

CITY OF ENCINITAS

CALIFORNIA



**CONTRACT DOCUMENTS,
SPECIFICATIONS AND STANDARD DRAWINGS**

FOR

BEACON'S BEACH PARKING LOT

CP22A

CITY OF ENCINITAS
NOTICE INVITING BIDS
INSTRUCTIONS TO BIDDERS
PROPOSAL
CONTRACT DOCUMENTS
GENERAL SPECIFICATIONS
SPECIAL PROVISIONS
TECHNICAL PROVISIONS
for
BEACON'S BEACH PARKING LOT
CP22A

JUNE 14, 2024



Jill T. Bankston, P.E.
Director of Engineering / City Engineer
Engineering Department
CITY OF ENCINITAS
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Encinitas, CA 92024
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CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
CP22A

NOTICE INVITING BIDS

Notice is hereby given that the City of Encinitas will receive ELECTRONIC BIDS ONLY, via the on-line bidding service PlanetBids, up to 2:00 PM, on July 12, 2024. At which time said ELECTRONIC BIDS will be publicly opened and read. The results will be posted on PlanetBids immediately upon bid opening. Bidders need not be present at bid opening.

WORK TO BE DONE: The work to be done generally includes:

Beacon's Beach is located at the west end of Leucadia Boulevard, with access off Neptune Avenue. The existing site consist of a dirt trail beginning at a public parking lot off Neptune Avenue and leading down across the face of the coastal bluff. This project will remove the existing parking lot, including the pavement and pedestrian pathways and constructing a new parking lot and pedestrian pathway and accompanying stripping.

Engineer's Estimate – \$360,000

The Contractor shall complete the proposed work in its entirety. Should any detail or details be omitted from the Contract Documents which are essential to its functional completeness, then it shall be the responsibility of the Contractor to furnish and install such detail or request such details from the City Engineer so that upon completion of the proposed work, the work will be acceptable and ready for use.

COMPLETION OF WORK: The Contractor shall finish all improvements complete and in place within forty-five (45) working days of the Commencement Date in the Notice to Proceed.

LOWEST RESPONSIVE AND RESPONSIBLE BIDDER: All bids are to be compared on the basis of the City Engineer's estimate of the quantities of work to be done and the unit prices bid by the bidder. The award of the contract, if it is awarded, will be to the lowest responsive and responsible bidder. Pursuant to Public Contract Code Section 1103, a "Responsible Bidder", means a bidder who has demonstrated the attributes of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform this public works contract.

FIFTY PERCENT "OWN FORCES" REQUIREMENT: Any bid that proposes performance of more than 50 percent of the work by subcontractors or owner operator/lessors or otherwise to be performed by forces other than the Bidder's own organization will be rejected as non-responsive.

OBTAINING CONTRACT DOCUMENTS: The website for this advertisement and related documents is: PlanetBids (<http://www.encinitasca.gov/bids>). All bid documents and project correspondence will be posted on the PlanetBids website. It is the responsibility of Proposed Bidders to check the website regularly for information updates and Bid Clarifications, as well as any addenda. To submit a bid, a bidder must be registered with the City of Encinitas as a vendor. To register as a vendor, go to the following link (<http://www.encinitasca.gov/bids>) and then proceed to the "Register As A Vendor" link. In compliance with California Contract Code Section 20103.7 electronic copies will be made available to contractor plan series bid boards and contractors upon their request. The

City makes no representation regarding the accuracy of Contract Documents received from third party plan rooms and Contractor accepts bid documents from third parties at its own risk.

Contractors shall be responsible for obtaining all addendums for the project and signing and submitting all addendums with their bid. Any contractor that does not acknowledge receipt of all addendums by signing and submitting all addendums with their bid shall be deemed a non-responsive bidder and their bid will be rejected.

