portion of the Work to be performed by such Subcontractor except as may have been requested in writing by the Contractor and to which CivicSD has responded.

Before commencing any portion of the Work, Contractor shall again carefully examine all Contract Documents, the Site and other information given to Contractor as to materials and other Work requirements. Contractor shall immediately notify CivicSD in writing of any potential error, inconsistency, ambiguity, conflict or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the requirements of the Contract Documents.

Contractor may make a written request for information to address any error, inconsistency, ambiguity, conflict or lack of detail or explanation in the Contract Documents. CivicSD will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

**2.4.3 Document Ownership.** Once the Contractor has received any compensation for the Work performed, all electronic or hard copy documents, e.g., original plans, studies, sketches, drawings, computer printouts and files, and specifications prepared in connection with or related to the Work shall be the property of CivicSD. CivicSD's ownership of these documents includes use of, reproduction or reuse of, and all incidental rights, whether or not the item of the Work for which they were prepared has been performed.

**2.4.4 Headings.** All section headings are for convenience only and shall not affect the interpretation of this contract.

**2.4.5 Cumulative Remedies.** The duties and obligations imposed by this contract and the rights and remedies available hereunder to the Parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the Contractor by this contract and all of the rights and remedies available to CivicSD thereunder; are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies imposed

or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents.

**2.4.6 Precedence of Contract Documents.** If there is a conflict between any of the Contract Documents, the documents highest in precedence shall control. The precedence shall be as follows:

1. Permits of other agencies as may be required by law.
2. Change Orders and Supplemental Agreements; whichever occurs last.
3. Contract/Agreement
4. Addenda
5. Bid Schedule
6. Project Special Provisions
7. Project Plans
8. CivicSD Standard Drawings
9. Utility Standard Drawings
10. Regional Standard Drawings
11. Regional Supplement
12. "Greenbook" Standard Specifications for Public Works Construction
13. Reference Specifications

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

1. Figures govern over scaled dimensions
2. Detail drawings govern over general drawings
3. Addenda or Change Order drawings govern over Contract Drawings
4. Contract Drawings govern over Standard Drawings
5. Contract Drawings govern over Shop Drawings

#### **2.4.7 Submittals.**

**2.4.7.1 General.** Anything required to be provided by the Contractor to CivicSD for review, acceptance or approval is a submittal. Submittals shall be provided, at the Contractor's expense as required by the Contract Documents, or when requested by the Engineer when needed to ensure consistency, quality, function, conformance, durability, compatibility or any other reason deemed necessary by the Engineer. CivicSD shall provide an initial submittal review and one re-review for each resubmittal. The cost of all additional re-reviews for each submittal shall be paid for by the Contractor. CivicSD may deduct the costs of the additional re-reviews from any monies owed to the Contractor.

Materials shall not be furnished or fabricated, or shall any work for which submittals are required be performed, before the required submittals have been reviewed and accepted with exception by the Engineer. Review or acceptance of the submittals by the Engineer shall not relieve the Contractor from responsibility for errors, omissions, or deviations from

the Contract Documents, unless such deviations were specifically called to the attention of the Engineer in the letter of transmittal and on the submittal. The Contractor shall be responsible for the correctness of the submittals. Work or materials that are incorporated into the work that differ from those required in the Contract Documents that were not approved with such proper written notice from Contractor shall be removed and replaced with the specified item at the Contractor's expense.

The Contractor shall allow a minimum of 20 working days for review of submittals unless otherwise specified in the Special Provisions. A letter of transmittal shall accompany each submittal.

Prior to the start of work the Contractor shall prepare in Microsoft Excel and deliver to the Engineer a log of submittals that indicates all required submittals, and for each:

- a. Estimated deliver date of the submittal.
- b. Last day submittal can be delivered to keep the project schedule (factor in response time and resubmittal/response time).

Unless otherwise stated in the Contract Documents, the Contractor shall deliver via email all submittals in pdf format to the Project Manager. Such submittals shall be returned via email in pdf format.

Each submittal shall be consecutively numbered (eg. 1.0, 2.0, 3.0, etc.). Resubmittals shall be labeled with the original submittal number followed by an ascending decimal designation (e.g. The label '4.1' would indicate the first resubmittal for submittal number 4). Each sheet of each submittal shall be consecutively numbered. Each set of shop drawings and submittals shall be accompanied by a letter of transmittal on the Contractor's letterhead. The Letter of transmittal shall contain the following:

1. Project title and CivicSD Project number.
2. Number of complete sets.
3. Contractor's certification statement.
4. Specification section number(s) pertaining to material submitted for review.
5. Submittal number (Submittal numbers shall be consecutive including subsequent submittals for the same materials.)
6. Table of Contents describing the contents of the submittal.
7. Identification of deviations from the contract documents.

The Contractor shall subscribe to and shall place the following certification on all submittals:

"I hereby certify that the (equipment, material) shown and marked in this submittal is that proposed to be incorporated into this Project, is in

compliance with the Contract Documents, can be installed in the allocated spaces, and is submitted for approval.”

By: \_\_\_\_\_ Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Company Name: \_\_\_\_\_

**2.4.7.2 Working Drawings.** Working Drawings shall be of a size and scale to clearly show all necessary details. The Contractor shall confirm the scale of the drawings with the Engineer prior to preparation and submittal.

**2.4.7.3 Shop Drawings.** Contractor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in his own Work or in that of any other contractor, subcontractor, or worker on the Work.

Contractor shall promptly address any CivicSD comments and resubmit. CivicSD’s review of shop drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called CivicSD’s attention to such deviations at time of submission and has secured CivicSD’s written approval. CivicSD’s review of shop drawings shall not relieve Contractor from responsibility for errors in shop drawings.

If requested by CivicSD, Contractor shall be required to provide no more than two (2) hard copies of shop drawings in specified scale and size.

**2.4.7.4 Supporting Information.** Supporting information is information required by the Contract Documents for the purposes of administration of the Contract, analysis for verification of conformance with the Specifications, the operation and maintenance of a manufactured product or system to be constructed as part of the Work, and other information as may be required by the Engineer. Six copies of the supporting information shall be submitted to the Engineer prior to the start of the Work unless otherwise specified in the Contract Document or directed by the Engineer. Supporting information for systems shall be bound together and include all manufactured items for the system. If resubmittal is not required, 3 copies will be returned to the Contractor. Supporting information shall consist of the following and is required unless otherwise specified in the Special Provisions.

The following submittals are required prior to the start of work:

1. 24-hour emergency contact information.
2. Name and contact information of the company contact and superintendent who is authorized to legally bind the Contractor.
3. List of all subcontractors regardless of percentage of work to be performed.
4. Construction schedule
5. Public notifications
6. Digital photo documentation of the project site and adjacent areas.

7. Corner Recorders of all survey monuments tie-out in or near the work area (if surveying is to be provided by the Contractor).
8. Specifications and certifications for each material or item to be used on the project.
9. List of all equipment to be employed on the project.
10. Traffic control plans.
11. Certified payroll documents set up documents.
12. Illness and Injury Prevention Program Plan
13. Certificates of Compliance for materials and equipment to be used.
14. Schedule of Values
15. Construction Schedule
16. All permits and contractor licenses
17. Business licenses
18. Confined Space Entry Program and Shoring Plan, (if required)
19. Cut sheet/shop drawings, manufacturer's brochures, technical bulletins and reports, specifications, diagrams for all products to be used on the project
20. Plans, schematics, drawings and engineering calculations as required per the contract documents and/or permitting
21. SWPPP (if required)
22. Controller cabinet wiring diagrams (if any)
23. Data, including, but not limited to, catalog sheets, manufacturer's brochures, technical bulletins, specifications, diagrams, product samples, and other information necessary to describe a system, product or item. This information is required for irrigation systems, street lighting systems, and traffic signals, and may also be required for any product, manufactured item, or system.
24. Other submittals as described herein, referenced or described in referenced materials, or as requested by the Engineer

The following submittals are required during the work:

1. Superintendent's daily report, which shall include:
  - (a) Name, work classification and hours of each worker
  - (b) Equipment make and model and character of use (use or idle hours).
  - (c) Work accomplished
2. Certificates of compliance for products delivered.
3. Incident reports
4. Photo documentation
5. Schedule updates
6. Material tickets
7. Product samples and mock-ups.
8. Certified payroll documents
9. Interim as-built drawings

10. Other submittals as described herein, referenced or described in referenced materials, or as requested by the Engineer

The following submittals are required at the completion of work:

1. Notice that work is complete
2. Warranties/Guarantees
3. User and Operation & Maintenance Manuals
4. As-built plans
5. Other submittals as described herein, referenced or described in referenced materials, or as requested by the Engineer

**2.4.8 Record Drawings (As-built drawings).** Accurate and legible records shall be kept on a set of contract drawings of all changes of work, which occur during construction. The contractor shall record the exact location by dimension, and exact depth, by elevation, of all underground lines, valves, plugged tees, capped ends, and all other underground facilities. The Contractor shall record, by dimension and/or scale drawings, all wiring, conduits and pull boxes as actually installed. All information necessary to maintain and/or service any concealed work shall be noted on these record drawings. Such records shall be kept up to date with all entries checked by the Engineer before the work is buried or covered up. Upon completion of the work (but prior to acceptance of the work), Contractor shall deliver to CivicSD two sets of complete "As Built" record drawings.

Depending upon the length of the Contract and the complexity of the project, the Engineer reserves the right to request interim prints of the "As-Built" record drawing when the Contractor submits periodic application for payment in order to verify the accuracy and timeliness of recording the actual construction conditions. If the Contractor's "As Built" documentation is not satisfactory to the Engineer, this deficiency may be cause to delay approval of the periodic or final payment applications until the deficiencies are satisfactorily resolved.

If the Contractor fails to keep adequate As-Built Drawings the Engineer may take any and all measures necessary to create proper and acceptable As-Built drawings through any means the Engineer deems appropriate including hiring a qualified third party. All costs incurred by CivicSD to develop and produce As-Built drawings shall be deducted from amounts due to the Contractor.

## **2.5 SUBSURFACE DATA.**

When a soils investigation report for the Site is available, such report is provided for informational purposes only. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Contractor is required

to examine the Site before submitting its bid and must make whatever tests it deems appropriate to determine the condition of the soil.

## **2.6 RIGHT-OF-WAY.**

Rights-of-way, easements, or rights-of-entry for the Work will be provided by CivicSD. Unless otherwise specified in the Special Provisions, the Contractor shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required. The Contractor shall indemnify and hold CivicSD harmless from all claims for damages caused by such actions.

The Contractor shall confine operations to the areas shown in the Contract Documents unless special arrangements are otherwise made with individual property owners. The Contractor shall obtain a written release from the property owner and provide a copy of said release to CivicSD for any special arrangements made with property owners prior to any action relating to the special arrangement is taken by the Contractor. Furthermore, the Contractor shall conduct operations in accordance with any other provisions and shall observe any restrictions contained in these Contract Documents or as directed by the Engineer concerning work on private property.

## **2.7 SURVEYING.**

**2.7.1 General.** The Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work, and all necessary surveys to compute quantities of Work performed. Any required “as-built” drawings of civil engineering elements of the Work shall be prepared by a registered civil engineer.

**2.7.2 Surveying.** The Contractor must notify the Engineer at least 7 days before starting the Work to allow for the preservation of survey monuments, and benchmarks. The Contractor through its Licensed Land Surveyor will, at its cost and in accordance with Business and Professions Code Section 8771, file a Corner Record or a Record of Survey referencing survey monuments subject to disturbance in the Office of the County Surveyor. The recording will take place twice i.e., prior to the start of construction and prior to the issuance of the Notice of Completion. The corner records for tying out the survey monuments shall be delivered to the Engineer prior to the commencement of work.

1. The Contractor shall not disturb or permanently cover survey monuments or benchmarks without the consent of the Engineer or the. The Contractor shall bear the expense of uncovering and replacing any that may be disturbed or covered without permission.
2. When a change is made in the finished elevation of the pavement of any roadway in which a street survey monument is located, adjust the monument cover to the new grade within 7 days of finished paving unless otherwise specified in the



Special Provisions. If a referenced monument is unable to be reset in its original location due to improvements, establish the reset monument in a location approved by the Engineer.

3. Replacing and establishing survey monuments and benchmarks must be done only under the direction of the Engineer by a Licensed Land Surveyor or a Registered Civil Engineer authorized to practice land surveying within the State of California.

**2.7.3 Records.** Survey data shall be recorded in accordance with recognized professional surveying and City of San Diego standards. Original field notes, computations, and other surveying data shall be recorded on electronic data collectors or in standard field books and must be of sufficient quality to enable the Contractor to prepare accurate record drawings as required by the Contract Documents.

**2.7.4 Payment.** Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required for surveys for the layout of work shall be included in the items of work requiring the surveys. No additional compensation shall be made to the Contractor for this Work.

## **2.8 AUTHORITY OF THE BOARD AND THE ENGINEER.**

The Board has the final authority in all matters affecting the Work. Within the scope of the Contract, the Engineer has the authority to enforce compliance with the Contract Documents. The Contractor shall promptly comply with instructions from the Engineer.

The decision of the Engineer is final and binding on all questions relating to:

- a. quantities;
- b. acceptability of material, equipment, or work;
- c. execution, progress or sequence of work; and
- d. interpretation of the Plans, Specifications, or other Contract Documents.
- e. Any other areas specifically identified in the Contract Documents or under the law.

Compliance with instructions from the Engineer shall be a condition precedent to any payment under the Contract, unless otherwise ordered by the Board.

## **2.9 INSPECTION/OBSERVATION.**

**2.9.1 General.** The Work is subject to inspection, observation, and approval by CivicSD and/or the City.

**2.9.2 Notice.** Contractor shall give the Engineer timely notice of readiness of the Work for all required inspections, observations, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

**2.9.3 Inspection by Other Agencies.** If any public body having jurisdiction and any jurisdictional permits require any Work (or part thereof) to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish the Engineer any required certificates of inspection or approval.

**2.9.4 Availability of Inspection Services.** As required by the Contract Documents, CivicSD will provide inspection and observation services during normal working hours Monday through Friday. Inspection or observation before or after this time will be charged to the Contractor as reimbursable inspection or observation time. Inspections and observations on weekends requires two days' notice for review and approval. Upon written request and approval the working day may be changed to other limits subject to city/county ordinance.

**2.9.5 Payment.**

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

**2.9.5.2** Unless otherwise stated and as provided by the Contract Documents, CivicSD shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.

**2.10 WRITTEN NOTICE.**

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Contract Documents. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to CivicSD shall be addressed to CivicSD as follows, unless CivicSD designates another address in writing for service of notice:

Daniel Kay, Vice President, Engineering and Construction  
Civic San Diego  
8989 Rio San Diego Drive, Suite 100  
San Diego, CA 92108

Notices shall be deemed to be received upon personal delivery to the addresses above; if sent by email, upon delivery; if sent by overnight delivery, upon delivery as shown by delivery service records; if sent by facsimile, upon receipt as confirmed by the sending facsimile equipment; if by United States Postal Service, five days after deposit in the mail.

## **2.11 SITE ACTIVITIES BY CIVICSD OR SEPARATE CONTRACTORS**

**2.11.1 CivicSD's Right to Award Separate Contracts.** CivicSD reserves the right to perform work or operations outside the scope of Work of this contract related to the Project with separate contractors. If Work to be performed by another party was not noted in this contract, CivicSD will give written notice to the Contractor 10 Working Days prior to the start of any work. If the Contractor determines that the work being performed by others may interfere with, or cause damages to Work being performed by the Contractor, the Contractor shall notify CivicSD in writing within 3 Working Days of CivicSD's notice.

**2.11.2 Integration of the Work with Separate Contractors.** If specified in the Contract Documents, the Contractor shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to CivicSD for approval. The plan shall be fair and reasonable for the Contractor and the Separate Contractors, and the Contractor shall work with the Separate Contractors to reach agreement on such plan. The Contractor shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, joined in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

The cost of coordinating traffic control and attending project coordination meeting shall be included in the various line items of work and there shall be no further costs to CivicSD.

If part of your work depends on proper execution or results upon construction or operations a separate contractor, prior to proceeding with that portion of the Work, promptly report to the separate contractor and the Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by you. Use good faith efforts to resolve any such discrepancies or defects or any related disagreements. Your failure to report constitutes your acceptance of the work of separate contractors as fit, proper, and coordinated with the Work.

## **2.12 FLOW AND ACCEPTANCE OF WATER.**

It is anticipated that storm, surface, or other waters will be encountered at various times during the work herein contemplated. The Contractor, by submitting a bid, acknowledges that it has investigated the risk arising from such waters and has prepared its bid accordingly; and Contractor submitting a bid assumes all said risk.

The Contractor shall conduct its operations in such a manner that storm or other existing waters may proceed uninterrupted along their existing street or drainage courses. Diversions of water for short reaches to protect construction in progress will be permitted if public and/or private properties, in the opinion of the Engineer, are not subject to probability of damage. The Contractor shall obtain written permission from the applicable public CivicSD

or property owner before any diversion of water outside of public right-of-way will be permitted.

## SECTION 3 - CHANGES IN WORK

### 3.1 CHANGE ORDER WORK

**3.1.1 General.** CivicSD, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Contract Price and Contract Time shall be adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract Price or the Contract Time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

Contractor shall promptly execute changes in the Work as directed in writing by CivicSD even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Contract Price or Contract Time, if any. All claims for additional compensation to the Contractor shall be presented in writing. No claim will be considered after the work in question has been done unless a written contract change order has been issued or a timely written notice of claim has been made by Contractor. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract Documents, and shall be subject to all terms, conditions and provisions of the original Contract Documents.

**3.1.2 Owner Initiated Change.** The Contractor must submit a complete cost proposal, including any change in the Contract Time, within seven (7) Days after receipt of a proposed change order initiated by CivicSD, unless CivicSD requests that proposals be submitted in less than seven (7) Days.

**3.1.3 Contractor Initiated Change.** The Contractor shall notify CivicSD in writing no later than twenty four (24) hours after any event(s) or discovery of facts giving rise to any claim for a proposed change order, additional compensation, or adjustment of Contract Time, including but not limited to a claim for changed or unknown condition or change in scope of work to be performed. The Contractor shall provide a written cost proposal within seven (7) Days of discovery of the facts giving rise to the proposed change order. The Contractor shall not perform any additional work without written authorization from CivicSD. The Contractor shall be responsible for all costs, including but not limited to labor, materials, equipment, and delay, incurred by the Contractor as a result of its failure to comply with this section.

### **3.1.4 Cost Proposals.**

**3.1.4.1** Whenever possible, any changes to the Contract Price shall be in a lump sum mutually agreed to by the Contractor and CivicSD.

**3.1.4.2** Price quotations from the Contractor shall be accompanied by such detailed supporting documentation, including but not limited to estimates and quotations from subcontractors or material suppliers, as CivicSD may reasonably request.

**3.1.4.3** If the Contractor fails to submit a complete cost proposal within seven (7) Days (or as requested), CivicSD has the right to order the Contractor in writing to commence the work immediately on a force account basis and/or issue a lump sum change to the Contract Price and/or Contract Time in accordance with CivicSD's estimate. If the change is issued based on CivicSD estimate, the Contractor will waive its right to dispute the amount of compensation or time unless within fifteen (15) Days following receipt of CivicSD's estimate, the Contractor presents written proof that CivicSD's estimate was in error.

**3.1.4.4** Estimates for lump sum quotations and accounting for force account work shall be limited to direct expenditures necessitated specifically by the extra work, and shall be segregated as follows:

- a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the cost of extra work will not be permitted unless the Contractor establishes the necessity for such new classifications. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
- b. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials cost shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then CivicSD shall determine the materials cost, at its sole discretion.
- c. Tool and Equipment Use. Costs for the use of small tools, which are tools that have a replacement value of \$1,000 or less, shall be considered included in the markups described below. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

d. Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be determined in accordance with the following provisions:

1. "Net Cost" is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up. Contractor shall provide CivicSD with documentation of the costs, including not limited to payroll records, invoices, and such other information as CivicSD may reasonably request.
2. For Work performed by the Contractor's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work.
3. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Subcontractor's Net Cost of the Work, to which the Contractor may add five (5%) percent of the Subcontractor's Net Cost.
4. For Work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost for Work, to which the subcontractor and general contractor may each add an additional five (5%) percent of the Net Cost of the lower tier subcontractor.
5. No additional markup will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by CivicSD exceed twenty-five (25%) percent of the Net Cost, as defined herein, of the party that performs the Work.

**3.1.4.5** All of the following costs are included in the markups for overhead and profit described above, and Contractor shall not receive any additional compensation for: Submittals, drawings: field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary on-Site facilities (Offices, Telephones, Internet access, Plumbing, Electrical Power, lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final cleanup; Other incidental Work; Related warranties.

**3.1.4.6** For added or deducted Work by subcontractors, the Contractor shall furnish to CivicSD the subcontractor's signed detailed records of the cost of labor, material and

equipment, including the subcontractor markup for overhead and profit. The same requirement shall apply to sub-subcontractors.

**3.1.4.7** For added or deducted Work furnished by a vendor or supplier, the Contractor shall furnish to CivicSD a detailed record of the cost to the Contractor, signed by such vendor or supplier.

**3.1.4.8** Any change in the Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an increase in the Contract Price; overhead and profit allowances shall not be applied if the net total cost is a deduction to the Contract Price. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.

**3.1.4.9** Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify CivicSD's Change Order form in an attempt to reserve additional rights.

**3.1.4.10** If CivicSD disagrees with the proposal submitted by Contractor, it will notify the Contractor and CivicSD will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with CivicSD, a change order will be issued by CivicSD. If no agreement can be reached, CivicSD shall have the right to issue a unilateral change order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to CivicSD within fifteen (15) Days of the issuance of the unilateral change order, disputing the terms of the unilateral change order and providing such supporting documentation for its position as CivicSD may reasonably require.

**3.1.4.11** No dispute, disagreement or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the changed work, including extra work, promptly and expeditiously.

**3.1.4.12** Any alterations, extensions of time, extra work or any other changes may be made without securing consent of the Contractor's surety or sureties.

## **3.2 ELIMINATED ITEMS.**

Should any Bid item be eliminated in its entirety, payment will be made to the Contractor for its actual costs incurred in connection with the eliminated item prior to notification in writing from the Engineer so stating its elimination.



If material conforming to the Plans and Specifications is ordered by the Contractor for use in the eliminated item prior to the date of notification of elimination by the Engineer, and if the order for that material cannot be canceled, payment will be made to the Contractor for the actual cost of the material. In this case, the material shall become the property of CivicSD. Payment will be made to the Contractor for its actual costs for any further handling. If the material is returnable, the material shall be returned and payment will be made to the Contractor for the actual cost of charges made by the supplier for returning the material and for handling by the Contractor.

### **3.3 CHANGES IN CONTRACT UNIT PRICES**

**3.3.1 General.** If the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Contract Documents varies from the Bid quantity by 25 percent or less, payment will be made at the Contract Unit Price.

**3.3.2 Increases of More Than 25 Percent.** Should the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the plans and specifications exceed the bid quantity by more than 25 percent, payment for the quantity in excess of 125 percent of the bid quantity will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by the Contractor and CivicSD, or at the option of the Engineer, on the basis of Extra Work per 3.1, above.

**3.3.3 Decreases of More Than 25 Percent.** Should the actual quantity of an item of work covered by a Contract Unit Price, and constructed in conformance with the Plans and Specifications, be less than 75 percent of the Bid quantity, an adjustment in payment will not be made unless so requested in writing by the Contractor. If the Contractor so requests, payment will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by the Contractor and CivicSD, or at the option of the Engineer, on the basis of Extra Work per 3.1; however, in no case will payment be less than would be made for the actual quantity at the Contract Unit Price nor more than would be made for 75 percent of the Bid quantity at the Contract Unit Price.

### **3.4 COST REDUCTION INCENTIVE.**

**3.4.1 General.** The Contractor may submit written proposals to CivicSD for modifying the Plans, Specifications, or other requirements of this Contract for the sole purpose of reducing the total cost of the construction.

**3.4.2 Incentive.** CivicSD agrees to pay to the Contractor, as additional compensation under the Contract, an amount equal to fifty percent (50%) of the net savings in construction costs, as determined by CivicSD in accordance with this Section, for cost reduction changes made pursuant to the Change Order resulting from a Cost Reduction proposal submitted by the Contractor and accepted by CivicSD.

**3.4.3 CivicSD Costs.** CivicSD requires the Contractor to pay for CivicSD's cost of investigating a cost reduction proposal submitted by the Contractor as a condition of considering such proposal. By submitting the Contractor's cost reduction proposal, the Contractor grants full authority for CivicSD to deduct amounts payable from the Contractor from any monies due or that may become due to the Contractor under the contract.

**3.4.4 Cost Reduction Proposal.** A "Cost Reduction Proposal" is a written proposal submitted by the Contractor for a change in the materials or method of construction of the Work which results in reducing the overall cost of the Work or a component of the Work to CivicSD, without impairing, in any manner, the essential functions or characteristics of the Work or component of the Work, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards. Proposals which involve a change in deliverable end quantities only or which do not provide CivicSD with the functional equivalent of the Work or component thereof as described in the Bid and Contract Documents will not be considered. CivicSD reserves the right to reject any Cost Reduction Proposal for any reason, including, without limitation, reasons of aesthetics. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project.

**3.4.4.1** A Cost Reduction Proposal submitted by the Contractor shall include the following information:

- a. A description of the difference between the existing Contract requirements and that proposed, the comparative advantages and disadvantages of each, and the effect of the change on the end item's performance;
- b. A list and analysis of the Contract requirements that must be changed if the Cost Reduction Proposal is accepted by CivicSD, including any suggested specification revisions;
- c. A separate, detailed cost estimate for (i) the affected portions of the existing Contract requirements, and (ii) the Cost Reduction Proposal, taking into consideration the factors described in the following paragraph; and
- d. A description of the effect on the Construction Schedule, showing any changes to the critical path, which would occur if the cost Reduction Proposal was accepted by CivicSD, and a statement of the time by which the Cost Reduction proposal must be accepted in order to achieve the maximum cost reduction.

**3.4.4.2** In determining the amount of cost savings which results from a Cost Reduction Proposal, CivicSD will consider the net savings based upon:

- a. The cost of the implementation of the Cost Reduction Proposal, including the cost of all labor, materials, services and equipment required to implement the Cost Reduction

Proposal versus the cost of all labor, materials, services and equipment if the Cost Reduction Proposal is not accepted.

b. The cost to CivicSD for review and implementation of the Cost Reduction Proposal, including all costs of design, engineering, and testing incurred by CivicSD's representative;

c. Any difference in operating, maintenance or replacement costs, and any difference in the projected useful life of the Work or components of the Work; and

d. Any difference in costs due to changes in the Construction Schedule, the schedule of other contractors or consultants doing work on the Project and any difference in the cost to CivicSD for work of other contractors or consultants doing work on the Project.

### **3.4.5 Change Order Required.**

**3.4.5.1** The Contractor shall continue to perform the work in accordance with the requirements of the contract until an executed Change Order, incorporating the cost reduction proposal has been issued. If an executed Change Order has not been issued by the date upon which the Contractor's cost reduction proposal specified that a decision thereon should be made, or such other date as the Contractor may subsequently have specified in writing, such cost reduction proposal shall be deemed rejected.

**3.4.5.2** If the Contractor's cost reduction proposal is accepted, in whole or in part, such acceptance will be executed by a contract Change Order, which shall specifically state that it is executed pursuant to this section. Such Change Order shall incorporate the changes in the Bid and Contract Documents which are necessary to permit the cost reduction proposal or such part of it as has been accepted to be put into effect, and shall include any conditions upon which CivicSD's approval thereof is based if the approval of CivicSD is conditional. The Change Order shall also set forth the estimated net savings amount in the cost of performing the work attributable to the cost reduction proposal effectuated by the Change Order, and shall further provide that the Contractor be paid fifty (50%) percent of said estimated net savings amount.

**3.4.5.3** Acceptance of the cost reduction proposal and performance of the Work thereunder shall not extend the time of completion of the contract unless specifically provided for in the contract Change Order authorizing the use of the cost reduction proposal.

### **3.5 DISPUTES/CLAIMS.**

Contractor shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Section 3.1 Change Order Work and Section 6.4 Delays and Extension of Work, as a prerequisite to filing any claim governed by this

Section. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the Contract Price or Contract Time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

**3.5.1 Intent.** Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with all applicable law, including but not limited to these statutes.

**3.5.2 Claims.** For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with Section 3.1 Change Order Work and Section 6.4 Delays and Extension of Work has been denied by CivicSD, for:

**3.5.2.1** An adjustment of the Contract Time including, without limitation, for relief from damages or penalties for delay assessed by CivicSD;

**3.5.2.2** Payment by CivicSD of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or

**3.5.2.3** An amount the payment of which is disputed by the District.

**3.5.3 Filing Claims.** Claims governed by this Section may not be filed unless and until the Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fifteen (15) days after the request for change has been denied in whole or in part. The Claim shall be submitted in writing to the CivicSD and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for filing of Claims, including all requirements pertaining to adjustment of the Contract Time or Contract Price for compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.

**3.5.4 Documentation.** The Contractor shall submit all Claims in the following format:

**3.5.4.1** Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made.

**3.5.4.2** List of documents relating to Claim:

**3.5.4.2.1** Specifications

**3.5.4.2.2** Drawings

**3.5.4.2.3** Clarifications (Requests for Information)

**3.5.4.2.4** Schedules

**3.5.4.2.5** Other

**3.5.4.3** Chronology of events and correspondence

**3.5.4.4** Narrative analysis of Claim merit

**3.5.4.5** Analysis of Claim cost, including calculations and supporting documents

**3.5.4.6** Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested

**3.5.5 CivicSD's Response.** Upon receipt of a Claim pursuant to this Section, CivicSD shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after CivicSD issues its written statement.

**3.5.5.1** If CivicSD needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and CivicSD's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, CivicSD shall have up to three Days following the next duly publicly noticed meeting of CivicSD's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

**3.5.5.2** Within 30 Days of receipt of a Claim, CivicSD may request in writing additional documentation supporting the Claim or relating to defenses or Claims the CivicSD may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of CivicSD and the Contractor. CivicSD's written response to the Claim, as further documented, shall be submitted to the Contractor within 30 Days (if the Claim is less than \$50,000, 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 or requested documentation, whichever is greater.

**3.5.6 Meet and Confer.** If the Contractor disputes CivicSD's written response, or CivicSD fails to respond within the time prescribed, the Contractor may so notify CivicSD, in writing, either within 15 Days of receipt of CivicSD's response or within 15 Days of CivicSD's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, CivicSD shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

**3.5.7 Mediation.** Within 10 business Days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, CivicSD shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the public entity issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with CivicSD and the Contractor sharing the associated costs equally. CivicSD and Contractor shall mutually agree to a mediator within 10 business Days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

**3.5.7.1** If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

**3.5.7.2** For purposes of this Section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Section.

**3.5.7.3** Unless otherwise agreed to by CivicSD and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

**3.5.7.4** The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

**3.5.8 Procedures After Mediation.** If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a Claim pursuant to Chapter 1 (commencing with

Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.

**3.5.9 Civil Actions.** The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:

**3.5.9.1** Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Agreement. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall 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.

**3.5.9.2** If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

### **3.5.10 Government Code Claim Procedures.**

**3.5.10.1** This Section does not apply to tort claims and nothing in this Section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.

**3.5.10.2** In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against CivicSD.

**3.5.10.3** Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If Contractor does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Contractor may not file any action against CivicSD.

**3.5.10.4** A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims known to Contractor or that should reasonably be known to Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.

**3.5.11 Non-Waiver.** CivicSD's failure to respond to a Claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Section.

### **3.6 CONTRACTOR'S ASSISTANCE WITH THIRD PARTY DISPUTES.**

**3.6.1 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this contract, upon CivicSD's request, the Contractor agrees to assist in resolving the dispute or litigation. The Contractor assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution, litigation, or both.

**3.6.2 Compensation Related To Mandatory Assistance.** CivicSD may reimburse the Contractor for reasonable fees and expenses incurred by the Contractor for any required assistance rendered in accordance with this section as Extra Work. CivicSD in its sole discretion shall determine whether these fees and expenses were necessary due to the conduct of or failure to act by the Contractor or Subcontractors or their respective agents, officers, and employees. If CivicSD determines that the basis of the dispute or litigation in which these fees and expenses were incurred were the result of the conduct of or failure to act by the Contractor or their respective agents, officers, and employees, in part or in whole, CivicSD shall be entitled to be reimbursed for any payments made for these fees and expenses.

Notwithstanding the foregoing, Contractor agrees that any attorney fees and costs it may incur in providing CivicSD with dispute or litigation assistance are not reimbursable.



## **SECTION 4 - CONTROL OF MATERIALS**

### **4.1 MATERIALS AND WORKMANSHIP**

**4.1.1 General.** Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Contract within the Contract Time.

**4.1.2 Quality.** Unless otherwise specified, all materials, parts, and equipment furnished by the Contractor in the Work shall be new, the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.

#### **4.1.3 On Site Storage**

**4.1.3.1** Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work until CivicSD has accepted the Work.

**4.1.3.2** Materials shall be stored on the Site in such manner so as not to interfere with any operations of CivicSD or any independent contractor.

**4.1.4 Property Rights in Material.** Nothing in the contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the work or the soil. All such materials shall become the property of CivicSD upon being so attached or affixed.

### **4.2 INSPECTION REQUIREMENTS**

**4.2.1 General.** Contractor shall give the Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

**4.2.2 Inspection by CivicSD.** Except as specified in the Contract Documents, CivicSD will bear the cost of testing locally produced materials and/or on-site materials and workmanship where the results of such tests meet or exceed the requirements indicated in the Contract Documents. The cost of all other tests shall be borne by the Contractor.

**4.2.2.1** The Contractor shall pay for the cost of any re-testing of materials for failure of the original test of any materials by CivicSD deduction said costs from any payment due.

**4.2.2.2** The Contractor shall pay for the cost of any minimum “show up” costs of a materials testing technician that was called for by the Contractor but ultimately the Contractor work was not ready for the inspection. Any such costs shall be deducted from any amounts due to the Contractor.

**4.2.2.3** At the option of the Engineer, the source of supply of each of the materials to be incorporated in the Work shall be approved by the Engineer before the delivery is started. All materials proposed for use may be inspected or tested at any time during their preparation and use. If, after incorporating such materials into the Work, it is found that sources of supply that have been approved do not furnish a uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved material from other approved sources. If any product proves unacceptable after improper storage, handling or for any other reason it shall be rejected, not incorporated into the work, and shall be removed from the project site all at the Contractor’s expense.

**4.2.2.4** Compaction tests may be made at any location along the work as deemed necessary by the Engineer.

**4.2.2.5** Additional materials and fabricated items which require inspection at the source shall be as specified in the Special Provisions.

**4.2.3 Inspection of Items Not Locally Produced.** When the Contractor intends to purchase materials, fabricated products, or equipment from sources located more than 50 miles (80km) outside the geographical limits of CivicSD or outside the United States, an inspector or accredited testing laboratory approved by the Engineer, shall be engaged by the Contractor at its expense, to inspect the materials, equipment or process. This approval shall be obtained before producing any material or equipment. The inspector or representative of the testing laboratory shall evaluate the materials for conformance with the requirements of the Plans and Specifications. The Contractor shall forward reports required by the Engineer. No materials or equipment shall be shipped nor shall any processing, fabrication or treatment of such materials be done without proper inspection by the approved agent. Approval by said agent shall not relieve the Contractor of responsibility for complying with the requirements of the Contract Documents.

**4.2.4 Tests of Materials.** Before incorporation into the Work, the Contractor shall submit samples of materials, as the Engineer may require, at no cost to CivicSD. The Contractor, at its expense, shall deliver the materials for testing to the place and at the time designated by the Engineer. Unless otherwise specified in the Special Provisions, all initial testing and a reasonable amount of retesting will be performed under the direction of the Engineer, and at no expense to the Contractor. If the Contractor is to provide and pay for testing, it will be so specified in the Special Provisions.

The Contractor shall notify the Engineer in writing, at least 15 days in advance, of its intention to use materials for which tests are specified, to allow sufficient time to perform the tests. The notice shall name the proposed supplier and source of material.

If the notice of intent to use is sent before the materials are available for testing or inspection, or is sent so far in advance that the materials on hand at the time will not last but will be replaced by a new lot prior to use on the Work, it will be the Contractor's responsibility to re-notify the Engineer when samples which are representative may be obtained.

Third party independent testing and quality control testing shall be performed within the United States.

**4.2.5 Certificate of Compliance.** A Certificate of Compliance shall be furnished to the Engineer prior to the use of any material or assembled material for which these Specifications so require or if so required by the Engineer.

The Engineer may waive the materials testing requirements of the Specifications and accept a Certificate of Compliance. Material test data may be required by the Engineer to be included with the submittal.

Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The submission of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material into the Work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection by the Engineer whether in place or not.

### **4.3 SUBSTITUTIONS.**

**4.3.1** Pursuant to Public Contract Code section 3400(b) CivicSD may make a finding that is described in the invitation for bids that designates certain products, things, or services by specific brand or trade name.

**4.3.2** Unless specifically designated in the Contract Documents, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process or article which is substantially equal or better in every respect to what is specified in the Contract Documents.

**4.3.3** Contractor shall submit written requests for substitution or any "equal" material, process or article, together with substantiating data, no later than thirty-five (35) days after award of the Contract or at the Pre-Construction meeting, whichever is first or earlier. To

facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract.

**4.3.4** Provisions regarding submission of substitution requests shall not in any way authorize an extension of the Contract Time. If a proposed “equal” substitution is rejected, Contractor shall be responsible for providing the specified material, process or article without adjustment to the Contract Price or Contract Time. The burden of proof as to the equality of any material, process or article shall rest with the Contractor. CivicSD has the complete and sole discretion to determine if a material, process or article is an “equal” material, process or article that may be substituted. Contractor shall furnish the specified item without change in the Contract Price if CivicSD rejects the proposed substitution.

**4.3.5** Information required to substantiate requests for substitutions of an “equal” material, process or article data shall include a signed affidavit from the Contractor stating that, and describing how, the proposed “equal” material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant material, including but not limited to, catalog information which describes the requested substitute “equal” material, process or article, and substantiates that it is an “equal to the specified material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the proposed substituted “equal” material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to CivicSD in a timely fashion will result in the rejection of the proposed substitution.

**4.3.6** The Contractor shall bear all of CivicSD’s costs associated with the review of substitution requests, including review by design professionals.

**4.3.7** The Contractor shall be responsible for paying all costs related to a substituted “equal” material, process or article.

**4.3.8** Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

#### **4.4 MATERIAL PROVIDED BY CIVICSD**

If applicable and upon written request of the Contractor, any materials furnished by CivicSD shall be available to the Contractor within a reasonable time at the points designated in the Contract Documents. The cost of handling, including loading and unloading, transport, storing, and placing all materials after they are made available to the Contractor shall be considered as included in the contract prices for the items in connection with which they are used.

The Contractor shall be responsible for all material provided to him and deductions will be made from any monies due to the Contractor to make good any shortages, damages and deficiencies, from any cause whatsoever, which may occur after materials are provided.