BID INFORMATION: Bids shall be submitted electronically to the city utilizing PlanetBids (<http://www.encinitasca.gov/bids>) No bid will be considered unless it is made on a proposal form furnished by the City. The work shall be in strict conformity with the Contract documents. In order to bid this project, the Contractor must have at the time of bid award a **valid Class A** State of California Contractor's License in good standing and must maintain said license in good standing throughout the course of the project. Certain specialty licenses may be required of certain work as set forth in the plans and specifications. The Contractor is responsible to ensure that all proper licenses are maintained. No bid will be awarded to a Contractor who is not licensed in accordance with the provisions of Chapter 9, Division 3 of the Business and Professions Code. Withdrawal of bids by Contractor shall not be permitted for a period of ninety (90) days after the date set for the opening thereof.

BID SECURITY: Each bid must be accompanied by cash, certified or cashier's check, or bidder's bond made payable to the City of Encinitas for an amount equal to at least ten percent (10%) of the amount bid, such guarantee to be forfeited should the bidder to whom the contract is awarded fail to enter into the contract.

PRE-BID MEETING: A pre-bid meeting will not be held.

PRE-BID QUESTIONS: The City will answer information requests on this project up to Noon on July 3, 2024. After Noon on July 3, 2024, no more questions or information requests will be answered. All questions regarding this project shall be submitted through PlanetBids. All project correspondence will be posted on the PlanetBids website. It is the responsibility of the Bidders to check the website regularly for information updates, clarifications, and addenda.

LIQUIDATED DAMAGES: The Contractor shall pay to the City of Encinitas the sum of Three Thousand Six Hundred (\$3,600) per day for each and every calendar day of unexcused total project delay in completing the work in excess of the number of working days prescribed above. Pursuant to Public Contract Code Section 7203, these liquidated delay damages shall not limit the other express terms of this public works contract.

EQUALS: Notwithstanding if the project plans or specifications designate specific brands, materials, items or trade names, the Bidder may submit proposed equals to the Contract, pursuant to Public Contract Code Section 3400. Any contractor seeking a request for a substitution of "an equal" item shall submit all necessary data substantiating a request at least ten business days prior to the bid opening date.

RIGHT TO REJECT ALL BIDS: The City reserves the right to reject all bids at its sole discretion and to waive any immaterial irregularities or informalities in the bids received.

PREVAILING WAGE AND ENFORCEMENT COMPLIANCE: This is a prevailing wage project and prevailing wage rates for this locality and project as determined by the director of industrial relations apply, pursuant to labor code section 1770, et. Seq. The Prevailing Wage Determination for this

project is 2024-1. A copy of the prevailing wage rates shall be posted on the job site by the contractor. A schedule of prevailing wage rates is available for review at the City's offices or may be found on the internet at <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. The successful bidder shall be required to pay at least the wage rates set forth in that schedule. Certified Payroll records shall be maintained by the contractor and copies of the certified payroll shall be electronically sent to the Department of Industrial Relations and be delivered to the City at the end of each month during the entire duration of the project.

The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Subject to exceptions as set forth in Labor Code section 1771.1, contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined by statute, unless it is currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. The City may not accept a bid nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5. For more information, go to <https://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>.

COMPLIANCE WITH LABOR LAWS: The prime contractor shall be responsible for insuring compliance with all applicable provisions of the Labor Code, including, but not limited to, section 1777.5.

SUBLETTING AND SUBCONTRACTING FAIR PRACTICES ACT: Contractor shall comply with sections 4100 et. seq. of the Public Contracts Code ("Subletting and Subcontracting Fair Practices Act") in all respects. The City is the "duly authorized officer" for the purposes of sections 4107 and 4107.5.

PERFORMANCE AND PAYMENT BONDS: Each bid shall be accompanied by security in a form and amount as required by law. The successful bidder will be required to furnish a Payment Bond for one hundred percent (100%), and a Performance Bond for one hundred percent (100%) of the contract amount prior to execution of the contract. The City requires the awarded contractor obtain Payment and Performance bonds, issued by an admitted carrier, qualified to do business in California, as required by Code of Civil Procedure Section 995.120. Pursuant to Public Contract Code section 22300, the City permits the substitution of securities for any moneys withheld to ensure performance under the contract, or, alternatively, the contractor may request and the City may make payment of retentions earned directly to the escrow agent at the expense of the Contractor.