#### **4.5 PROTECTION OF WORK AND PROPERTY**

**4.5.1** Contractor shall be responsible for all damages to persons or property that occur as a result of or in connection with the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by CivicSD. All Work shall be solely at the Contractor's risk. Contractor shall protect adjacent property from settlement or loss of lateral support as necessary, and shall give all notices required by law. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Site. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

**4.5.2** In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from CivicSD, shall act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if directed or instructed by CivicSD. Any compensation claimed by Contractor on account of emergency work shall be determined in accordance with the provisions of Section 3 (Changes In Work).

**4.5.3** Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

**4.5.4** Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:

1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
2. Provide substantial barricades around any shrubs or trees to be preserved.
3. Deliver materials to the Site over a route designated by CivicSD.
4. Provide any and all dust control required and follow the applicable air quality regulations as appropriate. If the Contractor does not comply immediately with a notice from CivicSD or an public CivicSD responsible for air quality, CivicSD shall have the authority to provide dust control and deduct the cost from payments to the Contractor.

5. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of CivicSD. Contractor shall not unreasonably encumber the Site with its materials.
6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to CivicSD, at no cost to CivicSD.
7. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to CivicSD.
8. Preserve and protect from injury all buildings, pole lines and all direction, warning and mileage signs that have been placed within the right-of-way.
9. At the completion of work each day, leave the Work and the Site in a clean, safe condition.
10. Comply with any stage construction and traffic handling plans. Access to residences and businesses shall be maintained at all times.

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

**4.5.5** Should damage to persons or property occur as a result of the Work, Contractor shall promptly notify CivicSD in writing. Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. CivicSD shall be entitled to inspect and copy any such documentation, video, or photographs.

## **SECTION 5 - UTILITIES**

### **5.1 EXISTING UTILITIES.**

**5.1.1 General.** Known existing utilities and pipelines are shown on the Plans in their approximate locations. However, nothing herein shall be deemed to require the Owner to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the site of the Project.

**5.1.2 Trunk Line Utilities.** The Owner will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site if such utilities are not identified by the Owner in the Contract Documents or cannot reasonably be inferred from the presence of other visible facilities.

## **5.2 UTILITY LOCATION**

**5.2.1 General.** It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation or time extensions for work necessary to avoid interferences or for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this section.

**5.2.2 Locating Utilities.** The locating of utilities shall be in conformance with Government Code section 4216 except for the Owner's utilities located on the Owner's property and not in public right-of-way.

### **5.2.3 High Priority Subsurface Installation.**

**5.2.3.1** A "High Priority Subsurface Installation" is defined in section 4216 (e) as "high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig) or greater than six inches nominal pipe diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged."

**5.2.3.2** The Contractor's attention is directed to the requirements of Government Code section 4216.2 (a)(2) which provides: "When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation prior to the legal excavation start date and time, as such date and time are authorized pursuant to paragraph (1) of subdivision (a) of section 4216.2. The excavator and the operator or its representative shall conduct an onsite meeting at a mutually-agreed-on time to determine actions or activities required to verify the location of the high priority subsurface installation prior to start time." The Contractor shall notify CivicSD in advance of this meeting.

**5.2.4 Subsurface Installation.** A "Subsurface Installation" is defined in section 4216 (l) as "any underground pipeline, conduit, duct, wire, or other structure, except non-pressurized sewer lines, non-pressurized storm drains, or other non-pressurized drain lines."

**5.2.5 Notice.** Pursuant to Government Code section 4216.2 the Contractor shall contact the appropriate regional notification center at least two (2) working days but not more than 14 Days before performing any excavation. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service. The Contractor shall furnish to CivicSD written documentation of its contact(s) with the regional notification center prior to commencing excavation at such locations.

**5.2.6 Potholing.** After the utility survey is completed, the Contractor shall commence “potholing” or hand digging to determine the actual location of the pipe, duct, or conduit. CivicSD shall be given written notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown on the Drawings, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities, which are to remain in service for any period subsequent to the construction of the run of pipe involved.

The Contractor shall backfill and patch these potholes immediately after establishing those locations. The backfill shall conform to the relative compaction requirements for trenches. The Contractor shall maintain all patches a smooth, firm traversable surface fit for the use of that surface at all times until the permanent repair or improvement is installed.

**5.2.7 Contractor Responsibility.** The Contractor shall be responsible for detecting, determining and marking in the field the alignment of utility service (sewer, water, gas, etc.) laterals in the vicinity of proposed excavation, boxes, pads, and streetlights. This will include whatever research, excavation, electronic detection potholing or testing which is necessary to make this determination. This will be done prior to marking out and constructing the proposed improvements, in order to allow for placement and/or adjustment of trench, box, and pad locations due to actual field conditions.

No claim for additional compensation or unforeseen delay will be considered for the Contractor's failure to adequately locate existing utilities, including service laterals, in the vicinity of proposed improvements as described herein.

### **5.3 PROTECTION.**

The Contractor shall not interrupt the service function or disturb the support of any utility without authority from the utility owner or direction from the Engineer. Valves, switches, vaults, and meters shall be maintained readily accessible for emergency shutoff.

The contractor shall provide support for all utilities in a manner that is approved by the owner of such utility. It is the contractor's sole responsibility to come up with the appropriate method to provide support to all crossing utility.

The fact that existing utilities and improvements, either above or below the ground surface, are not shown on the drawings shall not relieve the Contractor of liability for complete and careful protection of said utilities or improvements from damage as specified herein. All repairs to damaged utilities or improvements shall be inspected and approved by an authorized representative of the utility and/or improvement Owner before being concealed by backfill or other work.



For the Contractor's information, the following companies are listed for initial contacts concerning the above requirements and coordination of new and/or existing utility operations for the project: CALL DIG ALERT BEFORE YOU DIG 1-800-422-4133.

#### **5.4 RELOCATION AND REPAIR.**

**5.4.1** If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, Contractor shall notify CivicSD in writing.

**5.4.2** Care shall be exercised by the Contractor to prevent damage to adjacent existing facilities and public or private works; where equipment will pass over these obstructions, suitable planking shall be placed. If high priority subsurface installations are damaged and the operator cannot be contacted, Contractor shall call 911 emergency services.

**5.4.3** CivicSD will compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and for removing or relocating such main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy, and for the cost of equipment on the Project necessarily idled during such work. The payment for such costs will be made as provided in Section 3 (Changes In Work). The Contractor shall not be assessed liquidated damages for delay in completion of the Project when such delay is caused by the failure of CivicSD or utility company to provide for removal or relocation of such utility facilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with Section 6.4.3.

**5.4.4** The public utility, where they are the owner of the affected utility, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The right is reserved to CivicSD and the owners of utilities or their authorized agents to enter upon the Work area for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such forces and shall allow the respective utilities time to relocate their facility.

**5.4.5** When the Contract Documents indicate that a utility is to be relocated, altered or constructed by others, CivicSD will conduct all negotiations with the utility company and the work will be done at no cost to the Contractor, unless otherwise stipulated in the Contract Documents. Utilities which are relocated in order to avoid interference shall be protected in their position and the cost of such protection shall be included in the Bid for the items of work necessitating such relocation.

**5.4.6** When the Contract Documents provide for the Contractor to alter, relocate, or reconstruct a utility, all costs for such work shall be included in the Bid for the items of work necessitating such work. Temporary or permanent relocation or alteration of utilities desired

by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work.

## **5.5 COOPERATION.**

When necessary as determined by a utility company, the Contractor shall conduct its operations as to permit access to the Work site and provide time for any utility work to be accomplished during the progress of the Work.

## **SECTION 6 - PROSECUTION, PROGRESS AND ACCEPTANCE OF WORK**

### **6.1 CONSTRUCTION SCHEDULE AND COMMENCEMENT OF THE WORK**

**6.1.1 General Requirements.** The construction schedule shall be prepared in a Critical Path Method ("CPM") format and in an electronic scheduling program acceptable to CivicSD as set forth herein. Contractor shall deliver the schedule and all updates to CivicSD in both paper and electronic form. The electronic versions shall be in the original scheduling program format and include all data used to prepare the schedule; pdf. copies are not acceptable. All costs for producing, editing, maintaining, and updating the construction schedule throughout the course of the Project shall be included in the various items of work and there shall be no additional costs to CivicSD.

**6.1.2 Commencement of Work.** Unless specified otherwise, Contractor must start construction within 5 Working Days after the issuance of the NTP and diligently prosecute the Work to completion within the Contract Time. Do not start any construction activity at the site until the Pre-construction Meeting is held and the NTP has been issued by CivicSD. Contract time shall start on the first day work is commenced and in no case later than 5 days after the date NTP is issued.

**6.1.3 Initial Schedule.** Within ten (10) days after the issuance of the Notice to Proceed, Contractor shall prepare a schedule for performance of the Work and shall submit it for CivicSD's review. The receipt or review of any schedules by CivicSD shall not in any way relieve the Contractor of its obligations under the Contract Documents. Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for the required quality and timely completion of the Work. Contractor's failure to incorporate all elements of Work or any inaccuracy in the schedule shall not excuse the Contractor from performing all of the required Work within the Contract Time. If the initial schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by CivicSD.

**6.1.4 Acceptance.** Acceptance of the schedules by CivicSD will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or

compliance with the Contract Documents. Acceptance will not interfere with or relieve Contractor from Contractor's full responsibility therefor.

#### **6.1.5 Construction Schedule Contents.**

**6.1.5.1** Schedule duration shall match the Contract Time. Schedules indicating early completion will be rejected, unless approved in writing by CivicSD. The Engineer may choose to accept the Contractor's proposal of a project duration shorter than the duration specified provided CivicSD is satisfied the shortened Schedule is reasonable and CivicSD and any other necessary entities are able to support the provisions of the shortened Schedule. CivicSD's acceptance of shortened project duration will be confirmed through the execution of a contract change order revising the project duration and implementing all contractual requirements including liquidated damages in accordance with the revised duration.

**6.1.5.2** The schedule shall indicate the beginning and completion dates of all phases of construction; indicate a continuous critical path for all critical, sequential time related activities; and indicate "float time" for all "slack" or "gaps" in the non-critical activities. All float shall be owned by the Project.

**6.1.5.3** The Schedule shall show a breakdown of Work into activities and relationships to the extent required to effectively manage the Work. The Schedule shall show the division of the Work into activities and specify the progression from the Notice to Proceed (NTP) to the end of the Contract Time.

**6.1.5.4** The Schedule shall include appropriate time allowances and constraints for submittals, items of interface with Work performed by others, and specified construction, start-up and performance tests.

**6.1.5.5** Comments made by the Engineer during review will not relieve the Contractor from compliance with requirements of the Contract Documents. The Engineer may request that the Contractor and major subcontractors (defined herein as being any Subcontractor or Supplier with 5% or more of the value of the Contract) participate in review of any Schedule submission.

**6.1.5.6** The Schedule shall show work to be done by CivicSD personnel, such as but not limited to, submittal reviews (separate tasks for each), sewer televising, water main connections, water testing, and operational performance tests as separate tasks. The Schedule shall show appropriate time allowances for Work performed by other agencies.

**6.1.5.7** If completion of any part of the Work, delivery of equipment or materials, or provision of the Contractor submittals is behind schedule and will impact the completion date of the Work, the Contractor shall submit a written recovery plan

acceptable to the Engineer for completing the Work by the current Contract completion date.

**6.1.5.8** The Contractor shall not be entitled to any extension in Contract Time, or recovery for any delay incurred because of extensions in an early completion date, until all Contract float is used, performance of the Work extends beyond the corresponding Contract Time, and a recovery plan is submitted demonstrating that the delay cannot be mitigated or offset through actions such as rescheduling Work.

**6.1.5.9** Misrepresentation of actual Work durations in order to suppress available float time shall be cause for rejection of the Schedule and any revisions or updates.

**6.1.5.10** The Schedule shall include procurement related activities, which lead to the delivery of permanent materials to the Site in a timely manner. Procurement activities include activities such as preparation of Shop Drawings and Working Drawings, review and acceptance of Shop Drawings and Working Drawings, materials fabrication, materials delivery, etc., as appropriate.

**6.1.5.11** The schedule shall allow enough time for inclement weather that can reasonably be expected at the Site.

**6.1.5.12** For Contracts in excess of \$500,000, the schedule must be cost-loaded. Each activity shall be assigned a budget. Separate Bid items shall be separate activities. The Schedule shall specify costs for each phase of the Contract. The cost value of all Schedule activities shall equal the Contract values shown in the Bid both individually and in total and include Change Orders.

**6.1.5.13** For Contracts in excess of \$500,000, the schedule must clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Work within the Contract Time.

**6.1.5.14** At any time during the contract the Engineer makes the determination that the Contractor is not performing the work in compliance with the approved Schedule, the Engineer may require the Contractor to resubmit an updated Schedule for review by the Engineer in compliance with the requirements stated herein.

**6.1.6 Schedule Updates.** Contractor shall continuously update its construction schedule to show the actual status of the Work and incorporate changes in the Work. Each update shall identify any logic changes and why such changes were made. Contractor shall submit an updated and accurate construction schedule to CivicSD with each progress payment request as well as upon request by CivicSD. CivicSD may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.

#### **6.1.7 Recovery Schedule.**

**6.1.7.1** Should any of the following conditions exist, CivicSD may require Contractor to prepare, at no extra cost to CivicSD, a plan of action and a Recovery Schedule for completing the Work and achieving all contractual milestones within the allotted Contract Time:

1. The Contractor's monthly progress report indicates delays that are, in the opinion of CivicSD, of sufficient magnitude that CivicSD questions the Contractor's ability to complete the Work;
2. The CPM schedule shows the Contractor to be thirty (30) or more days behind the critical path at any time during construction;
3. The Contractor desires to make changes in the logic or the planned duration of future activities of the CPM schedule which, in the opinion of CivicSD, are major in nature.

**6.1.7.2** The recovery schedule shall include proposed revisions to the Construction Schedule, demonstrating how Contractor intends to achieve all contractual milestones including contract completion within the allotted Contract Time. The submittal shall include a narrative describing the actions planned by the Contractor to recover the schedule.

**6.1.7.3** Contractor shall submit the Recovery Schedule within seven (7) Days of CivicSD's request.

**6.1.7.4** If Contractor asserts that CivicSD is responsible for the delay, failure to submit the Recovery Schedule within seven (7) Days of CivicSD's request, will be considered a concurrent delay event attributable to Contractor, and Contractor shall only be entitled to non-compensable adjustments to Contract Times.

**6.1.7.5** If Contractor is responsible for the delay, this provision will not limit or affect Contractor's liability and failure to submit the Recovery Schedule with seven (7) Days of CivicSD's request may result in CivicSD withholding progress payments or other amounts due under the Contract Documents.

**6.1.7.6** Contractor is responsible for all costs associated with the preparation and execution of the Recovery Schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence.

**6.1.7.7** Regardless of whether CivicSD directs Contractor to prepare a Recovery Schedule pursuant to this Section, Contractor shall promptly undertake

appropriate action at no additional cost to CivicSD to recover the schedule whenever the current Construction Schedule shows that the Contractor will not achieve a milestone and/or complete the Work within the allotted Contract Time. Services, Materials, and Equipment.

## **6.2 SUSPENSION OF THE WORK AND TERMINATION**

### **6.2.1 CivicSD May Suspend Work.**

**6.2.1.1** CivicSD may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Contractor. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Contractor shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.

**6.2.1.2** Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

1. Immediately discontinue Work on the date and to the extent specified in the notice;
2. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
3. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to CivicSD's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and
4. Continue to protect and maintain the Work including those portions on which Work has been suspended.

**6.2.1.3** Except as provided by this article, as full and complete compensation for such suspension, Contractor shall be granted an adjustment in the Contract Price based on a negotiated daily rate that reflects the Contractor's actual costs associated with the demobilized condition of the Site (and as a result will be less than the Daily Rate contained in the Special Conditions) and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of Contract Price or extension of Contract Times shall be granted if the suspension results from Contractor's non-compliance with the requirements of the Contract.

### **6.2.2 CivicSD May Terminate for Cause.**

**6.2.2.1** CivicSD may, without prejudice to any other right or remedy, serve written notice upon Contractor of its intention to terminate this Contract in whole or in part if the Contractor: (i) refuses or fails to prosecute the Work or any part thereof with such diligence as will ensure its completion within the Contract Time; (ii) fails to complete the Work within the required time; (iii) files a bankruptcy petition or is adjudged a bankruptcy; (iv) makes a general assignment for the benefit of its creditors; (v) has a receiver appointed; (vi) refuses or fails to supply enough properly skilled workers or proper materials to complete the Work; (vii) fails to make prompt payment to subcontractors or for material or labor; (viii) disregards Applicable Laws, other requirements or instructions of CivicSD; or (ix) violates any of the provisions of the Contract Documents.

**6.2.2.2** The Notice of Default and Intent to Terminate shall state the reasons for termination. Unless within five (5) Days after the service of such notice, Contractor resolves the circumstances giving rise to the Notice of Default to CivicSD's satisfaction, or makes arrangements acceptable to CivicSD for the required corrective action, CivicSD may terminate this Contract. In such case, Contractor shall not be entitled to receive any further payment until the Work has been finished. CivicSD may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project Performance Bond. Contractor and its surety shall be liable to CivicSD for any excess costs or other damages incurred by CivicSD to complete the Work. If CivicSD takes over the Work, CivicSD may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Site.

### **6.2.3 CivicSD May Terminate for Convenience.**

**6.2.3.1** In addition to its right to terminate this Contract for default, CivicSD may terminate the Contract, in whole or in part, at any time upon seven (7) Days written notice to Contractor. The Notice of Termination shall specify that the termination is for the convenience of CivicSD, the extent of termination, and the effective date of such termination ("Effective Date of Termination").

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

1. Stop Work as specified in the Notice.
2. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

3. Leave the Site and any other property upon which the Contractor was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
4. Terminate all subcontracts and purchase orders to the extent that they relate to the portions of the Work terminated.
5. Place no further subcontracts or orders, except as necessary to complete the remaining portion of the Work.

Submit to CivicSD, within fifteen (15) Days from the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of CivicSD's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by CivicSD no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by CivicSD's Termination for Convenience."

**6.2.3.3** CivicSD's total liability to Contractor by reason of the termination shall be limited to the total (without duplication of any items) of:

1. The reasonable cost to the Contractor for all Work performed prior to the Effective Date of Termination, including the Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the Cost Breakdown. Deductions shall be made for cost of materials to be retained by the Contractor, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work as allowed by the Contract Documents.
2. When, in CivicSD's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract Documents and excessive actual cost shall be disallowed.
3. Any Work required by the Termination for Convenience that is not included in Contract Documents will be negotiated pursuant to the Contract Change Order provisions.



4. Reasonable costs to the Contractor of handling material returned to vendors, delivered to CivicSD or otherwise disposed of as directed by CivicSD.
5. A reasonable allowance for the Contractor's internal administrative costs in preparing termination claim.
6. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.

**6.2.3.4** In no event shall CivicSD be liable for unreasonable costs incurred by the Contractor or subcontractors after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the Contractor's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.

**6.2.3.5** CivicSD shall have no obligation to pay the Contractor under this Section unless and until the Contractor provides CivicSD with updated and acceptable as-builts and Record Documents for Work completed prior to termination as required by the Contract Documents.

**6.2.3.6** In arriving at the amount due the Contractor under this clause there shall be deducted in whole, or in the appropriate part(s) if the termination is partial:

1. All unliquidated advances or other payments on account previously made to the Contractor, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,
2. Any claim CivicSD may have against the Contractor in connection with the Work or any amounts that may be withheld in accordance with the Contract Documents, and
3. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the Contractor and not otherwise recovered by or credited to CivicSD.

These provisions are in addition to and not in limitation of any other rights or remedies available to CivicSD.

Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination

**6.2.3.7** Notwithstanding any other provision of this Section, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, CivicSD may immediately order Contractor to cease Work until such safety or liability issues are addressed to the satisfaction of CivicSD or the Contract is terminated.

**6.2.3.8** If CivicSD terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

**6.2.4 Moratoriums.** When moratorium periods are specified in the Special Conditions, Contractor must completely demobilize all construction related activity, equipment and materials within stated limits prior to beginning of moratorium period(s), at no additional cost to CivicSD. Complete the Work that is started prior to the moratorium start date.

Contractor must restore and clean the site prior to each moratorium. Contractor shall not leave equipment, materials, or traffic control on-site during the moratorium period(s). Contractor shall restore trenches during moratorium periods and use permanent and final design resurfacing.

Payment for compliance with moratorium requirements is included in the various Bid items and there will be no additional costs to CivicSD. Contractor will not be entitled to any additional costs for repeat mobilization to continue the work after the moratorium periods.

**6.2.5 CivicSD's Right to Terminate or Suspend for Loss of Project Funds.**

If CivicSD is administrating this project as the Successor CivicSD, the Parties acknowledge that the sole anticipated funding source for payments owed under the Contract will be redevelopment funds presently available, or anticipated to become available, to the Successor CivicSD. The Parties further acknowledge that the City's general fund and general assets shall not be exposed to any liability or claim whatsoever under the Contract. The Successor CivicSD may terminate or suspend the Contract at its sole discretion if the State of California or its agents deny or delay, in whole or in part, the expenditure of redevelopment funds that are anticipated to be used to fund this Project. A seven-member Oversight Board and the State Department of Finance must approve the Successor CivicSD's expenditure of redevelopment funds for this Project through a payment structure that is re-evaluated every six months through successive versions of the Recognized Obligation Payment Schedule. If the Successor CivicSD chooses to suspend the Contract due to the unavailability of redevelopment funds, that suspension will last until the redevelopment funds become available or until alternative funds are identified and approved by the City Council, or Mayor, whichever is appropriate, to be used to complete the Project. If the Successor CivicSD elects under this provision to terminate the Contract, then neither Party

is entitled to compensation from the other Party for any costs, losses or damages arising from such termination. The Successor CivicSD may also elect to terminate the Contract after invoking a suspension under this provision.

### **6.3 DELAYS AND EXTENSIONS OF TIME**

**6.3.1 General.** If delays are caused by unforeseen events beyond the control of the Contractor, such delays may entitle the Contractor to an extension of the Contract time as provided herein, but the Contractor will not be entitled to damages or additional payment due to such delays, except as provided herein.

**6.3.2 Inclement Weather.** Contractor shall be bound by CivicSD's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the then-current Project schedule.

**6.3.3 Written Notice.** Any request for an extension of time and/or compensation must be submitted in writing in accordance with Section 3.1.3.

The Contractor shall provide written notice to the Engineer within ONE (1) hour of the beginning of any period that the Contractor has placed any workers or equipment on standby for any reason that the Contractor has determined to be caused by CivicSD or by any organization that CivicSD may otherwise be obligated by. The Contractor shall provide continuing daily written notice to the Engineer, each working day, throughout the duration of such period of delay. The initial and continuing written notices shall include the classification of each workman and supervisor and the make and model of each piece of equipment placed on standby, the cumulative duration of the standby, the Contractor's opinion of the cause of the delay and a cogent explanation of why the Contractor could not avoid the delay by reasonable means. Should the Contractor fail to provide the notice(s) required by this section the Contractor agrees that no delay has occurred and that it will not submit any claim(s) therefore.

**6.3.4 No Damages for Reasonable Delay.** CivicSD's liability to Contractor for delays for which CivicSD is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall CivicSD be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs, or damages which the Contractor could have avoided by any reasonable means. Damages caused by unreasonable CivicSD delay, including delays caused by items that are the responsibility of CivicSD pursuant to Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

**6.3.5 Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and

without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within one (1) Day of identifying any such delay notify CivicSD in writing of causes of delay. CivicSD shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Time extensions to the Work shall be requested by the Contractor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Work beyond the Contract completion date.

**6.3.6 Contract Time Extension.** Extensions of time, when granted, will be based upon the effect of delays to the Work. They will not be granted for non-controlling delays to minor portions of the Work unless it can be shown that such delays did or will delay the progress of the Work.

CivicSD will not grant a claim for extension in Contract Time unless Contractor can demonstrate through a Critical Path Method (CPM) analysis of the Schedule's critical path(s) that:

1. The increases in the time to perform or complete the Work, or specified part of the Work, beyond the corresponding Contract Time arise from unforeseeable causes beyond your control and without your fault or negligence, and
2. Such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding Contract Time, despite your reasonable and diligent actions to guard against those effects.

The Schedule analysis shall use delay sub networks (fragnets) to show the impact of the Work that is the basis of the request. A fragnet is a group of schedule network activities representing a delay or change event.

Where the Contractor or subcontractors are prevented from completing any part of the Work within the Contract Time (or milestones) due to delay to a "critical path" activity beyond your control or ours, an extension of the Contract Time (or Contract milestones) in an amount equal to the time lost on the critical path of the Project due to such delay will be the Contractor's sole and exclusive remedy for such delay.

## **6.4 TIME OF COMPLETION AND LIQUIDATED DAMAGES.**

**6.4.1 Time for Completion/Liquidated Damages..** Work shall be commenced within ten (10) days of the date stated in CivicSD's Notice to Proceed and shall be completed by Contractor within the Contract Time(s) set forth in Article 2 of the Contract for Construction. If the Work is not completed within the Contract Time(s), it is understood that CivicSD will suffer damage, and that is and will be difficult and/or impossible to ascertain and determine the actual damage which CivicSD will sustain in the event of and by reason of the

Contractor's failure to complete the Work within the Contract Time(s). In accordance with Government Code section 53069.85, it is agreed that Contractor shall pay to CivicSD as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each Day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

**6.4.2 Contract Time Accounting.** The Engineer will make a daily determination of each working day to be charged against the Contract time. These determinations will be discussed and the Contractor will be furnished a periodic statement showing the allowable number of working days of Contract time, as adjusted, at the beginning of the reporting period. The statement will also indicate the number of working days charged during the reporting period and the number of working days of Contract time remaining. If the Contractor does not agree with the statement, it shall file a written protest within 5 days after receipt, setting forth the facts of the protest. Otherwise, the statement will be deemed to have been accepted and any right to dispute the statement will be waived.

## **6.5 COMPLETION, ACCEPTANCE, AND WARRANTY**

**6.5.1 Completion.** Upon completion of the project the Contractor shall submit a written assertion that the Work has been completed. If, in the Engineer's judgment, the Work has been completed in accordance with the Contract Documents, the Engineer will set forth in writing the date the Work was completed. This will be the date when the Contractor is relieved from responsibility to protect and maintain the Work and to which liquidated damages will be computed if applicable.

**6.5.1.1 Requirements Preparatory To Requesting a Walk-through.** Walk-through is the procedure used by CivicSD to generate a Punch list prior to Acceptance.

The following items shall be required prior to requesting a walk-through:

1. Remove temporary facilities from the Site.
2. Thoroughly clean the Site.
3. Provide completed and signed Redlines in conformance with requirements stated herein.
4. Provide all material and equipment maintenance and operation instructions and/or manuals.
5. Provide all tools that are a permanent part of equipment installed in the Project.
6. Provide and properly identify all keys; construction and permanent.
7. Provide all final Special Inspection reports required by this contract and applicable codes and regulations.

8. Provide all items that this contract requires to be supplied as extra stock. All items shall be wrapped, sealed, or placed in a container as necessary to allow for storage by CivicSD for future use. The amount specified in this contract shall be verified by CivicSD and the Contractor.
9. Ensure all certified prevailing wage rate documents and all other documents required by this contract and applicable codes and regulations have been submitted.
10. The spare parts for the proposed irrigation system as specified in the Special Provisions (if applicable).
11. All salvaged materials have been delivered and accepted by CivicSD or entity designated to receive them.
12. See other specification sections for additional requirements.

**6.5.1.2 Walk-through and Punch list Procedure.** The following procedure outlines the steps to be taken upon the Contractor's assertion that the Project is complete:

1. When the Contractor considers that the Work and Services are complete, the Contractor shall in writing notify CivicSD that the Project is complete and request that CivicSD perform a walk-through for generation of a Punch list. The Contractor shall notify CivicSD at least 7 days in advance of the time the walk-through is to be performed.
2. CivicSD will determine if the Contractor is ready for a walk-through by verifying whether the Contractor has provided or completed all items as required by 6.8.1, "Defective Work," whether the Contractor has obtained the applicable certifications, and by evaluating completeness by inspecting the Project and the specified Work required by the Contract Documents.
3. If the Work includes underground sewer conduit installations, the inspection will include televising in accordance with 306-1.4.8, "Televising Sewer Mains and Storm Drains."
4. CivicSD will facilitate a walk-through.
5. The Contractor shall make available at the Site for walk-through attendees the plans and specifications and the technical data such as submittals and equipment manuals.
6. CivicSD will generate the punch list within 15 Working Days from the date of the walk-through and submit it to the Contractor. CivicSD will not provide a preliminary punch list.
7. If CivicSD begins to generate a Punch list and finds the Project is not substantially complete as defined herein, CivicSD will terminate the walk-through and notify the Contractor in writing.
8. If, at any time during CivicSD's evaluation of the corrective Work required by the Punch list, CivicSD discovers that additional corrective Work is required, CivicSD may include that corrective Work in the Punch list. The Contractor shall be solely responsible for the Site until the Project is completely operational,

all Punch list items have been corrected, and all operation and maintenance manuals have been accepted by CivicSD.

9. CivicSD will meet with the Contractor until all Punch list items are corrected. If the Contractor takes longer than 30 Working Days to complete the corrective Work, the Project shall be subject to re-evaluation.
10. During the 35-day stop notice/lien period that commences on the date the NOC is recorded, the Contractor shall submit to CivicSD the retention billing. After CivicSD receives the retention billing, CivicSD will mail to the Contractor a "Release of Claims" form, which shall be completed by the Contractor and returned to CivicSD before the retention will be released.
11. Upon Acceptance, the Contractor shall assemble and deliver to CivicSD all records, documents, warranties, material certifications, bonds, guarantees, maintenance and service agreements, and maintenance and operating manuals. Written warranties, except manufacturer's standard printed warranties, shall be on the Contractor's and the Contractor's agents, material suppliers, installers, or manufacturer's letterhead, addressed to the Contractor. Warranties shall be submitted in the format described in this section, modified as approved by CivicSD to suit the conditions pertaining to the warranty.
12. See other specification sections for additional requirements.

The cost of the Contractor's participation in the punch-list process shall be included in the various items of work and there shall be no additional costs to CivicSD.

**6.5.2 Defective Work.** If CivicSD finds the Work, or any part of the Work, to be defective, whether or not manufactured, fabricated, installed, completed or overlooked and accepted by the Engineer, the Contractor must, in accordance with CivicSD's written instructions and within the specified time limits, either correct the Defective Work, or, if it has been rejected by the Engineer, remove it from the Site and replace it with non-defective and conforming Work.

1. If, upon notice, the Contractor fails to immediately correct the defective work, or the Contractor fails to correct the defective work in a manner conforming to the Contract Documents, the Engineer may order the Contractor to stop all or part of the Project. CivicSD's right to stop the work does not give rise to any duty on CivicSD's part to stop work for the Contractor's benefit or the benefit of any other party. The Contractor shall bear all direct and indirect costs and damages that result from CivicSD's stop work notice.
2. At the sole discretion of the Engineer, defective work may be accepted in lieu of requiring the Contractor to correct or remove and replace the defective work. However, the Contractor must bear all direct and indirect costs of the defective work, and the diminished value to the Project, as determined by the Engineer. If the Engineer's acceptance of defective work occurs prior to final payment, the

Engineer will issue a Change Order incorporating the necessary revisions in the Contract Documents with respect to the defective work and indicating the appropriate decrease in the Contract Price.

3. If the Contractor fails to correct, remove, or replace defective work within 5 Working Days from the date of a written notice from the Engineer, the Engineer may proceed with any correction of defective work undertaken in accordance with this section. CivicSD may take corrective action at any time in the event of an emergency or if the Engineer deems it necessary. CivicSD may remedy after 5 working days from the date of written notice when the Contractor fails to correct the defective work in accordance with the Contract Documents, or when Contractor fails to comply with any other provision of the Contract Documents.
4. When undertaking remedial action under this section, CivicSD may: exclude from all or part of the Site; take possession of all or part of the Work; suspend your Work or Services; and incorporate into the Project all materials and equipment stored at the Site or for which CivicSD has paid but Contractor has stored elsewhere.
5. CivicSD will not allow an extension of the Contract Time or milestones because of any delay in the performance of the work attributable to CivicSD's undertaking remedial action to correct defective work.
6. If Contractor completes the Project or portions of the Project prior to NOC, they must preserve equipment by developing and implementing a preventive maintenance program in compliance with manufacturer's recommendations.
7. Contractor must repair or replace the traffic signal and lighting system equipment within 48 hours after notification of defects by the Engineer.
8. The Contractor shall reimburse CivicSD for any claims, costs, losses, and damages incurred by CivicSD in remedying any deficiency e.g., all costs of repair or replacement of Defective Work and all costs of repair of any other Work on the Project destroyed or damaged by correction, removal, or replacement of Contractor's defective work.

**6.5.3 Acceptance.** Acceptance will occur after all of the requirements contained in the Contract Documents have been fulfilled. If, in the Engineer's judgment, the Contractor has fully performed the Contract, the Engineer will recommend to the Board that the Contractor's performance of the Contract be accepted.

**6.5.4 Warranty and Guarantee.** The Work shall be warranted by the Contractor against defective materials and workmanship for a period of 1 year from the date the project was deemed complete by the Engineer.



**6.5.4.1** Contractor warrants that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract Documents; and that all Work conforms to the Contract Document requirements and is free of any defect whether performed by the Contractor or any subcontractor or supplier.

**6.5.4.2** Unless otherwise stated, all warranty periods shall begin upon the filing of the Notice of Completion. Unless otherwise stated, the warranty period shall be for one year.

**6.5.4.3** The Contractor shall remedy at its expense any damage to City-owned or controlled real or personal property.

**6.5.4.4** Contractor shall furnish CivicSD with all warranty and guarantee documents prior to final acceptance of the Work by CivicSD.

**6.5.4.5** CivicSD shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary Work to complete or correct the Work at issue. If the Contractor fails to promptly remedy any defect, or damage within this time; CivicSD shall have the right to replace, repair, or otherwise remedy the defect, or damage at the Contractor's expense.

**6.5.4.6** In the event of any emergency constituting an immediate hazard to health, safety, property, when caused by Work of the Contractor not in accordance with the Contract requirements, CivicSD may undertake at Contractor's expense, and without prior notice, all actions necessary to correct such condition.

**6.5.4.7** With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Work performed and Materials furnished under this Contract, the Contractor shall:

1. Obtain for CivicSD all warranties that would be given in normal commercial practice or that are required in the Contract Documents;
2. Require all warranties to be executed, in writing, for the benefit of CivicSD and in a form acceptable to CivicSD; and
3. Enforce all warranties for the benefit of CivicSD, unless otherwise directed in writing by CivicSD.

**6.5.4.8** The warranty documentation must conform to the following requirements:

1. Obtain warranties, executed in triplicate by responsible Subcontractors and Suppliers, within 10 Working Days after completion of the applicable item of Work. Except for items put into use with CivicSD's permission with date

mutually agreed upon in writing, ensure the beginning time of warranty is the Project Completion date.

2. Verify that documents are in proper form, contain full information, and are notarized.
3. Verify that warranties are signed by both Contractor and the appropriate agent.
4. Retain warranties until the time specified for submittal to the Engineer.
5. Provide warranties to CivicSD with a neatly typed table of contents, identifying each warranty with the number and title of the applicable specification section requiring the warranty and the name of the product or Work item.
6. Separate each warranty with index tab sheets keyed to the table of contents listing. Provide complete information using separate typed sheets as necessary. The information must include a list of Subcontractors and Supplier with name, address, and telephone number of responsible principal.

**6.5.4.9** Any work or equipment repaired or replaced under warranty shall be re-warranted for the same period of time as the original warranty beginning on the day of acceptance of the replaced work or equipment by CivicSD.

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

## **6.6 USE OF IMPROVEMENT DURING CONSTRUCTION.**

CivicSD reserves the right to take over and utilize all or part of any completed facility or appurtenance. The Contractor will be notified in writing in advance of such action. Such action by CivicSD will relieve the Contractor of responsibility for injury or damage to said completed portions of the improvement resulting from use by public traffic or from the action of the elements or from any other cause, except Contractor operations or negligence. The Contractor will not be required to re-clean such portions of the improvement before field acceptance, except for cleanup made necessary by its operations. Nothing in this subsection shall be construed as relieving the Contractor from full responsibility for correcting defective work or materials.

In the event CivicSD exercises its right to place into service and utilize all or part of any completed facility or appurtenance, CivicSD will assume the responsibility and liability for injury to persons or property resulting from the utilization of the facility or appurtenance so placed into service, except for any such injury to persons or property caused by any willful or negligent act or omission by the Contractor, Subcontractor, their officers, employees, or agents.

The full, unimpeded use of the existing roadway and right-of-way, except in the immediate vicinity of an actual work operation, by the general public, including patrons, residents, their guests, and service people of the properties shall be permitted by the Contractor at all times.

#### **6.7 RIGHT TO AUDIT.**

CivicSD shall have the right to review and audit, and the reasonable right of access to your and all Subcontractor's premises to review and audit your compliance with the provisions of the Contract. This right includes the right to inspect and photocopy same, and to retain copies, outside of your premises, of any and all records with appropriate safeguards, if such retention is deemed necessary by CivicSD in its sole discretion. CivicSD will keep this information in strictest confidence.

The Contractor must include CivicSD's Right to Audit in the Subcontracts and ensure that these specifications are binding upon all Subcontractors.

CivicSD's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that CivicSD determines is necessary to discover and verify that Contractor is in compliance with all requirements under the Contract.

If there is a claim for additional compensation or for changes in Work, CivicSD's Right to Audit includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that CivicSD determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for changes in the Work have been submitted.

Contractor must maintain complete and accurate records in accordance with generally accepted accounting practices in the construction industry. Make available to the Engineer for review and audit all Project related accounting records and documents, and any other financial data. Upon the Engineer's request, Contractor must submit exact duplicates of originals of all requested records to the Engineer.

## SECTION 7 - RESPONSIBILITIES OF THE CONTRACTOR

### 7.1 THE CONTRACTOR'S EQUIPMENT AND FACILITIES

**7.1.1 General.** The Contractor shall furnish and maintain in good condition all equipment and facilities as required for the proper execution and inspection of the Work.

The Contractor shall provide and maintain enclosed toilets for the use of employees engaged in the Work. These accommodations shall be maintained in a neat and sanitary condition, and regularly pumped out.

**7.1.2 Temporary Utility Services.** The Contractor shall make all arrangements necessary for the provision of temporary utility services necessary for its own use during performance of the Work. The Contractor shall not draw water from any fire hydrant (except to extinguish a fire), without obtaining a permit from the water utility owner and CivicSD.

All costs associated with procuring and use of temporary utility services shall be considered incidental to the items of work that they are associated with and there shall be no additional costs to CivicSD.

The use of utilities from sources other than utility companies is strictly prohibited without prior written approval from the Engineer and the owner from which the utilities will be drawn. The Contractor shall also provide a written release from the property owner absolving CivicSD from any and all responsibility in connection with storage of materials or equipment on said property. CivicSD must approve the form and content of any release.

**7.1.3 Contractor's Yard.** The Contractor shall be solely responsible for yard site procurement, security, and liability. The yard shall be fenced, lighted and locked. A guard dog shall not be utilized at the yard.