NONDISCRIMINATION: During the performance of this contract, the contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race or color; religion; national origin or ancestry, physical disability; mental disability or medical condition; marital status; sex or sexual orientation; age, with respect to persons over the age of 40; and pregnancy, childbirth, or related medical conditions; nor shall they discriminate unlawfully against any employee or applicant for employment because of race or color; religion; national origin or ancestry, physical disability; mental disability or medical condition; marital status; sex or sexual orientation; age, with respect to persons over the age of 40; and pregnancy, childbirth, or related medical conditions. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

PROJECT ADMINISTRATION: All questions relative to this project prior to the opening of bids, shall be submitted through PlanetBids. All project correspondence will be posted on the PlanetBids website. Please see section titled PRE-BID QUESTIONS above. The bidder shall not rely upon any

representations made by City representatives in preparing its bid, but rather, rely solely upon the written Contract Documents and any contract addenda issued prior to bid opening.

Please also see **INFORMATION AND INSTRUCTIONS FOR BIDDERS** in bid documents for additional bid information and requirements.

City of Encinitas

BY:  DATE: 6/18/2024
Jill T. Bankston, P.E.
Director of Engineering / City Engineer

END OF NOTICE INVITING BIDS

CITY OF ENCINITAS

BEACON'S BEACH PARKING LOT CP22A

INFORMATION AND INSTRUCTIONS FOR BIDDERS

OBTAINING CONTRACT DOCUMENTS: The website for this advertisement and related documents is: PlanetBids (<http://www.encinitasca.gov/bids>). All bid documents and project correspondence will be posted on the PlanetBids website. It is the responsibility of Proposed Bidders to check the website regularly for information updates and Bid Clarifications, as well as any addenda. In compliance with California Contract Code, Section 20103.7 electronic copies will be made available to contractor plan series bid boards upon their request. A bidder must register as a vendor (planholder) and download the contract documents from the City of Encinitas Website at <http://www.encinitasca.gov/bids>. To register as a vendor, go to the following link (<http://www.encinitasca.gov/bids>) and then proceed to the "Register As A Vendor" link. The City makes no representation regarding the accuracy of Contract Documents received from third party plan rooms and Contractor accepts bid documents from third parties at its own risk.

Contractors shall be responsible for obtaining all addendums for the project and signing and submitting all addendums with their bid. Any contractor that does not acknowledge receipt of all addendums by signing and submitting all addendums with their bid shall be deemed a non-responsive bidder and their bid will be rejected.

CONTRACT DOCUMENTS: The Contract Documents shall be considered to include this entire Contract Documents, Specifications and Standard Drawings bid book including: Notice Inviting Bids, Information and Instruction to Bidders, Bid Forms, Contract Form, Performance Bond, Payment Bond, Worker's Compensation Insurance Certificate, Guaranty, General Specifications, Special Provisions, Technical Provisions and Final Close out Agreement. The Contract Documents also include Addenda, Project Plans, Standard Specifications, Standard Plans, incorporated Specifications, Reference Documents, Certificate(s) of Insurances and Endorsements, Permits, Environmental Documents, and Right of Way Documents.

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

Contractor shall also be responsible for accurately filling out the Project Qualification Questionnaire.

INTERPRETATION OF CONTRACT DOCUMENTS: Bidder is required to review all plans and specifications prior to the submission of the bid, and report in writing any errors and omissions discovered by Bidder to the City. Pursuant to Public Contract Code 1104, the review by bidder shall be confined to the Bidder's capacity as a contractor, and not as a licensed design professional. Discrepancies in, errors 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 City by submission of a bidder inquiry through PlanetBids. All project correspondence will be posted on the PlanetBids website. The City will answer questions and information requests on this project up to Noon on July 3, 2024. After Noon on July 3, 2024 no more questions or information requests will be answered.

The City is not obligated to respond to a request for interpretation or correction of the documents. Any pre-bid changes to the Contract Documents shall be made only by written addenda duly issued or otherwise delivered to each person or firm who has obtained a set of Contract Documents and registered as a Project plan holder. City will not be responsible for any explanations or interpretations provided in any other manner. No person is authorized to make any oral interpretation of any provision in the Contract Documents to any bidder, and no bidder may rely on any such oral interpretation.