Stockpile of material and equipment storage locations shall be selected by the Contractor subject to approval by the Engineer. When any material or equipment is to be stored outside the highway or street right-of-way or other CivicSD property, the Contractor shall first obtain a written permit from the property owner on whose property the storage is to be made.

The Contractor shall file with the Engineer said permit or a certified true copy thereof, together with a written release from the property owner absolving CivicSD from any and all responsibility in connection with storage of materials or equipment on said property. CivicSD must approve the form and content of any release.

The Contractor shall leave all storage areas in a neat clean condition, satisfactory to the Engineer and in accordance with the provisions of storage permits set by owner.

Full compensation for complying with the requirements of this Provision shall be considered as included in the Contract price paid for various items of work and there shall be no additional costs to CivicSD.

**7.1.4 Crushing and Screening Operations.** Unless otherwise specified in the Special Provisions, the establishment and operation of portable screens and crushers will not be allowed on or adjacent to the Work site.

## **7.2 LABOR**

**7.2.1 General.** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor and services necessary for the proper execution and completion of the Work.

The Contractor shall at all times enforce strict discipline and good order among the Contractor's employees, including, but not limited to, appropriate public behavior and decorum, and shall not employ on the Project any unfit person or anyone not skilled in the task assigned them. The Engineer shall have the final determination as to any employees' qualification to perform their duties. The Engineer may bar any employee of the Contractor from the project for behavior that is inappropriate, unsafe or detrimental to the Project.

Each machine or unit of equipment shall be operated by an experienced operator skilled in handling the particular make of machine or unit of equipment in use, at a speed or rate of production in conformance with the manufacturer's recommendation.

### **7.2.2 Hours of Work.**

**7.2.2.1** Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to CivicSD, twenty-five dollars (\$25) for each worker employed in the execution of Work by the Contractor or any subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, section 1810 to section 1815, except as provided in Labor Code section 1815.

**7.2.2.2** Work shall be accomplished on a regularly scheduled eight (8) hour per day work shift, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m. or as set forth at the pre-construction meeting.

**7.2.2.3** It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on City-observed holidays, unless otherwise approved by CivicSD:

1. Powered Vehicles

2. Construction Equipment
3. Loading and Unloading Vehicles
4. Domestic Power Tools

### **7.2.3 Payroll Records.**

**7.2.3.1** Pursuant to Labor Code section 1776, the Contractor and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.

**7.2.3.2** The payroll records described herein shall be certified and submitted by the Contractor at a time designated by CivicSD. The Contractor shall also provide the following:

1. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
2. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the Department of Industrial Relations ("DIR").

**7.2.3.3** The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

**7.2.3.4** In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the DIR, on a weekly basis and in the format prescribed by the DIR. This may include electronic submission. Contractor shall comply with all requirements and regulations from the Department of Industrial Relations relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

**7.2.3.5** Any copy of records made available for inspection and furnished upon request to the public shall be marked or obliterated in such a manner as to prevent disclosure

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

**7.2.3.6** In the event of noncompliance with the requirements of this section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to CivicSD, forfeit One Hundred Dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from contract payments.

#### **7.2.4 Prevailing Rates of Wages.**

**7.2.4.1** The Contractor is aware of the requirements of Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Work involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov/dlse/](http://www.dir.ca.gov/dlse/). In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at CivicSD. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the Work available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Site. Contractor shall defend, indemnify and hold CivicSD, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

**7.2.4.2** The Contractor and each subcontractor shall forfeit as a penalty to CivicSD not more than two hundred dollars (\$200) for each Day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

**7.2.4.3** Contractor shall post, at appropriate conspicuous points on the Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

### **7.2.5 Public Works Contractor Registration.**

**7.2.5.1** Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Contract. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Contract. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

**7.2.5.2** Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by CivicSD. Contractor shall defend, indemnify and hold CivicSD, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

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

### **7.2.7 Nondiscrimination/ Equal Employment Opportunity/Employment Eligibility.**

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



**Employment Eligibility; Contractor.** By executing this Contract, Contractor verifies that it fully complies with all Applicable Law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Contract, and shall not violate any such law at any time during the term of the Contract. Contractor shall avoid any violation of any such law during the term of this Contract by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to CivicSD or its representatives for inspection and copy at any time during normal business hours. CivicSD shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in this Section.

**Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants.** To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any part of the Work or of this Contract to make the same verifications and comply with all requirements and restrictions provided for in this Section.

**Employment Eligibility; Failure to Comply.** Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for CivicSD to terminate the Contract for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Section; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under this Section); or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

#### **7.2.8 Labor/Employment Safety**

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 O.K. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. Contractor certifies that it is aware of and has complied with the provisions of California Labor Code section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

## **7.3 INSURANCE**

**7.3.1 General.** The Contractor shall obtain and, at all times during performance of the Work of Contract, maintain all of the insurance described herein.

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

**7.3.3 Employer's Liability Insurance.** Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of, at least, one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide CivicSD with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of CivicSD.

**7.3.4 Commercial General Liability Insurance.** Contractor shall provide "occurrence" form Commercial General Liability insurance coverage, at least as broad as the most current ISO CAL Form 00 01 including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury, independent contractors, which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage and general aggregate limit of not less than \$4,000,000 providing at least all of the following minimum coverage (with deductibles or self-insured retentions not to exceed \$25,000). If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits with CivicSD and others covered having the right to select legal counsel.

The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. The limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to CivicSD and others, and shall not preclude CivicSD from taking such other actions available to CivicSD under other provisions of the Contract Documents or law.

Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold CivicSD, its employees, elected officials, private consultants and volunteers harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the aforementioned as a result thereof.

All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.

If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, CivicSD may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

All general liability policies provided pursuant to the provisions of this Article shall comply with all the provisions of the Contract Documents.

Such insurance shall comply with all the provisions of the Contract Documents.

**7.3.5 Automobile Liability Insurance.** Contractor shall take out and maintain at all times during the term of this Contract a comprehensive "occurrence" form Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, two million dollars (\$2,000,000) (or current limit carried, if higher) combined single limit for bodily injury and property damage, providing at least all of the following coverage (with deductibles or self-insured retentions not to exceed \$25,000). Such insurance shall provide coverage for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to CivicSD. Such insurance shall comply with the provisions of the Contract Documents.

**7.3.6 Builder's Risk ("All Risk").** It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. CivicSD accepts no responsibility for the Work until the Work is formally accepted by CivicSD. The Contractor shall provide a certificate evidencing this coverage before commencing performance of the Work.

The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and CivicSD, its elected and appointed officers, agents, officials, employees, consultants and volunteers, as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by CivicSD's Board.

Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to CivicSD to ensure adequacy and sublimit.

In addition, the policy shall meet the following requirements:

1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
2. Coverage shall include all materials stored on site and in transit.
3. Coverage shall include Contractor's tools and equipment.
4. Insurance shall include boiler, machinery and material hoist coverage.

**7.3.7 Railroad Protective Liability Insurance.** Exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, roadbed, tunnel, underpass, or cross shall be deleted from all policies to which they may apply. Alternatively, you may provide separate Railroad Protective Liability insurance providing coverage, including endorsements, equivalent to that required for the CGL described herein. Insurance must meet requirements as outlined in the Temporary Occupancy Permit required by BNSF.

Such insurance, certificates and endorsements shall comply with all provisions of the Contract Documents.

### **7.3.8 Form and Proof of Carriage of Insurance.**

**7.3.8.1** Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by CivicSD's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor, and such deductibles and retentions shall have the prior written consent from CivicSD. At the election of CivicSD the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to CivicSD indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

**7.3.8.2** Contractor shall cause its insurance carrier(s) to furnish CivicSD with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by CivicSD's Risk Manager, provide original certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect.

**7.3.8.3** CivicSD and the City of San Diego, its respective elected officials, officers, employees, agents, representatives, consultants, contract employees and volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in the Contract Documents for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. Contractor and its insurance carriers shall provide a Waiver of Subrogation in favor of those parties.

**7.3.8.4** The Certificate(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to CivicSD prior to any

material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, CivicSD may terminate the Contract or stop the Work in accordance with the Contract Documents, unless CivicSD receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until CivicSD has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this section. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

**7.3.8.5** The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and CivicSD's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory. The Contractor shall provide endorsement(s) to this effect, using ISO CG form 20 01 or endorsement(s) providing the exact same coverage, at CivicSD's request.

**7.3.8.6** CivicSD reserves the right to adjust the monetary limits of insurance coverages during the term of this Contract including any extension thereof if in CivicSD's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.

**7.3.8.7** Certificates of Insurance shall be submitted to the Engineer prior to commencement of the Work. The Contractor agrees to furnish promptly to CivicSD originals of any endorsements issued after execution of the Contract amending the Contractor's coverage or limits. The Contractor further agrees that, upon receipt of any notice of cancellation or alteration, the Contractor shall procure, other policies of insurance satisfying the requirements of this Section. If the Contractor fails to provide acceptable policies of insurance, CivicSD may obtain such insurance at the cost and expense of Contractor.

**7.3.8.8** Contractor shall require all tiers of sub-contractors working under this Contract to provide the insurance required under this Section unless otherwise agreed to in writing by CivicSD.

**7.3.9 Investigation and Cooperation.** Contractor agrees to assist in every manner possible in the reporting and investigation of any accident and, upon request, to cooperate with all interested insurance carriers in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required for the resolution of any claim or lawsuit.

**7.3.10 Limitations.** Nothing contained in these insurance requirements is to be construed as limiting the type, quality or quantity of insurance that the Contractor should maintain, or the extent of the Contractor's responsibility or liability for payment of damages resulting for the Contractor's operations under the Contract. The carrying of the insurance specified herein shall not be construed to be a limitation of liability on the part of the Contractor or as a matter of law.

**7.3.11 Payment.** All costs for compliance with section 7.3 LIABILITY INSURANCE shall be borne by the Contractor and there shall be no additional costs to CivicSD.

## **7.4 PERMITS.**

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

**7.4.1.1** Contractor shall obtain and pay for all permits and licenses required for the Work, including excavation permit and permits for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies.

**7.4.1.2** The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections identified as CivicSD's responsibility in the Contract Documents.

**7.4.2** Before acceptance of the Work, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to CivicSD.

**7.4.3 Licenses.** The contractor and subcontractors shall obtain and pay costs incurred for all licenses as required by its operations, including municipal business license(s).

**7.4.4 Railroads.** The Contractor, at its sole cost and expense, is required to comply with the terms of, and obtain, the Right of Entry Permit from any rail entity for this Work. This includes but is not limited to permit fees, insurance and bonding requirements, deposits, and all other terms per the Right of Entry Permit.

## **7.5 THE CONTRACTOR'S REPRESENTATIVE.**

Before starting the Work, the Contractor shall designate in writing a representative who shall have complete authority to act on behalf of and obligate the Contractor. An alternative representative may be designated as well. The representative or alternate shall be present at the Work site whenever work is in progress or whenever actions of the elements necessitate its presence to take measures necessary to protect the Work, persons, or property. A joint venture shall designate only one representative and alternate.

The Contractor's representative, superintendent, or person in charge of specific work shall be able to speak, read, and write the English language.

**7.5.1 Project Meetings.** Your representatives e.g., field supervisor, superintendent, and project manager, must attend weekly and other scheduled construction meetings as required by the Engineer. If any of your staff cannot attend, Contractor must notify the Engineer a minimum of 24 hours in advance, prior to the start of the scheduled meeting. If Contractor does not provide the required notification, Contractor must pay for the costs of CivicSD's staff, Consultants, or both that attend. Contractor will be charged a minimum of 2 hours of the Engineer's time plus the time of CivicSD's other employees or representatives that attend the meeting at full cost recover rates.

## **7.6 COOPERATION AND COLLATERAL WORK.**

**7.6.1 Cooperation.** Contractor shall ascertain to its own satisfaction the scope of the Work and nature of any other contracts that have been or may be awarded by CivicSD in prosecution of the Work to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at the Site. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Work. If simultaneous execution of any contract for the Work is likely to cause interference with performance of some other contract or contracts, CivicSD shall decide which contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. CivicSD shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Site.

**7.6.2 Separate Contracts.** CivicSD reserves the right to let other contracts in connection with this Project or the Site. Contractor shall cooperate with and permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.

**7.6.3** To ensure proper execution of its subsequent Work, Contractor shall immediately inspect Work already in place and shall at once report to CivicSD any problems with the Work in place or discrepancies with the Contract Documents.

## **7.7 WORK SITE MAINTENANCE**

**7.7.1 General.** Contractor at all times shall keep Site free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the Site. Upon completion of Work, Contractor shall clean the interior and exterior of the building or improvement including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all glass,



plumbing fixtures, and finish hardware and similar finish surfaces and equipment. Contractor shall remove temporary fencing, barricades, planking, construction toilets and similar temporary facilities from Site. Contractor shall clean all buildings, asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor's operations or equipment.

The Contractor shall furnish trash bins for all debris from construction. All debris shall be placed in trash bins daily. Forms and false-work that are to be re-used shall be stacked neatly concurrently with their removal. Forms and false-work that are not to be re-used shall be disposed of concurrently with their removal.

Contractor shall fully clean up the site at the completion of the Work or such other time as CivicSD may reasonably request. If the Contractor fails to clean up to CivicSD's satisfaction within one business Day, CivicSD may do so and the cost of such clean up shall be charged back to the Contractor.

**7.7.2 Air Pollution Control.** Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes.

The Contractor shall use low sulphur fuel (0.5% by weight) for construction equipment, shall phase and schedule construction activities to avoid high ozone days, and shall maintain equipment engines in proper tune.

Without limiting the foregoing, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over the Project and/or California Air Resources Board (CARB). Contractor shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition is considered includes any item of equipment with a fuel-powered engine. Contractor shall indemnify CivicSD against any fines or penalties imposed by the air quality management district, CARB, or any other governmental or regulatory CivicSD for its violations of Applicable Laws as well as those of its subcontractors or others for whom Contractor is responsible under its indemnity obligations required in the Contract Documents.

**7.7.3 Noise Control.** The Contractor shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.

The Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Work without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined

to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return that equipment to the Site until the device is repaired or replaced. Noise and vibration level requirements shall apply to all equipment on the jobsite or related to the Work, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

The Contractor shall comply with the provisions of the state and local, Noise Abatement and Control, and the County of San Diego Code of Regulatory Ordinances, Noise Abatement and Control. In the event of conflict, the most stringent requirement shall apply. If the Contractor chooses to conduct work activities during times when a Noise Permit is required, the Contractor shall apply for, obtain, and pay for the Noise Permit at no additional cost to CivicSD.

The Contractor shall coordinate their activities in such a way that minimizes the disturbance with the any adjacent or nearby schools. The Contractor shall attend any coordination meetings with any schools, businesses, hospitals, Home Owner Associations or community groups. The cost of noise mitigation and coordination efforts shall be included in the various items of work and there shall be no additional costs to CivicSD.

#### **7.7.4 Compliance With State Storm Water Permit**

**7.7.4.1** Contractor shall be required to comply with all conditions of the State Water Resources Control Board ("State Water Board") Water Quality Order No. 2009-0009-DWQ as modified by Order No. 2010-0014-DWQ, National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Discharges Associated with Construction Activity ("NPDES Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") prior to initiating Work. Contractor shall include in its bid all costs of procuring the Permit and preparing the SWPPP, as well as complying with the SWPPP and any necessary revision to the SWPPP. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance in the Contract Price.

**7.7.4.2** Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to CivicSD.

**7.7.4.3** Contractor shall comply with the lawful requirements of any applicable municipality, CivicSD, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

**7.7.4.4** Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. Therefore, Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

**7.7.4.5** Failure to comply with the NPDES Permit is a violation of federal and state law. Contractor hereby agrees to indemnify, defend and hold harmless CivicSD, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which CivicSD, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of CivicSD, its officials, officers, agents, employees or authorized volunteers. CivicSD may seek damages from Contractor for delay in completing the Work arising from Contractor's failure to comply with the NPDES Permit.

**7.7.5 Graffiti Control.** The Contractor shall maintain all site improvements, including any temporary facilities, equipment or other materials in a graffiti free condition throughout the construction period, until acceptance of the project by CivicSD. The Contractor shall remove graffiti encountered on the job site within twenty-four (24) hours. The Contractor may cover graffiti only in a manner approved by the Engineer if allowed.

**7.7.6 Vermin Control.** At the time of acceptance, structures entirely constructed under the Contract shall be free of rodents, insects, vermin and pests. Necessary extermination work shall be arranged and paid for by the Contractor as part of the Work within the Contract time, and shall be performed by a licensed exterminator in accordance with requirements of governing authorities. The Contractor shall be liable for injury to persons or property and responsible for the elimination of offensive odors resulting from extermination odors.

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

permitted. Any other Sanitary Facilities required by CAL-OSHA shall be the responsibility of the Contractor.

## **7.8 PROTECTION AND RESTORATION OF EXISTING IMPROVEMENTS.**

**7.8.1 General.** Contractor shall be responsible for all damages to persons or property that occur as a result of or in connection with the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by CivicSD. All Work shall be solely at the Contractor's risk. Contractor shall protect adjacent property from settlement or loss of lateral support as necessary, and shall give all notices required by law. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Site. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

**7.8.2** In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from CivicSD, shall act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if directed or instructed by CivicSD. Any compensation claimed by Contractor on account of emergency work shall be determined in accordance with the provisions of Section 3.

**7.8.3** Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

**7.8.4** Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:

1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
2. Provide substantial barricades around any shrubs or trees to be preserved.
3. Deliver materials to the Site over a route designated by CivicSD.
4. Provide any and all dust control required and follow the applicable air quality regulations as appropriate. If the Contractor does not comply immediately with a notice from CivicSD or a public CivicSD responsible for air quality, CivicSD shall have the authority to provide dust control and deduct the cost from payments to the Contractor.

5. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of CivicSD. Contractor shall not unreasonably encumber the Site with its materials.
6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to CivicSD, at no cost to CivicSD.
7. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to CivicSD.
8. Preserve and protect from injury all buildings, pole lines and all direction, warning and mileage signs that have been placed within the right-of-way.
9. At the completion of work each day, leave the Work and the Site in a clean, safe condition.
10. Comply with any stage construction and traffic handling plans. Access to residences and businesses shall be maintained at all times.
11. Give reasonable notice to occupants or owners of adjacent property to permit them to salvage or relocate plants, trees, fences, sprinklers, and other improvements, within the right-of-way, which are designated for removal and would be destroyed because of the Work.

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

**7.8.5** Should damage to persons or property occur as a result of the Work, Contractor shall promptly notify CivicSD, in writing. Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. CivicSD shall be entitled to inspect and copy any such documentation, video, or photographs.

**7.8.6** Contractor will take measures to minimize inconvenience to CivicSD, including but not limited to:

- a. Advance notification of the impending work and the estimated duration of the work.

- b. Care in access to and from the building by the Contractor's equipment, materials and/or personnel.
- c. Private property and improvements must be repair, restored and/or replaced within 7 days of the completion of the adjacent work.
- d. CivicSD reserves the right to repair damages to CivicSD's facilities caused by the Contractor's operations. All costs for such repair shall be paid for by the Contractor and all such costs can be deducted from any amounts due to the Contractor.
- e. The Contractor is responsible for coordinating with property owners for access to work on their private property.
- f. Loop detectors must be replaced within 3 Working Days of completion of underground work.
- g. Maintenance of street and traffic signal systems that are damaged, temporarily removed or relocated shall be done in conformance with 307-2.
- h. Replace damaged lawns with sod that matches the type of the existing lawn. Install and maintain the sod per manufacturer's recommendations for no less than 30 days.
- i. Trees and shrubbery that are not to be removed shall be protected from damage or injury. If damaged or removed due to Contractor's operations, they shall be restored or replaced in the original condition, size and location. If they are not able to be replaced in size and kind the Contractor shall pay the owner the value of the damaged item, or the difference in retail value between the original item and the replacement not including removal, replacement, profit and overhead.