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

INSPECTION OF SITE: Before submitting a proposal, the Bidder shall carefully examine the drawings, specifications, and other Contract Documents, and Bidder shall visit the site of the work. The Contractor shall be required to inspect the project site prior to submitting a bid (in order to examine the existing conditions such as existing survey monument covers, manhole covers, drainage inlets, utility vaults, etc., adjoining the project site).

This project is located at Beacon's Beach, west of Neptune Avenue just north of Leucadia Boulevard. Any portion of the project that is not described in complete detail in the specifications, but can be clarified by the site inspection, shall not be considered unforeseen conditions and no additional compensation will be made thereto for extra work. It is the Contractor's responsibility to inspect the site and include any costs in the Bid Proposal for work that is not called out in complete detail in the specifications prior to submitting a bid.

The submission of a proposal shall establish that the Bidder is familiar with existing site conditions and that Bidder has a clear understanding of the requirements of the contract regarding site ingress and egress, the furnishing of materials and performance of work. **The pedestrian beach access on the west side of the parking lot will remain open for the duration of the project. It is the contractor's responsibility to ensure that adequate pedestrian access is provided. The costs to ensure access is provided is considered included in the bid prices for the contract items and no additional compensation shall be allowed.**

Where the bidder feels that additional field data are either necessary or desirable, it shall be the Bidder's responsibility to make all examination and field studies necessary for his own determination of the character of materials that will be encountered in any required work, including excavation and embankment construction operations and to fully determine all cost factors related thereto which shall be included in his bid price for the work. Such additional field data required by the Bidder shall be undertaken at the bidder's expense.

Before construction starts, the contractor shall video all preconstruction conditions in the entire project area and provide a copy of the video to the City prior to issuance of traffic control/ encroachment permit. Payment for video shall be included in the various bid items of work and no additional compensation will be made therefor.

The submittal of a bid will establish that in compliance herewith, the Bidder is accurately and fully informed of all geologic and soils conditions that will influence the cost of performing the work and that all such factors were carefully considered by Bidder, prior to making the bid.

ADDENDA: City reserves the right to revise the Contract Documents prior to the bid opening date. Revisions, if any, shall be made by Addenda posted on PlanetBids. All Addenda issued by City shall be included in the bid and made part of the Contract Documents. Pursuant to Public Contract Code 4104.5, in the event the City issues a material change, addition, or deletion to the bid documents later than 72 hours prior to the bid closing, the date and time for closing of the submission of bids by the prime contractor shall be extended by no less than 72 hours. A "material change" means a change with a substantial cost impact on the total as determined by the awarding agency. City may determine, in its sole discretion, whether an Addendum warrants postponement of the bid submission date.

Please Note: Bidders are responsible for ensuring that they have received any and all Addenda. All contract addendums will also be posted on the City's PlanetBids website (<http://www.encinitasca.gov/bids>). Contractor shall check the website prior to bid to confirm that all addenda have been received and considered as part of the bid.

COMPLETION OF BID FORMS AND PROJECT QUESTIONNAIRE: Bids shall only be prepared using copies of the Bid and questionnaire Forms which are included in the Contract Documents. The use of substitute bid or questionnaire forms other than clear and correct photocopies of those provided by City will not be permitted. Bids shall be executed by an authorized signatory as described in these Instructions to Bidders. In addition, Bidders shall fill in all blank spaces (including inserting "N/A" where applicable) and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. Any change or substitution in the scope of work, quantities, materials or specifications will result in disqualification of the bid. **USE OF BLACK OR BLUE INK, INDELIBLE PENCIL OR A TYPEWRITER IS REQUIRED.** Deviations in the bid form or failure to complete all sections of each required bid form may result in the bid being deemed non-responsive.

The bidder shall set forth for each item of work, a unit price in clearly legible words and figures, and a total for the item in the respective spaces provided for this purpose. In the case of unit price items, the amount set forth under the "Total" column shall be the extension of the unit price bid on the basis of the City Engineer's estimated quantity for the item.