**7.8.7 Video & Photo Documentation of Existing Conditions.** The Contractor shall digitally record video and take photographs of the project site and adjacent improvements in a manner and quality that clearly depicts the existing condition of the project site and adjacent improvements immediately prior to the start of work (minimum 1080p video and 4MP photo). The Contractor shall submit the video and photos in digital format and jpg on a memory stick before the commencement of work. All costs for such documentation shall be included in the bid.

**7.8.8 Placements and Removal of Markouts.** Markouts refer to the temporary marking or painting of the ground, pavement, or sidewalk by the facility or utility owner or its representative for the Contractor's convenience. Do not place Markouts in the public right-of-way more than 30 days prior to the commencement of work. Remove Markouts from all surfaces in the public right-of-way, including decorative surfaces, before the completion of the Work.

## **7.9 PUBLIC CONVENIENCE AND SAFETY**

### **7.9.1 Traffic and Pedestrian Control**

**7.9.1.1 General.** The Contractor's operations shall cause no unnecessary inconvenience to the public or businesses in the vicinity of the Work. The Contractor shall have no greater length or quantity of Work under construction than can be properly prosecuted with a minimum of inconvenience to the public and other contractors engaged in adjacent or related work.

The Contractor shall provide continuous and unobstructed access to the adjacent properties unless otherwise specified in the Special Provisions or approved by Engineer. Work requiring traffic lane closures shall only be performed between the hours specified in the Special Provisions or shown on the traffic control plan. Traffic shall be permitted to pass through the Work site, unless otherwise specified in the Contract Documents or shown on the traffic control plan.

The contractor shall provide and maintain a twelve-foot wide lane for through traffic at all times.

Upon completion of each day's work, the contractor shall be responsible for leaving the work area free of hazards and shall provide all necessary temporary signs, warning devices and barricades. Access is to be provided for all adjacent residences and businesses at all times.

Full street closures require prior approval by CivicSD. Therefore, the contractor shall submit all requests for full street closures, including a separate detour plan, to the Engineer a minimum of 30 days in advance of construction. If approved, the contractor shall notify both the Police and Fire Departments a minimum of 1 week in advance of the closure, and immediately after re-opening of the street.

Contractor shall notify residents, business owners/occupants and school officials a minimum of 1 week in advance of construction adjacent to their properties.

Contractor shall notify all transit providers a minimum of 1 week in advance of construction affecting bus stops.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to adjacent property owners.

Contractor must cooperate with the various parties involved in the delivery of mail and the collection of trash, recycling, and yard waste to maintain existing schedules for these services.

Contractor must comply with the following requirements for trash, recycling, and yard waste collection:

- a. Provide advance written notice to every property affected by blocked public right of way.
- b. Coordinate the relocation of trash, recycling, and yard waste containers to an accessible public street for the City's waste collection crews on collection day.
- c. When necessary relocate the containers from the blocked streets to the accessible public right of way before the City's collection vehicles arrive to assist with collection on existing schedules. Return the containers to their point of origin to ensure the accuracy of inventory assignment by address.

Notify Environmental Services Department via fax (858-526-2356) of street closures affecting the regular scheduled solid waste collection at least 3 Working Days prior to the street closure. Include Contractor's name and phone number, day(s) of closure, time of scheduled closure, and date of anticipated street reopening in the notification.

If the City's crews are unable to provide the citizens with the mandated services due to your failure to comply with these specifications, Contractor must collect trash, recyclables, and yard waste on the City's schedule and deliver to the City's designated locations, or arrange to have a private franchise hauler provide the collection service at your expense.

Notify and coordinate with Metropolitan Transit System (MTS) and the San Diego County Regional Airport Authority (Authority) a minimum of 5 Working Days prior to excavation, construction, or traffic control affecting airport operation and transit stops. Notify the remaining agencies a minimum of 2 Working Days prior to construction activities affecting the agencies:

- Fire Department Dispatch (Street or alley closure) (858) 573-1300
- Police Department Traffic (Street or alley closure) (858) 495-7800
- Street Division/Electrical (Traffic signals) (619) 527-7500
- U.S. Navy (32nd Street Naval Station) (619) 556-1319
- Underground Service Alert (Any excavation) (800) 422-4133
- MTS (Street Closure and Bus Stops) (619) 238-0100 Ext 6451
- San Diego County Regional Airport Authority (619)-400-2880

If weather condition is suitable, complete each street segment within 15 Working Days from the day the resurfacing. Each completed segment shall include other incidental Work items e.g., weed abatement, damaged asphalt pavement replacement, asphalt patching, striping, markings, raised pavement markers, and inlet markers.



If Work is located within the flight path of aircrafts landing or taking off at San Diego airports, obtain a construction permit for tall equipment (e.g., cranes) through Federal Aviation Administration (FAA).

Where Work occurs on Harbor Drive or impacts traffic flow to San Diego International Airport (Airport) from adjacent and contiguous streets such as Pacific Highway, Laurel Street, Grape Street, Hawthorn Street, and Nimitz Blvd., adjust the Schedule to take advantage of the reduced Airport operations and low vehicular traffic on Harbor Drive and surrounding streets between the hours of 11:00 pm and 5:30 am Monday through Sunday. Do not interrupt access to the Airport.

**7.9.1.2 Vehicular Access.** Vehicular access to residential driveways shall be maintained to the property line except when necessary construction precludes such access. If backfill has been completed to the extent that safe access may be provided and the street is opened to local traffic, the Contractor shall immediately clear the street and driveways and provide and maintain access.

- a. Access to adjacent property owners shall be maintained at all times.
- b. Emergency vehicle access shall be maintained at all times.
- c. All traffic control devices shall be placed as to not obstruct visibility at driveways, and shall be removed from view or covered when not in use.
- d. Contractor shall maintain a minimum turning radius of 25' at corners of work zones.
- e. The designated driving lanes shall be kept in a smooth and drivable condition at all times.
- f. All travel lanes shall be a minimum of 12 feet wide, 14 feet if adjacent to bike lanes, unless otherwise specifically approved by the Engineer.
- g. All travel lanes shall have a minimum of 5 feet of clearance from open trenches and a minimum of 2 feet of clearance from vertical obstructions. Open trenches with less than 5 feet of clearance shall be protected by K-Rail barriers and temporary crash cushions per the latest standard plans and specifications, and to the satisfaction of the Engineer.
- h. Contractor shall post "Uneven Lanes" (W8-11) signs for pavement surface disruptions of ½ inch or greater. Pavement disruptions of 1 inch or greater shall have beveled edges of 4:1 (horizontal to vertical).

- i. Flashing arrow boards shall be used for all full lane closures or as otherwise required by the Engineer. Flash rates and patterns shall conform to the latest standard specifications. Silent type arrow boards shall be used in residential areas.
- j. For extended lane closures the contractor shall place "LANE CLOSED" (C30 (CA)) signs at 300' intervals in urbanized areas (or one sign per City block) and at 500' intervals for areas with limited access.
- k. For extended work areas in commercial districts the contractor shall place "BUSINESSES OPEN DURING CONSTRUCTION" signs (Black on White background) at intervals of 150' (or two per City block). More frequent sign placement may be required at the direction of the Engineer.
- l. If parking is allowed in the advance warning area, advance warning signs shall be mounted on high level devices.
- m. Contractor shall post tow-away/no parking signs seventy-two (72) hours in advance, with the day of the week, date and work hours noted, and shall bag parking meters (where applicable).

## **7.9.2 Traffic Control**

### **7.9.2.1 Traffic Control Plan (TCP)**

**7.9.2.1.1 General.** Contractor shall provide a TCP as specified in the Contract Documents.

- a. The TCP must clearly show all necessary details. The TCP must be site-specific. The Engineer will not accept typical plans and sections.
- b. The sheets of the TCP must display the title, phase identification, name of the firm preparing the TCP, name and stamp of the Registered Traffic or Civil Engineer, approval block for each jurisdictional CivicSD, north arrow, sheet number, and number of sheets comprising the TCP. Include general notes and symbol definitions when required. Provide adequate dimensioning to allow for proper field installation.
- c. Draw the TCP to a 1 inch = 40 feet scale on common size sheets, either 8-1/2 inches x 11 inches, 8-1/2 inches x 14 inches, 11 inches x 17 inches, or 2-foot x 3-foot plan sheets ("D" sheet) as dictated by the length of the Work.
- d. Prepare TCP in accordance with our Computer Aided Design and Drafting (CADD) standards. Contractor may use any standard engineering CADD program e.g., MicroStation and AutoCAD to prepare TCP.

- e. Allow at least 20 Working Days for the Engineer's review of each submitted TCP.

#### **7.9.2.1.2 Traffic Control Permit.**

- a. Do not begin the Work in the public roadway without the approved traffic control permit. The traffic control plans are not valid until Work dates are approved and a traffic control permit is issued by us.
- b. Coordinate the traffic control permit application submittal with the Work so that no items of Work will be delayed. To obtain a traffic control permit, call the Field Engineering Traffic Control Section, (858) 495-4741 for an appointment a minimum of 2 Working Days prior to starting the Work (5 Working Days when the Work will affect a traffic signal).
- c. Provide 2 copies of the traffic control drawings specified in the Contract Documents or prepared by Contractor at the time of the appointment. Upon approval of your plans, the Traffic Control Section of the Field Engineering Division will issue the permit.

#### **7.9.2.1.3 Engineered Traffic Control Plans Provided by the Contractor.**

- a. Engineered TCP must be "D" sheet sized in accordance with 7.10.2.2.1, "General." The engineered TCP must be prepared by a Professional Engineer (i.e., Traffic or Civil) registered in the State of California.
- b. Coordinate with the City's Traffic Control Section of the Field Engineering Division for the development and approval of the engineered TCP. Submit a Traffic Control Approach to the Engineer prior to preparing the TCP. A list of traffic control items is available upon request from the Field Engineering Division as a guideline. Prepare the TCP in accordance with the approved Traffic Control Approach. Contractor may obtain a copy of the Project area base map through the Engineer or from [www.basemap.com](http://www.basemap.com).
- c. If extensive additions or corrections are required, the Field Engineering Traffic Control Section will return the marked-up print for corrections and re-submission.
- d. If no changes or corrections are required, the Field Engineering Traffic Control Section will retain the original engineered drawings and return 1 copy with the TCP Permit to you.
- e. Contractor is not entitled to Contract Time extension if fail to properly produce TCP and to schedule the Work.
- f. Contractor must obtain or require the Subcontractor to obtain Architects and Engineers Professional Insurance in accordance with 7.3.10, "Architects and Engineers

Professional Insurance (Errors and Omissions Insurance)” for the Work including engineered “D” size TCP by you.

**7.9.2.1.4 Traffic Control Working Drawings.**

- a. For those portions of the Work where “D” size engineered TCP are not provided nor required, prepare traffic control Working Drawings.
- b. If extensive additions or corrections are required, the Field Engineering Traffic Control Section will return the marked-up print for corrections and re-submission.
- c. If no change or correction is required, the original Working Drawings will be retained by the Engineer. One copy, with the TCP Permit attached, will be returned to you.
- d. No extension of time will be allowed as a result of your failure to properly produce traffic control Working Drawings and to schedule the Work.

**7.9.2.1.5 Traffic Control for Resurfacing and Slurry Sealing.**

- a. Prepare TCP for Resurfacing and Slurry Sealing in accordance with 7.10.2.2.4, “Traffic Control Working Drawings.”
- b. Place temporary reflective pavement markers on all roadways with painted centerline immediately upon completion of the resurfacing or slurry sealing. Remove temporary reflective pavement markers only for new permanent pavement striping.

**7.9.3 Public Notice.** Written notices shall be given to adjacent properties impacted by the construction work. Said notices shall include the hours and days of work, the date of beginning the work, the estimated date of completion and the type to be done. Contractor shall submit a sample notice and distribution list to the Engineer who will review and approve it prior to distribution.

**7.9.3.1 Work Area Traffic & Pedestrian Control.** No work shall occur in the right-of-way without a traffic and pedestrian control plan approved by the Engineer. Work shall not commence prior to the Engineer's approval of the Traffic Control Plan(s).

Installation of all traffic control shall be the responsibility of the contractor and shall conform to the most recent edition of the following standards, plans and specifications:

1. California Manual on Uniform Traffic Control Devices (MUTCD)
2. San Diego Area Regional Standard Drawings (SDRSD)

3. Provided Traffic Control Plans (if any)
4. State of California Department of Transportation (Caltrans) Standard Plans
5. State of California Department of Transportation (Caltrans)
6. Standard Specifications, Standard Specifications for Public Works Construction (“Greenbook”), including all current supplements
7. Contract Documents

Traffic control plans shall be submitted to the Engineer a minimum of 20 days in advance of construction to allow for review.

Approval of the traffic control plan does not constitute an official Permit to begin construction.

A copy of all traffic requirements and traffic control plans approved by the Engineer must be kept on the job site for review by the Engineer’s representative and police/safety personnel.

All temporary striping and pavement markings shall conform to the latest standard plans and specifications.

Traffic signals shall remain fully actuated at all times. Requests to have a traffic signal placed on “All-Way Red Flash” shall be submitted to the Engineer a minimum of 72 hours in advance.

Requests for changes to traffic signal timing to facilitate traffic control through an intersection, or in the event detector loops need to be cut in order to complete construction, shall be coordinated with the Engineer a minimum of 1 week in advance.

Requests to perform construction or set up traffic control outside of the stated work hours must be pre-approved by the Engineer as an amendment to the approved traffic control plan.

The Contractor shall maintain all traffic control devices in “like new” condition at all times that they are in use.

All conflicting signs shall be covered during construction in a manner that prevents them from being discerned in daylight or at night.

Warning (W) series signs used in work zones shall be Black on Orange background consistent with the latest standard plans and specifications, including size, shape and retro-reflectivity.

All warning and construction signs shall be mounted on Type II or III barricades per the latest standard plans and specifications. Alternative mounting locations shall be pre-approved by the Engineer prior to construction and shown on the approved traffic control plan.

Overnight traffic control must be pre-approved by the Engineer and shall include the use of flashing beacons mounted on Type II or III barricades per the latest standard plans and specifications.

All cones, tubular delineators and other approved channelizing devices shall be a minimum height of 36" and have retro-reflective sleeves per the latest standard plans.

Where flaggers are required to facilitate traffic control they shall be properly equipped with a "STOP/SLOW" paddle per the latest standard plans and specifications. Flaggers are required to maintain two-way radio communications at all times.

Flaggers shall be present to assist pedestrians through work areas and to provide ingress/egress at private driveways.

Flaggers shall be used at intersections where the traffic signal has been placed on "All-Way Red Flash" if construction results in obstruction to driver line of sight, or as deemed necessary by the Engineer or his representative to ensure public safety.

Flaggers shall be present to assist with the merging of construction trucks and heavy equipment into and out of traffic. "Trucks Entering/Exiting" (C44 (CA)) signs may be required for frequent movements, at the direction of the Engineer.

Contractor shall remove all conflicting striping and pavement markings by "waterblasting". Alternative methods must be pre-approved by the Engineer. The Contractor shall immediately remove any debris as the result of this operation.

Pavement that is damaged due to the removal of striping, pavement markings and pavement markers shall be immediately repaired to the satisfaction of the Engineer.

Within 24 hours of completing the work, the contractor shall promptly restore the road back to satisfactory condition, which includes but is not limited to, paving, striping, markings, signing, and loop detection.

CalTrans Standard Specifications (current edition) and any supplemental provisions. Traffic control devices shall be installed in conformance with the current edition of the "Manual of Traffic Control Devices" as published by CalTrans. Where reference is made to the "State", it shall be understood that reference is to CivicSD.

Contractor shall set up temporary traffic control at the beginning of each workday and promptly remove at the end of each day to allow for normal traffic operations after work hours. Requests to maintain temporary traffic control after hours must be pre-approved by the Engineer and approved on a TCP.

All traffic & pedestrian control must take into account and provide for ADA access in conformance with federal regulations.

**7.9.3.2 Maintenance of Traffic Control Devices.** The Contractor shall be responsible for maintenance of any and all traffic control devices (signs, delineators, barricades, etc.) that are required by the Traffic Control Plan. The Contractor shall ensure that all devices are maintained in the property location during holiday, overnight, and on weekends. Should it become necessary to use other forces to maintain the traffic control devices, the Contractor will be billed at the overtime rate for two (2) men and a vehicle (minimum, two (2) hours per call).

**7.9.3.3 Payment.** All costs for compliance with section 7.10.1 through 7.10.1.7 shall be included in the line item, "Traffic and Pedestrian Control". If there is no line item then all costs associated with this work shall be included in the relevant line items and there shall be no additional costs to CivicSD.

**7.9.4 Hours of Operation.** Construction work is to be performed only during the hours between 6:00 am and 7:00 am for traffic control and equipment setup, and from 7:00 am to 5:00 pm for work, Monday through Friday, unless special permission has been obtained from the Engineer. Unless otherwise authorized by the Engineer, the contractor will not be allowed to work during special events at the vicinity of the project location(s).

## **7.9.5 Safety**

**7.9.5.1 Work Site Safety.** The Contractor shall be solely and completely responsible for conditions on the job site, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and is not limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor, the California Occupational Safety and Health Act (OSHA), and all other applicable Federal, State, County, and City laws, ordinances, codes, the requirements set forth below, and any regulations that may be detailed in other parts of these documents. Where any of these are in conflict, the more stringent requirement

shall be followed. The Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve them from compliance with the obligations and penalties.

The Contractor shall develop and maintain for the duration of this contract, a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Engineer or other representative. In addition, the Contractor must promptly report in writing to the Engineer all accidents whatsoever arising out of or in connection with, the performance of the work whether on, or adjacent to the site, giving full details and statements of witnesses.

**7.9.5.2 Work Site Safety Official.** The Contractor shall designate in writing a "Project Safety Official" who shall be at the Work site at all times, and who shall be thoroughly familiar with the Contractor's Injury and Illness Prevention Program (IIPP), Code of Safe Practices (CSP) and all TCP's. The Project Safety Official shall be available at all times to abate any potential safety hazards and shall have the authority and responsibility to shut down an unsafe operation, if necessary.

#### **7.9.5.3 Safety Orders**

**7.9.5.3.1 General.** The Contractor shall have at the Work site, copies or suitable extracts of Construction Safety Orders, Tunnel Safety Orders, and General Industry Safety Orders issued by the State Division of Industrial Safety.

Prior to beginning any excavation 5 feet in depth or greater, the Contractor shall submit to the Engineer, the name of the "Competent Person" as defined in CCR, Title 8, Section 1504. The "Competent Person" shall be present at the Work site as required by Cal-OSHA.

**7.9.5.3.2 Shoring Plan.** Before excavating any trench 5 feet (1.5m) or more in depth, the Contractor shall submit a detailed working drawing (shoring plan) showing the design of the shoring, bracing, sloping, or other provisions used for the workers' protection. If the shoring plan varies from the shoring system standards, the shoring plan shall be prepared by a registered Structural or Civil Engineer. The shoring plan shall accommodate existing underground utilities. No excavation shall start until the Engineer has accepted the shoring plan and the Contractor has obtained a permit from the State Division of Industrial Safety. A copy of this permit shall be submitted to the Engineer. If the Contractor fails to submit a shoring plan or fails to comply with an accepted shoring plan, the Contractor shall suspend work at the affected location(s). Such suspended work shall not be the basis



of a claim for Extra Work and the Contractor shall not receive additional compensation or contract time.

**7.9.5.3.3 Payment.** Payment for shoring shall be paid in accordance with the line item(s) for "Shoring". If there is no such line item said costs shall be included in the relevant bid line item and there shall be no additional costs to CivicSD. Payment for compliance with the provisions of the safety orders and all other laws, ordinances, and regulations shall be included in the relevant bid line item and there shall be no additional costs to CivicSD.