In case of discrepancy between the unit price and the total set forth for the item, the written unit price shall prevail, provided, however, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or in the case where the unit price is the same amount as the entry in the "Total" column, then the amount set forth in the "Total" column for the item shall prevail in accordance with the following:

- A. As to lump sum items, the amount set forth in the "Total" column shall be the unit price.
- B. As to unit price items, the amount set forth in the "Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price.

Any error in the addition of the amounts constituting the items of the Bid Schedule will be corrected, and such corrected total shall be used to determine the successful bidder. All prices or sums shall include all sales and other taxes which may be applicable.

FIFTY PERCENT “OWN FORCES” REQUIREMENT: Any bid that proposes performance of more than 50 percent of the work by subcontractors or owner operator/lessors or otherwise to be performed by forces other than the Bidder’s own organization will be rejected as non-responsive.

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

DESIGNATION OF SUBCONTRACTORS: The bidder must comply with all requirements of the Subletting and Subcontracting statutes, *Public Contract Code* section 4100, *et seq.* and complete the required subcontractor listing form at the time of submitting the Proposal. If no subcontractors are to be designated, enter the word "NONE." The attention of the bidder is directed to the provision of the Specifications which requires the Contractor to perform with his own forces contracting work amounting to a specified percentage of the total contract price.

LICENSING REQUIREMENTS: Pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, all bidders must possess proper licenses for performance of this Contract, in this case a **valid Class A** State of California Contractor’s License in good standing. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Section 7028.5, *et. seq.* of the Business and Professions Code, City shall consider any bid submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be non-responsive, and City shall reject the Bid. City shall have the right to request, and Bidders shall provide within five (5) calendar days, evidence satisfactory to City of all valid license(s) currently held by that Bidder and each of the Bidder’s subcontractors, before awarding the Contract.

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

If a Bidder is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also: (1) authorize that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom. The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

BID GUARANTEE (BID BOND): Each bid shall be accompanied by: (a) cash; (b) a certified check made payable to City; (c) a cashier’s check made payable to City; or (d) a bid bond payable to City executed by the bidder as principal and surety as obligor in an amount not less than 10% of the maximum amount of the bid. These shall be submitted either via PlanetBids or received by the City at the address below. Personal sureties and unregistered surety companies are unacceptable. The

surety insurer shall be a California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The cash, check or bid bond shall be given as a guarantee that the bidder shall execute the Contract if it be awarded to the bidder, shall provide the payment and performance bonds and insurance certificates and endorsements as required herein within ten (10) calendar days after notification of the award of the Contract to the bidder. Failure to provide the required documents may result in forfeiture of the bidder's bid deposit or bond to City and City may award the Contract to the next lowest responsible bidder or may call for new bids.

If bid security is delivered or mailed, the address is as follows:

Kathy Hollywood
City Clerk
505 S. Vulcan Avenue
Encinitas, California 92024

The sealed bid security envelope shall be marked as follows:

**Bid Security, Do Not Open Until Bid Opening
BEACON'S BEACH PARKING LOT
CP22A**

SUBMISSION OF SEALED BIDS: Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be submitted along with the Bid Guarantee and other required materials via PlanetBids (<http://www.encinitasca.gov/bids>) at the date and time set forth in the Notice Inviting Bids. No oral or telephonic bids will be considered. No forms transmitted via the Internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by City as provided herein.

DELIVERY AND OPENING OF BIDS: Bids will be received by City on PlanetBids up to the date and time shown on the Notice Inviting Bids. It is the Bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the dates(s) and time(s) indicated. City will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the Bidder. It is the Bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted directly to the City Clerk of the City of Encinitas earlier than the dates(s) and time(s) indicated.

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

No proposal shall be considered binding upon the City until the execution of the contract.

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

RESPONSIVE AND RESPONSIBLE BIDDER FOR THIS PROJECT IS REQUIRED: Pursuant to Public Contract Code Section 1103, a "Responsible Bidder", means a bidder who has demonstrated the attributes of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform this public works contract.

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

RESPONSIBLE BIDDER: In selecting the lowest responsible bidder, consideration will be given not only to the financial standing but also to the competency and responsibility of the bidder for the performance of the work covered by the proposal. The City may reject any bid which, in the opinion of the City, is submitted by a Contractor who cannot demonstrate the attributes of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform this public works contract. When evaluating the competency and responsibility of the lowest bidder, consideration will be given to the following nonexclusive matters:

- (a) The past similar comparable projects shall demonstrate a high quality of workmanship and competence including the ability and willingness to meet the requirements of the contract specifications.
- (b) The Contractor must demonstrate a history of successfully completing similar comparable projects on time and with a minimum of Contractor initiated delays.
- (c) The Contractor must demonstrate a record of submitting reasonable Contractor initiated change orders, reasonable Contract requests and reasonable claims, where applicable.
- (d) The Contractor's history of past litigation, or license revocation or suspension will be reviewed.
- (e) The record of stop notices filed against the Contractor will be reviewed, including the relationship with subcontractors.
- (f) Recommendations from the Owners of previous projects should reflect a good working relationship with the Owner, regulatory agencies and other contractors.

Based upon such information as is available, the City may reject any bidder which it determines is not qualified, responsible and/or competent to perform the work and manage this project to the highest standards or care in the local public works community for the type of work to be performed.

To this end, each proposal shall be supported by a statement of the bidder's experience as of recent date on the form entitled "Project Qualification Questionnaire," contained herein.

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

INSURANCE REQUIREMENTS: Prior to submitting its bid, the successful bidder shall procure and provide evidence of all bonds, insurance and endorsements in the form and in the amount specified in the Contract Documents.

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

AWARD PROCESS: Once all Bids are opened and reviewed to determine the lowest qualified, competent, responsive and responsible Bidder, City may award the contract. The apparent successful Bidder should begin to prepare the following documents: (1) the Performance Bond; (2) the Payment Bond; and (3) the required insurance certificates and endorsements. Once City notifies the Bidder of the award, the Bidder will have ten (10) consecutive calendar days from the date of this notification to execute the Contract and supply City with all the required documents and certifications. Bidders are required to hold and honor their bid prices for ninety (90) days after bid opening while the City evaluates all submitted bids. Regardless of whether the Bidder supplies the required documents and certifications in a timely manner, the Contract time will begin to run ten (10) calendar days from the date of commencement set forth in the Notice to Proceed. Once City receives all the properly drafted and executed documents and certifications from the Bidder, City shall issue a Notice to Proceed to that Bidder.

FILING OF BID PROTESTS: Bid protests must be received by the Clerk of the City of Encinitas no later than 4:00 p.m. on the fifth (5th) consecutive City working day following the Notice of Intent to Award. The bid protest shall be in writing and timely delivered to the Clerk, with accompanying documentation, including a complete statement for the basis of the protest and legal authority in support. The party filing the protest shall concurrently transmit a copy of the protest and documentation to all other parties with a direct financial interest which may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

The City shall review and respond in writing to such protest within 5 consecutive City working days thereafter. The written determination of the City shall be final, with no further internal rights of appeal. The procedure and time limits set forth in this paragraph are mandatory and are the Bidder's sole and exclusive remedy in the event of Bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest or bring a writ or other legal proceeding against the City.

SUBSTITUTION OF SECURITY: The Contract Documents call for monthly progress payments based upon the percentage of the work completed. City will retain five percent (5%) of each progress payment as provided by the Contract Documents. At the request and expense of the successful Bidder, City will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

PREVAILING WAGE AND ENFORCEMENT COMPLIANCE: This is a prevailing wage project and prevailing wage rates for this locality and project as determined by the director of industrial relations apply, pursuant to labor code section 1770, et. Seq. A copy of the prevailing wage rates shall be posted on the job site by the contractor. A schedule of prevailing wage rates is available for review at the City's offices or may be found on the internet at <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. The Wage Determination for this project is CA 2024-1. The successful bidder shall be required to pay at least the wage rates set forth in that schedule. Certified Payroll records shall be maintained by the contractor and copies of the certified payroll shall be electronically sent to the Department of Industrial Relations and be delivered to the City at the end of each month during the entire duration of the project.