**7.9.5.4 Use of Explosives.** Explosives may be used only when authorized in writing by the Engineer, or as otherwise specified in the Special Provisions.

Explosives shall be handled, used, and stored in accordance with all applicable regulations.

Prior to blasting, the Contractor shall comply with the following requirements:

- a. The jurisdictional law enforcement CivicSD shall be notified 24 hours in advance of blasting.
- b. The jurisdictional fire department shall be notified 24 hours in advance of blasting.
- c. Blasting activities and schedule milestones shall be included in the Contractor's construction schedule.

For a Private Contract, specific permission shall be obtained from CivicSD in writing, prior to any blasting operations in addition to the above requirements.

The Engineer's approval of the use of explosives shall not relieve the Contractor from liability for claims caused by blasting operations.

**7.9.5.5 Hazardous Materials.**

**7.9.5.5.1** Should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes and hazardous materials (as defined in section 25117 of the Health and Safety Code) at the Site which have not been rendered harmless, the Contractor shall immediately stop work at the affected area and shall report the condition to CivicSD in writing. CivicSD shall contract for any services required to directly remove and/or abate PCBs and other toxic wastes and hazardous materials, and shall not require the Contractor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of CivicSD and Contractor.

**7.9.5.5.2** Except as expressly set forth in the Contract Documents, the Contractor shall not cause or permit any Hazardous Material to be used, stored, transported, generated

or disposed of in or about the Project Site by the Contractor, Subcontractors, or their respective employees, agents or sub-subcontractors.

**7.9.5.5.3** If the presence of any Hazardous Material on the Project Site caused or permitted by the Contractor, any subcontractor or their respective employees, agents, or subcontractors results in any contamination of the Project Site, the Contractor shall promptly take all actions at the Contractor's sole expense as are necessary to return the Project Site to the condition existing prior to the introduction of any such Hazardous Material to the Project Site, provided that CivicSD's approval of such action shall first be obtained. The Contractor shall be responsible for any and all damages suffered by CivicSD as the result of such contamination, including, without limitation, any diminution in value of the Project Site, costs of investigation, remediation, and any claims by other tenants for costs or expenses caused by the contamination and any investigation and remediation.

## **7.9.6 Security and Protective Devices**

**7.9.6.1 General.** Security and protective devices shall consist of fencing, steel plates, or other devices as required to protect open excavations.

**7.9.6.2 Security Fencing.** The Contractor shall completely fence open excavations. Security fencing shall remain in place unless workers are present and construction operations are in progress during which time the Contractor shall provide equivalent security.

**7.9.6.3 Steel Plate Covers.** The Contractor shall:

1. Protect transverse or longitudinal cuts, voids, trenches, holes, and excavations in the right-of-way that cannot be properly completed within 1 Working Day by adequately designed barricades and structural steel plates (plates) that will support legal vehicle loads in such a way as to preserve unobstructed traffic flow.
2. Secure approval, in advance, from the Engineer concerning the use of any bridging proposed on the Work.
3. Shore the trench adequately shored to support the bridging and traffic loads.
4. Design plates for HS 20-44 truck loading in accordance with Caltrans Bridge Design Specifications Manual.
5. Installation of plate types and methods:
  - (a) For the minimum thickness of plates refer to Table 7.10.5.3(A):

Table 7.10.5.3(A)	
Trench Width	Minimum Plate Thickness
10"	1/2"
1'-11"	3/4"
2'-7"	7/8"
3'-5"	1"
5'-3"	1 1/4"

- (b) For spans greater than 5'-3", submit a structural design prepared by a California Registered Civil Engineer to the Engineer.
- (c) Make the surface of the plates skid-resistant with a nominal Coefficient Of Friction (COF) of 0.35 as determined by California Test Method 342.
- (d) Extend plates minimum 12" beyond the edges of the trench.
- (e) Plates must provide complete coverage to prevent any person, bicycle, motorcycle or motor vehicle from being endangered due to plate movement causing separations or gaps.
- (f) Install and secure plates against movement or displacement by using adjustable cleats, shims, welding, or other devices in a manner that will minimize noise.
- (g) Install plates using either Method (1) or (2):

*Method 1 [For speeds greater than 45 mph]:* Mill the pavement to a depth equal to the thickness of the plate and to a width and length equal to the dimensions of the plate.

*Method 2 [For Speeds less than 45 mph]:* Attach approach plate(s) and ending plate (if longitudinal placement) to the roadway by a minimum of 2 dowels pre-drilled into the corners of the plate and drilled 2" into the pavement. Subsequent plates must be butted to each other. Compact fine graded asphalt concrete to form ramps, maximum slope 8.5 % with minimum 12" taper to cover all edges of the plates.

Alternative installation method may be submitted for the Engineer's review and approval.

- 6. The Contractor is responsible for maintenance of the plates, shoring, and asphalt concrete ramps or any other approved device used to secure the plates. The Contractor must immediately mobilize necessary personnel and equipment after being notified by anyone of a repair needed e.g., plate movement, noise, anchors, and asphalt ramps. Failure to respond to the emergency request within 2 hours will be grounds for CivicSD to cause the necessary repairs and adjustments. All costs for any action by or on behalf of CivicSD to secure, adjust or repair trench plates shall be borne by the Contractor and be deducted from any amounts due. Failure to comply is a default and breach of contract may result in automatic grounds for suspension of permit, Contract, or both.

7. When plates are removed, repair any damage to the pavement with fine graded asphalt concrete mix or slurry seal to the satisfaction of the Engineer.

**7.9.7 Parking Restrictions.** The contractor is responsible for posting "no parking" signs on any section of street where such a prohibition is necessary to allow the work to be accomplished. The number of "no parking" signs required to provide adequate notice will be determined by the contractor and approved by the Engineer. Generally, signs shall be not greater than fifty (50) feet apart and face oncoming traffic. Such signs shall also give specific information as to the dates and times when parking is prohibited, and shall be posted three (3) calendar days before the effective date. If weather or other circumstances prevent work from being finished before expiration of the posted parking ban, new signs with revised "no parking" information shall be posted at least seventy-two (72) hours before any tow-aways by the Police Department are requested. It is the contractor's responsibility to contact the Police Department and arrange for tow-aways and such arrangements shall be made no later than the day before tow-aways will be needed on any section of street. The signs shall be clean and free of graffiti and readable from 50 feet.

If the above telephone numbers are changed, the contractor is not relieved of responsibility for notifying the various departments.

#### **7.10 PATENTS, TRADEMARKS, AND COPYRIGHTS.**

Contractor must pay, at no additional cost to CivicSD, all applicable royalties and license fees on any and all matters arising in connection with the Work. Contractor must defend all suits or claims for infringement of patent, trademark, and copyrights against CivicSD and any other Indemnified Parties, and must save CivicSD and any other Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work on the Project, such costs to be paid at no additional cost to CivicSD, except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by CivicSD, other than pursuant to your recommendation or suggestion; provided however, if Contractor has reason to believe that the design, process or product so specified is an infringement of a patent, Contractor will be responsible for any loss resulting unless Contractor have provided the Engineer with prompt written notice of your belief, and the Engineer has nevertheless elected to go forward with such design, process, or product so specified.

#### **7.11 ADVERTISING.**

The names, addresses and specialties of Contractors, Subcontractors, architects, or engineers may be displayed on removable signs. The size and location shall be subject to the Engineer's approval.

Commercial advertising matter shall not be attached to or painted on the surfaces of buildings, fences, canopies, or barricades.

Any advertisement referring to CivicSD as a user of a product, material, or service by Contractor or any Subcontractor and Supplier is expressly prohibited without CivicSD's prior written approval.

#### **7.12 LAWS TO BE OBSERVED.**

The Contractor shall keep itself fully informed of State and national laws and County and municipal ordinances and regulations which in any manner affect those employed in the Work or the materials used in the Work or in any way affect the conduct of the Work. The Contractor shall at all times observe and comply with such laws, ordinances, and regulations.

The Contract shall be governed by the law of the State of California applicable to contracts to be performed wholly within the State of California.

Rules of law shall prevail over any provision contained in any of the Bid and Contract Documents which may be in conflict thereto or inconsistent therewith.

The Contractor shall conform to and abide by all local, State and Federal building, sanitary, health and safety laws, rules, and regulations, including all City ordinances and regulations. To the best knowledge and belief of the parties, the Bid and Contract Documents contain no provision that is contrary to Federal or State law or any ruling or any regulations of a Federal or State CivicSD. Should, however, any provisions of the Bid and Contract Documents at any time during its term be in conflict with any such law, ruling or regulation, and such provisions of the Bid and Contract Documents are thus held inoperative, the remaining provisions of the Bid and Contract Documents shall, nevertheless, remain in full force and effect.

Whenever the provisions of any chapter of the Bid and Contract Documents may conflict with any agreement or regulation of any kind in force among members of any trade association, union or council which regulates or distinguishes what work shall or shall not be included in the work of any particular trade, the Contractor shall make all necessary arrangements to reconcile any such conflict without recourse to CivicSD.

## **SECTION 8 - FACILITIES FOR CIVICSD PERSONNEL**

### **8.1 GENERAL.**

A field inspector's office is not required for this project.

## **SECTION 9 - MEASUREMENT AND PAYMENT**

### **9.1 MEASUREMENT OF QUANTITIES**

#### **9.1.1 Measurement Of Quantities For Unit Price Work.**

**9.1.1.1** Unless otherwise specified, payment will be based on actual quantities of work as verified and approved by the Engineer, based on the price per unit as set forth in the Bid. Items for which quantities are indicated "Lump Sum", "LS", or "Job", shall be paid for at the price indicated in the Bid. Such payment shall be full compensation for the items of work and all work appurtenant thereto.

**9.1.1.2** No Payment will be made for materials wasted or disposed of in a manner not called for under the Contract. This includes rejected material not unloaded from vehicles, material rejected after it has been placed, and material placed outside of the construction limits. No compensation will be allowed for disposing of rejected or excess material.

#### **9.1.2 Lump Sum Work.**

**9.1.2.1** The Contractor shall submit to the Engineer within 15 days after award of Contract, a detailed Schedule of Values to be used only as a basis for determining progress payments on a lump sum contract or designated lump sum Bid item. This schedule shall equal the lump sum Contract Price or Bid item price and shall be in such form and sufficiently detailed as to satisfy the Engineer that it correctly represents a reasonable apportionment of the lump sum.

#### **9.1.3 Mobilization.**

**9.1.3.1** When the Bid Form includes a bid item for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate as "Mobilization." When no bid item is provided for "Mobilization," payment for such costs will be deemed to be included in the other items of the Work.

**9.1.3.2** Payment for Mobilization shall be based on the lump sum provided in the Bid Form, which shall constitute full compensation for all such Work. No payment for Mobilization will be made until all of the items listed below have been completed to the satisfaction of CivicSD. The scope of the Work included under Mobilization shall include, but shall not be limited to, the following principal items:

1. Obtaining, paying for and delivering to CivicSD all bonds, insurance, and permits.
2. Moving on to the Site all Contractor's plant and equipment required for first month's operations.
3. Installing temporary construction power, wiring, and lighting facilities.
4. Establishing fire protection system.
5. Developing and installing a construction water supply.
6. Providing and maintaining the field office trailers for the Contractor and CivicSD, complete, with all specified furnishings and utility services including telephones, telephone appurtenances, computer and printer, and copying machine.
7. Providing on-site communication facilities for CivicSD, including telephones, radio pagers, and fax machines.
8. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.
9. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.
10. Arranging for and erection of Contractor's work and storage yard.
11. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.
12. Full-time presence of Contractor's superintendent at the Site as required herein.
13. Submittal of initial Construction Schedule as required by the Contract Documents.

**9.1.3.3 Payment Schedule.** When applicable, Mobilization/Demobilization shall be paid for at the Contract lump sum price bid. The lump sum price for

Mobilization/Demobilization shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, overhead, taxes, fees and profit for doing all the work involved in mobilization and demobilization. Payments for Mobilization/Demobilization will be made in accordance with the following schedule:

60% after construction begins.

40% after acceptance of the completed project by the Engineer.

## **9.2 PAYMENT**

**9.2.1 Progress Payments.** CivicSD shall make monthly progress payments following receipt of undisputed and properly submitted payment requests. Unless otherwise specified in the Notice, Contractor shall be paid a sum equal to ninety five percent (95%) of the value of Work performed up to the last day of the previous month, less the aggregate of previous payments.

**9.2.2 Final Payment.** The Contractor shall, after the full completion of the Work, submit a final payment application. All prior progress estimates shall be subject to correction in the final estimate and payment.

**9.2.3 Retention Release.** Unless otherwise required by law, the final payment of five percent (5%) of the value of the Work, if unencumbered, shall be paid no later than sixty (60) Days after the date of recordation of the Notice of Completion.

**9.2.4 Acceptance of Final Payment.** Acceptance by Contractor of the final payment shall constitute a waiver of all claims against CivicSD arising from this Contract except those previously stated in writing in accordance with Section 3.

**9.2.5 No Waiver.** Payments to the Contractor shall not be construed to be an acceptance of any defective work or improper materials, or to relieve the Contractor of its obligations under the Contract Documents.

## **9.3 PAYMENTS WITHHELD AND BACKCHARGES**

**9.3.1** In addition to amounts which CivicSD may retain under other provisions of the Contract Documents, CivicSD may withhold payments due to Contractor as CivicSD may consider appropriate to protect CivicSD from any of the following:

- a. Stop Payment Notice Claims.
- b. Defective work not remedied.
- c. Failure of Contractor to make proper payments to its subcontractors or suppliers.



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

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

## **9.4 BID ITEMS**

The following are detailed descriptions of the bid items. The descriptions are intended to provide a narrative of the bid item and shall not be considered as an all-inclusive or encompassing scope of work for each bid item. **All work shown or mentioned on the plans, in the Contract Documents, General Provisions, or Technical Provisions/Specifications shall be considered as included in the Bid Items.** Some bid items may not have a narrative and/or bid description in this section. Payment for each Bid Item shall be made at the quantity and type as listed in the Contractor's Proposal. Contractor must protect existing utilities, improvements, landscaping, irrigation systems, and vegetation in place. If damaged during the work, Contractor is responsible to repair or replace any utilities, improvements, landscaping, irrigation systems, and vegetation at his expense.

### **Bid Item Descriptions:**

#### **9.4.1 Mobilization/Demobilization (Bid Item No. 1)**

##### **Bonds (Payment and Performance) (Bid Item No. 2)**

Mobilization / Demobilization shall consist of preparatory work and operations, including, but not limited to, items necessary for the move-on and move-off operations of personnel, labor, equipment, supplies, and incidentals to the Project Site; for the establishment of all offices, storage yards, buildings, hook-up and disconnects for utility services, and other facilities

necessary for work on the Project; and for all other work and operations including furnishing bonds, the application for and acquiring of permits from other agencies, which must be performed or costs incurred prior to beginning work on the various items of work on the Project Site. Mobilization shall include but not be limited to items in Section 9.1.3.

No additional compensation will be allowed for additional mobilizations required, including but not limited to delays caused by the relocation of existing utility facilities shown on the Plans or discovered during construction operations.

The deletion of work or the addition of extra work as provided for herein shall be reflected in Contract Change Orders, and shall not affect the price paid for "Initial Mobilization."

Payment for Initial Mobilization will be made as outlined in Section 9.1.3.3.

The deletion of work or the addition of extra work as provided for herein shall not affect the price paid for Mobilization/Demobilization.

The contract unit price paid for mobilization shall include full compensation for furnishing all labor, materials, tool, equipment, the cost of all bonds and insurance policies, and incidentals, and for doing the work involved in mobilization and demobilization as specified herein.

**9.4.2 SWPPP Development (Bid Item No. 3) Lump Sum**  
**SWPPP Permit Fee (Bid Item No. 4) Allowance**  
**SWPPP Implementation (Bid Item No. 5) Lump Sum**

The Contractor shall comply with Section 7-8.6 of the Standard Specifications, including the preparation of a Storm Water Prevention Pollution Plan (SWPPP), payment of fees, and implementation of the SWPPP and erosion controls.

The contract price paid for each line item shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals involved in preparing a Storm Water Prevention Pollution Plan (SWPPP) as required by the City of San Diego, payment of the permit fee, and implementing and maintaining said SWPPP and erosion controls, and no additional compensation will be allowed therefor.

**9.4.3 Clear and Grubbing (Bid Item No. 6) Lump Sum**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals, to clear trash, debris, rocks, and brush and other miscellaneous items as required per plan and specifications to perform work on the project. Payment for this item shall be paid once work is completed and no additional compensation will be allowed thereof.

**9.4.4 Remove Concrete Walkway (Bid Item No. 7) Square Feet**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to remove and dispose of the concrete walkway according to the plans and specifications. Payment for this item shall be based on the amount of material removed and no additional compensation will be allowed thereof.

**9.4.5 Remove, Salvage and Deliver Decorative Light Heads (Bid Item No. 8) Each  
Remove, Salvage and Deliver Chairs (Bid Item No. 9) Each**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals, to excavate and salvage the decorative lights and chairs as required per plan and specifications. Work will include removal and disposal of concrete footings, pull boxes and conduits. Light heads and chairs will be delivered to the Port of San Diego as per notes found on the plans. Payment for this item shall be based on the value of work completed for each piece and no additional compensation will be allowed thereof.

**9.4.6 Remove, Salvage and Deliver Existing Irrigation Controller and SS Pedestal Mount Enclosure (Bid Item No. 10) Lump Sum**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to remove, salvage and deliver the existing irrigation controller and SS Pedestal Mount Enclosure to the Port of San Diego according to the plans and specifications. Payment for this item shall be based on a lump sum price, and no additional compensation will be allowed thereof.

**9.4.7 Remove Concrete Mow Strip (Bid Item No. 11) Lineal Feet**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to remove and dispose of the concrete mowstrip according to the plans and specifications. Payment for this item shall be based on the amount of material removed and no additional compensation will be allowed thereof.

**9.4.8 Tree Removal (Bid Item No. 12) Each**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to remove and dispose of the Washington Robusta trees according to the plans and specifications. Payment for this item shall be based on the each removed and no additional compensation will be allowed thereof.

**9.4.9 Remove CL Fencing and Footings (Bid Item No. 13) Lineal Feet**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to remove and dispose of the chain link fence and associated concrete footings according to the plans and specifications. Payment for this item shall be based on the amount of material removed and no additional compensation will be allowed thereof.

#### **9.4.10 Place Topsoil (Bid Item No. 14) Cubic Yards**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to replace removed concrete and miscellaneous areas with topsoil according to the plans and specifications. Payment for this item shall be based on the amount of material placed and no additional compensation will be allowed thereof.

#### **9.4.11 Grade and Level Ballast Area (Bid Item No. 15) Lump Sum**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to grade and level the walking ballast according to the plans and specifications. Payment for this item shall be based on a lump sum price and no additional compensation will be allowed thereof.

#### **9.4.12 Import and Place Walking Ballast (Bid Item No. 16) Tons**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to import and install walking ballast between the new and old fence according to the plans and specifications. Payment for this item shall be based on the amount of material required and no additional compensation will be allowed thereof.

#### **9.4.13 Fine Grading and Soil Prep for Sod Placement (Bid Item No. 17) Square Feet**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to prepare and fine grade topsoil in preparation of sod placement according to the plans and specifications. Payment for this item shall be based on the amount of square footage and no additional compensation will be allowed thereof.

#### **9.4.14 Furnish and Install Sod (Bid Item No. 18) Square Feet**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to supply and install the sod according to the plans and specifications. Payment for this item shall be based on the amount of material purchased and no additional compensation will be allowed thereof.