The rate of compensation for any classification not listed in the schedule, but which may be required to execute the proposed contract, shall be commensurate and in accord with the rates specified to similar or comparable classifications or for those performing similar or comparable duties.

The Contractor shall be required to pay wages not less often than once a week. Not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work shall be paid by the Contractor and Subcontractors to all laborers and mechanics employed on the project. Pursuant to Division 2, Part 7, Chapter 7, Article 2 of the Labor Code of the State of California or local laws thereto applicable, the City of Encinitas has obtained the general prevailing rates for legal holiday and overtime work in the locality in which this type of work is to be performed for each craft, classification, or type of worker needed to execute contracts for public works.

The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime contractor shall be responsible for ensuring compliance with all applicable provisions of the Labor Code, including, but not limited to, section 1777.5. Subject to exceptions as set forth in Labor Code section 1771.1, contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined by statute, unless it is currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor shall also comply with sections 4100 et seq. of the Public Contracts Code ("Subletting and Subcontracting Fair Practices Act) in all respects. The City is the "duly authorized officer" for the purposes of sections 4107 and 4107.5.

The City may not accept a bid nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5. For more information, go to <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>

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

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

ENCINITAS BUSINESS REGISTRATION: The bidder to whom a contract is awarded shall obtain a City of Encinitas Business Registration Certificate and must keep their registration current, through annual renewal, for the life of the project.

REQUEST FOR SUBSTITUTIONS: If the project plans or specifications designate specific brands or trade names, the Bidder may submit proposed equals to the Contract, pursuant to Public Contract Code Section 3400. Any contractor seeking a request for a substitution of "an equal" item shall submit all necessary data substantiating a request at least ten (10) City working days prior to opening of the bid.

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.

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

The time within which the Work must be completed by the Contractor is fixed at forty-five (45) Working Days.

CONTRACTOR'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986: The bidder's execution of the signature portion of the proposal shall constitute that the Contractor certifies that Contractor is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Contract.

CONTRACTOR'S AWARENESS AND COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990 AND RELATED ACCESSIBILITY STANDARDS: The bidder's execution of the signature portion of the proposal shall constitute that the Contractor is aware of the requirements of the Americans with Disabilities Act of 1990 (42 USC §§ 12101) and related accessibility standards and has complied with and will comply with these requirements, including, but not limited to verifying compliance of their contractors, consultants, agents and employees and constructing the project consistent with current accessibility statutes and regulations.

NONDISCRIMINATION: During the performance of this contract, contractor and its subcontractors shall not deny the contracts' benefits to any person on the basis of race, color, religion, ancestry, national origin, ethnic group identification, marital status, gender, sex, sexual orientation, age, medical condition, physical handicap or disability, mental disability, political affiliation, or position in a labor dispute, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, religion, national origin, ethnic group identification, ancestry, physical handicap or disability, mental disability, medical condition, marital status, age, gender, sex, sexual orientation, political affiliation, or position in a labor dispute. Contractor and its subcontractors shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination."

Contractor and its subcontractors shall comply with the applicable provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0 et seq.) the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any regulations promulgated thereunder.

Contractor and its subcontractors shall not knowingly give preferential treatment of any kind whatsoever in connection with any business transaction related to the construction or operation of the project to any City affiliates or to any business enterprise in which the City has any financial interest, but in such business transactions shall deal at all times with such affiliates and enterprises on the same basis as though dealing with any other parties.

Contractor and its subcontractors shall, with respect to the project, give written notice of their obligations under this section to labor organizations representing any contractor or subcontractor performing work on the project which have a collective bargaining or other contract.

Contractor and its subcontractors shall include the provisions of this section in all subcontracts to perform work with respect to this project.