#### **9.4.15 Construct Mow Strip (Bid Item No. 19) Lineal Feet**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to install concrete mow strip, Type B, according to the plans and specifications for installation of the new fence. Payment for this item shall be based on the amount of lineal feet placed and no additional compensation will be allowed thereof.

#### **9.4.16 Install 6' Chain Link Fence (Bid Item No. 20) Lineal Feet**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to install the 6' chain link fence according to the plans and specifications. Payment for this item shall be based on the length of fence installed and no additional compensation will be allowed thereof.

#### **9.4.17 Install Temporary 6' Chain Link Fence (Bid Item No. 21) Lineal Feet**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to install the temporary 6' chain link fence according to the plans and specifications. Payment for this item shall be based on the length of fence installed and no additional compensation will be allowed thereof.

#### **9.4.18 Install 4' Chain Link Fence (Bid Item No. 22) Lineal Feet**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to install the 4' chain link fence according to the plans and specifications. Payment for this item shall be based on the length of fence installed and no additional compensation will be allowed thereof.

#### **9.4.19 Construct Mow Curb (Bid Item No. 23) Lineal Feet**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to install the mow curb adjacent to the irrigation controller according to the plans and specifications. Payment for this item shall be based on the lineal feet of curb and no additional compensation will be allowed thereof.

#### **9.4.20 DG near Irrigation Controller (Bid Item No. 24) Square Feet**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to provide and install the DG near the

irrigation controller according to the plans and specifications. Payment for this item shall be based on the square footage installed and no additional compensation will be allowed thereof.

#### **9.4.21 Install Irrigation System (Bid Item No. 25) Lump Sum**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to install the irrigation system and controller according to the plans and specifications. Payment for this item shall be based on the amount of work performed and no additional compensation will be allowed thereof.

#### **9.4.22 6-Month Plant Establishment (Bid Item No. 26) Lump Sum**

The contract lump sum price paid for this item shall include full compensation to furnish all labor, materials, tools, equipment, and incidentals to establish the landscape for six months according to the plans and specifications. Payment for this item shall be based on the amount of work performed and no additional compensation will be allowed thereof.

#### **9.4.23 Field Orders (Bid Item No. 27) Allowance**

The contract allowance for this item shall be used when directed by the Project Manager or his representative to perform work outside, or in addition to, the items shown on the project plans or specifications. Payment for this item shall be based on the amount of work requested by the Project Manager and no additional compensation will be allowed thereof.

#### **9.4.24 Provide BNSF Flagmen (Bid Item No. 28) Allowance**

The contract allowance for this item shall include full compensation to acquire the required BNSF flagmen for the project during the times where construction is within the existing railroad right-of-way according to the plans and specifications. Payment for this item shall be based on the actual time required and no additional compensation will be allowed thereof.

### **SECTION 10 – MISCELLANEOUS**

#### **10.1 INDEMNIFICATION**

To the fullest extent allowed by law, Contractor shall defend, indemnify and hold CivicSD, the Successor CivicSD, (if any), the City of San Diego, and their respective officials, officers, agents, employees, and representatives (the “indemnitees”) free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, regardless of whether the allegations are false, fraudulent, or groundless, arising out of, related to , or in connection with the Work or this Contract, including claims made by subcontractors for nonpayment, and including without limitation the payment of all consequential damages and attorneys’ fees and other related costs and expenses. Contractor shall defend, at Contractor’s own cost,

expense and risk, with counsel of the Indemnatee's choosing, any and all such suits, actions, or other legal proceedings of every kind that may be brought or instituted against any indemnitee. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against an Indemnitee, in any such suit, action or other legal proceeding. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitation on this provision shall be those imposed by Civil Code section 2782.

## **SECTION 10 -**

### **10.2 COMMUNITY LIAISON.**

**10.2.1 General.** Contractor shall retain a community liaison throughout the Contract Time. The community liaison must closely coordinate the Work with the businesses, institutions and residents impacted by the Project. Example duties of the community liaison include notification to the businesses, institutions and residents of the commencement of construction activities not less than 5 Working Days in advance, coordination of access for vehicular and pedestrian traffic to businesses, institutions and residences impacted by the Project, response to community questions and complaints related to your activities, reporting of liaison activities at all Project progress meetings scheduled by the Engineer, and attendance to the Project Pre-construction Meeting.

### **10.3 CONFLICT OF INTEREST.**

The Contractor shall establish and make known to your employees appropriate safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Project personnel must not accept gratuities or any other favors from Subcontractors or potential subcontractors.

The Contractor is subject to all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, e.g., California Government Code §§1090, et. seq. and 81000, et. seq. If, in performing the Work, Contractor make, or participate in, a "governmental decision" in accordance with title 2, §18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for CivicSD that would otherwise be performed by an CivicSD employee holding a position specified in the applicable department's conflict of interest code, Contractor will be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing your relevant financial interests.

If required, statements of economic interests must be made on Fair Political Practices Commission Form 700 and filed with CivicSD. Contractor must file a Form 700 (Assuming

Office Statement) within 30 days of CivicSD's written determination that Contractor will be subject to a conflict of interest code. File a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to a conflict of interest code.

If CivicSD requires Contractor to file a statement of economic interests as a result of the Work performed, Contractor will be considered a "CivicSD Official" subject to the provisions of CivicSD Ethics Ordinance, including the prohibition against lobbying CivicSD for 1 year following the expiration or termination of the Contract.

If the Contractor employed on the Project must not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The Contractor must not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

If the Contractor violates any conflict of interest laws or any of these conflict of interest provisions, the violation will be grounds for immediate termination of this Contract. Further, the violation subjects Contractor to liability to CivicSD for all damages sustained as a result of the violation.

#### **10.4 NOTICE OF THIRD PARTY CLAIMS.**

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

#### **10.5 STATE LICENSE BOARD NOTICE.**

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

#### **10.6 INTEGRATION**

- a. These Contract Documents, together with its incorporated documents, contains the entire, integrated agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void.



- b. Any modification of this Contract shall only be effective if in writing signed by all parties.
- c. No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.

## **10.7 GOVERNING LAW, VENUE**

This Agreement and the Contract Documents shall be construed under and in accordance with the laws of the State of California, and the appropriate venue for any action or proceeding arising from this Agreement and/or the Contract Documents shall be had in the Superior Court of San Diego, Central Branch.

## **10.8 CITY OF SAN DIEGO COUNCIL POLICIES APPLICABLE TO THIS CONTRACT**

### **10.8.1 Policy no. 100-17 - Drug-free workplace/city contractors**

#### **10.8.1.1 Definitions.**

The following definitions should be used in conjunction with this Section:

**10.8.1.1.1** “Drug-free workplace” means the site for the performance of this Contract at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this Section.

**10.8.1.1.2** “Employee” means the employee of the Contractor directly engaged in the performance of work pursuant to this Contract.

**10.8.1.1.3** “Controlled substance” means a controlled substance in schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. Sec. 812).

#### **10.8.1.2 Contractor Requirements**

Pursuant to City Council Policy No. 100-17, the Contractor will provide a drug-free workplace by doing all of the following:

**10.8.1.2.1** Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person’s organization’s workplace and specifying the actions that will be taken against employees for violations of the prohibition.

**10.8.1.2.2** Establishing a drug-free awareness program to inform employees about all of the following:

- a. The dangers of drug abuse in the workplace.

- b. The person's or organization's policy of maintaining a drug-free workplace.
- c. Any available drug counseling, rehabilitation, and employee assistance programs.
- d. The penalties that may be imposed upon employees for drug abuse violations.

**10.8.1.2.3** Posting the statement required by Section 10.8.1.2.1 in a prominent place at Contractors main office. For projects large enough to necessitate a construction trailer at the job site, the required signage would also be posted at the job site.

**10.8.1.2.4** The Contractor shall include in each subcontract agreement language which indicates the subcontractor's agreement to abide by the provisions of this Section. The Contractor and subcontractors shall be individually responsible for their own drug-free workplace programs.

## **10.8.2** Policy no. 100-04 - Americans with DISABILITIES act/city contractors

### **10.8.2.1** Definitions.

**10.8.2.1.1** "Qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

**10.8.2.1.2** "Employee" means the employee of the Contractor directly engaged in the performance of work pursuant to this Contract.

### **10.8.2.2** Contractor Requirements

Pursuant to City Council Policy No. 100-04, the Contractor will adhere to the following provisions of the American with Disabilities Act (ADA) of 1990:

**10.8.2.2.1** Title I. Employment Mandates - "No contractor may discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment."

**10.8.2.2.2** Title II. State and Local Government - "No qualified individual with a disability maybe excluded on the basis of disability, from participation in, or be denied the benefits of services, programs, or activities by contractors or subcontractors providing services for the City."

**10.8.2.2.3** Post a statement addressing the requirements of the ADA in a prominent place at the worksite.

**10.8.2.2.4** The Contractor shall include in each subcontract agreement language which indicates the subcontractor's agreement to abide by the provisions of this Section. The Contractor and subcontractors shall be individually responsible for their ADA employment programs.

### **10.8.3 Policy no. 900-16 - CONSTRUCTION AND DEMOLITION (C&D) MATERIAL RECYCLING**

#### **10.8.3.1 Contractor Requirements.**

Pursuant to City Council Policy No. 900-16, the Contractor will adhere to the following provisions:

**10.8.3.1.1** Divert as much waste from landfills as possible through waste reduction, reuse and recycling.

**10.8.3.1.2** Evaluate the potential for maximizing waste diversion through recycling, waste reduction and reuse.

**10.8.3.1.3** Diversion goals shall be 100% diversion of inert materials (concrete, rock, asphalt, dirt, etc.) and at least 50% diversion of all remaining materials by weight if mixed C&D recycling facilities are available or as much as feasible through source separation of recyclable materials if a mixed C&D facility is not available.

**10.8.3.1.4** Recycling and waste reduction, when economically feasible, is required through reuse and grinding of materials onsite or other efforts. All trash and mixed loads of recycling shall be processed at the Miramar Landfill when economically feasible.

**10.8.3.1.5** A contractor who is convicted of illegal dumping may be subject to debarment in accordance with Chapter 2, Article 2, Division 8 of the City's Municipal Code.

**10.8.3.1.6** Purchase products made from recycled materials, when economically feasible.

### **10.9 GOVERNING LAW, VENUE**

This Agreement and the Contract Documents shall be construed under and in accordance with the laws of the State of California, and the appropriate venue for any action or proceeding arising from this Agreement and/or the Contract Documents shall be had in the Superior Court of San Diego, Central Branch.

**END OF GENERAL CONDITIONS**

## **SUPPLEMENTAL SPECIAL CONDITIONS**

### **SECTION 11 - GENERAL CONSTRUCTION**

**SSP SHALL CONFORM TO PART 1 THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION (EXCLUDING PART 1) ("GREEN BOOK" 2018 EDITION) CURRENTLY ADOPTED BY THE CITY, INCLUDING ITS CURRENT SUPPLEMENT AMENDMENTS (CITY SUPPLEMENT – "WHITE BOOK" 2018 EDITION), EXCEPT FOR THE FOLLOWING CHANGES AND ADDITIONS:**

#### **SECTION 5 – LEGAL RELATIONS AND RESPONSIBILITIES**

##### **5-7 SAFETY**

##### **5-7.1 Work Site Safety.**

ADD the following section:

##### **5-7.1.3 Rail Operations**

The Contractor's work shall not interfere with any rail operations (heavy rail passenger, light rail transit, or freight operations).

Prior to initiating any work within the railroad right-of-way, the Contractor shall comply with BNSF requirements for insurance and safety training. Contractor shall also comply with BNSF Temporary Occupancy Permit.

When working near the railway corridor [area within the fenced area of tracks], the Contractor's employees are prohibited from positioning themselves, placing material, or positioning machinery within the existing fenced track area or within 25 feet of the nearest rail of main line track (25 feet from the centerline of track) when the existing fence is removed, unless under control of a BNSF railroad flagman at each work location.

Work involved within the fenced railroad track area shall be under the control of the BNSF railroad flagman. When the Contractor plans to perform work within the fenced railroad track area or within 25-feet of the BNSF track centerline when the existing fence is removed, a BNSF railroad flagman will be required. Notify the Engineer and the Railroad Representative to schedule a BNSF railroad flagman, not less than ten (10) Business Days prior to when they are needed for such work. If the Contractor changes plans, notify the Engineer and the railroad not less than 48 hours prior to the pre-scheduled operation.

The Contractor shall plan the work to minimize the need for the railroad flagger. In particular, the Contractor is expected to plan as much work as possible while the existing fence is in place. The Contractor will be provided with a fixed allowance for railroad flagging. If the Contractor exceeds the fixed amount of the allowance, the cost of additional railroad flagging will be at the Contractor's expense.

ADD the following section:

#### **5-7.1.4 Overhead Traction Power Catenaries**

Attention is directed to the existence of overhead 650 volt DC overhead power lines for the trolleys within the MTS right-of-way. The Contractor should assume these wires live at all times. Extreme caution shall be exercised when working in the vicinity of these wires.

The Contractor shall not allow metal equipment or other items to contact the trolley tracks and the overhead catenary wires. The wires convey positive current and the tracks act as the negative return for the 650 volt DC traction power.

For this contract, there is no reason for the Contractor to be on the MTS right-of-way or near the traction power overhead wires. The Contractor shall not venture onto the MTS right-of-way.

### **PART 3**

#### **CONSTRUCTION METHODS**

#### **SECTION 300 – EARTHWORK**

**300-1.4 Payment.** DELETE in its entirety and SUBSTITUTE with the following:

1. The lump sum for “Clearing and Grubbing” shall include full compensation for the removal and disposal of all the resulting materials not specifically identified as separate removal items. This item will include sawcutting and removal of concrete divider strips (approximately 27) and earthwork for installation of the new mow strip.
2. Payment for bid items specifically identified shall be the units indicated and shall include full payment for their removal and disposal.
3. Salvage light heads from decorative lights. Contact designated Port person and deliver salvaged items to Port Maintenance Yard. Payment for salvaging light heads; removal of poles and concrete footings; and removal of pull boxes and conductors shall be the unit bid price.
4. Salvage chairs. Contact designated Port person and deliver salvaged items to Port Maintenance Yard. Payment for salvaging chairs shall be the unit bid price.
5. Salvage irrigation controller and SS pedestal mount enclosure. Contact designated Port person and deliver salvaged items to Port Maintenance Yard. Payment for salvaging items shall be the unit bid price. The existing controller shall remain operative until the new system has been fully implemented. Payment for salvaging the irrigation controller and SS pedestal mount enclosure shall be the unit bid price.
6. Payment for Tree Removal and Disposal (Washington Robustus) shall include removal of the stump and roots to 18-inches below the finish surface.

**300-4.10 Payment.** ADD the following:

Upon completion of construction of the new CL fence and mow strip, perform finish grading to bring the area adjacent to the mow strip to approximately 1-inch below the edge of the mow strip. Taper the grading to approximately 3-feet away from the new mow strip. On the railroad side of the fence, fill low areas with walkway ballast and perform finish grading to leave the area in a neat and uniform surface with a drainage swale located approximately 3-feet from the new fence line. Payment for finish grading shall be the lump sum price.

Furnish and place walking ballast fill material in low areas on railroad side of new fence. Walking ballast shall be in accordance with BNSF specifications. Payment for furnishing and placing walking ballast fill material shall be the unit bid price per ton.

Furnish and place disintegrated granite fill material at irrigation controller. Payment for furnishing and placing disintegrated granite fill material shall be the unit bid price per square foot.

**SECTION 304 – METAL FABRICATION AND CONSTRUCTION**

**304-3 CHAIN LINK FENCE.**

**304-3.1 General.** ADD the following:

Where new fences and mow strips are shown on the plans, layout alignment to avoid altering existing concrete mow strips where they are encountered in the westerly part of the project area, and establish the vertical alignment to match the top of the existing mow strips (Approximately 23-feet from center line of proposed BNSF Track 1). In the area where the new fence and mow strip is located away from the existing mow strips, continue the horizontal alignment to maintain the same offset from the proposed new BNSF track alignment, and establish the vertical alignment of the fence and mow strip to be approximately 1-inch above the high points of the existing sod.

## **PART 8 - LANDSCAPING AND IRRIGATION**

### **SECTION 800 - MATERIALS**

#### **800-1.1.2 Class "A" Topsoil.**

4. The Agronomic Topsoil Test procedure shall be as follows:

ADD the following subsection:

- f) Soil test(s) shall be performed by an agricultural soil testing laboratory. Agricultural soil testing laboratories shall be from the below list, or approved equal:

**Wallace Laboratories**

365 Coral Circle

El Segundo, CA 90245

Phone: 310 615-0116 Fax: 310 640-6863

<http://www.bettersoils.com>

**Waypoint Analytical (Soil & Plant Laboratory, Inc.)**

4741 East Hunter Avenue Ste. A

Anaheim, CA 92807

Phone: 714 282-8777 Fax: 714 282-8575 <http://www.waypointanalytical.com>

**Fruit Growers Laboratory, Inc.**

853 Corporation Street

Santa Paula, CA 93061-0272

Phone: 805 659-0910 Fax: 805 525-4172

<http://www.fglinc.com>

#### **800-1.2 Soil Fertilizing and Conditioning Materials**

#### **800-1.2.5 Mulch**

DELETE in its entirety and SUBSTITUTE with the following:

1. Compost

a) General Guidelines

1. Compost shall be produced by a CA State Licensed facility using the Pathogen Reduction process, Title 14 Regulations.

Compost shall be aerobic without malodorous presence of decomposition products.

2. Maximum particle size shall be 0.5 inch, 80% or more shall pass a No. 4 screen for soil amending. Maximum particle size shall be 0.25 inch for hydroseeding.
3. Humic Compost from Agri Service, or approved equal.

b) Acceptable Types

1. Acceptable types: Composts low in salts, low in heavy metals, Pathogen Reduction completed and free from weed seeds, free of pathogens and other deleterious materials.



2. Conditionally acceptable types: Fully composted wood products, stable humus must be present.
3. Not acceptable: Sludge-based materials and wood-based products based on redwood or cedar. Fines are not acceptable.

c) Specific Criteria

Acid-soluble ash: 5% - 20%.

Silicon content (acid-insoluble ash): < 50%

Organic matter, dry weight basis: > 50%

pH: 6 – 7.5

ECe (Salt content): <10 millimho/cm, 25°C, saturated paste extract

Calcium carbonate: Non-detectable, if applied on alkaline soils

Boron: <1.0 parts per million in saturated extract

Carbon : Nitrogen ratio: <25:1

d) Maximum total permissible pollutant concentrations:

*(parts per million on a dry weight basis)*

arsenic	10	molybdenum	15	cobalt	20
silver	5	mercury	5	cadmium	10
nickel	50	copper	100	vanadium	400
chromium	100	selenium	20	lead	200
zinc	250				

## SECTION 801 - INSTALLATION

### 801.2.2 Topsoil Preparation and Conditioning

#### 801-2.2.1 General

ADD the following:

The project includes the removal of an existing concrete sidewalk and grasscrete blocks. The subgrade for sod shall be brought to finish grade with Type A Topsoil.

**(((((((END OF SUPPLEMENTARY SPECIAL PROVISIONS)))))))**

## **ADDITIONAL DOCUMENTS**

**INCORPORATED HEREIN BY REFERENCE AS IF SET FORTH IN THEIR ENTIRETY**

- 1. PORT OF SAN DIEGO RIGHT-OF-ENTRY LICENSE AGREEMENT**
- 2. BNSF TEMPORARY OCCUPANCY PERMIT**

## **PLANS AND DRAWINGS**

**"THE FOLLOWING PLANS AND DRAWINGS ARE INCORPORATED HEREIN BY REFERENCE AS IF SET FORTH IN THEIR ENTIRETY:**

- 1. Improvement Plans for Park Boulevard Grade Crossing Linear Park Modifications, sheets 36239-1-D through 36239-20-D**