Labor Code Section 1735 requires as follows:

A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

A violation of any of the Fair Employment Practices requirements of this Contract or of the California Fair Employment Practices Act shall be regarded by the awarding authority as a basis for determining the Contractor to be not a "responsible bidder" as to future contracts for which such Contractor may submit bids, for revoking the Contractor's pre-qualification rating, if any, and for refusing to establish, re-establish or renew a pre-qualification rating for the Contractor and any other contractual remedies and rights that may be available to the City to enforce compliance or penalize Contractor for non-compliance.

The Contractor agrees, that should the awarding authority determine that the Contractor has not complied with the Fair Employment Practices section of this Contract, then pursuant to Labor Code Sections 1735 and 1775, the Contractor shall, as a penalty to the Awarding Authority forfeit, for each calendar day, or portion thereof, for each person who was denied employment as a result of such non-compliance, the penalties provided in the Labor Code for violation of prevailing wage rates. Such monies may be recovered from the Contractor. The awarding authority may deduct any such damages from any monies due the Contractor.

END OF INSTRUCTIONS TO BIDDERS

CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
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BID FORMS

All of the following forms must be fully completed and turned in with the bid. Do not leave any forms blank. If the form does not apply, write "Not Applicable" across it and submit it with the bid. FAILURE TO DO SO WILL RESULT IN A NON-RESPONSIVE BID AND THE BID WILL BE REJECTED.

1. Proposal
2. 50 Percent Own Forces Requirement & Subletting and Subcontracting Fair Practices Act
3. Designation of Subcontractors and Amount of Subcontractor's Bid Items
4. Bidder's Statement of Financial Responsibility
5. Bidder's Information and Experience Form
6. Bidder's Certificates of Insurance
7. Non-Collusion Affidavit
8. Contractor's Certification Regarding Worker's Compensation
9. Certificate of Awareness of Immigration Reform and Control Act
10. Bidder's Statement Regarding Debarment
11. Bidder's Disclosure of Discipline Record
12. Public Works Contractor Registration Certification
13. Project Bid Schedule and Bid
14. Bidder's Declaration
15. Bid Bond
16. Acknowledgement of Addenda

CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
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PROPOSAL

TO CITY OF ENCINITAS as Agency:

In accordance with Agency's "Notice Inviting Bids", the undersigned Bidder hereby proposes to furnish all materials, equipment, tools, labor, and incidentals required for the above stated project as set forth in the Specifications, and Contract Documents therefore, and to perform all work in the manner and time prescribed therein.

Bidder declares that this proposal is based upon careful examination of the work site, Plans, Specifications, Instructions to Bidders, and Contract Documents. If this proposal is accepted for award, Bidder agrees to enter into a contract with Agency at the unit and/or lump sum prices set forth in the following Project Bid Schedule. Bidder understands that failure to fully execute all contract documents and furnish the required insurance policies and bonds in the manner and time prescribed shall be considered breach of contract and may result in the rejection of the bid and forfeiture to Agency of the Bid Bond accompanying this proposal.

Bidder understands that a bid is required for the entire work, that the estimated quantities set forth in the Project Bid Schedule are solely for the purpose of project administration and comparison of bids, and that final compensation under the contract will be based upon the actual quantities of work satisfactorily completed. It is agreed that the unit and/or lump sum prices bid include all appurtenant expenses, taxes, royalties, and fees. In the case of discrepancies in the amounts bid, unit prices shall govern over extended amounts, and the lump sum total shall govern over the subtotals.

Bidder agrees and acknowledges that they are aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workman's Compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Bidder will comply with such provisions of that code before commencing the performance of this Contract if awarded to it. Bidder certifies that in all previous contracts or subcontracts, all reports which may have been due under the requirements of any agency, State, or Federal equal employment opportunity orders have been satisfactorily filed, and that no such reports are currently outstanding.

Bidder declares in the Non-Collusion Affidavit included herein that the only persons or parties interested in this proposal as principals are those named herein; that no officer, agent, or employee of the Agency is personally interested, directly or indirectly, in this proposal; that this proposal is made without connection to any other individual, firm, or corporation making a bid for the same work; and that this proposal is in all respects fair and without collusion or fraud.

Bidder certifies that affirmative action has been taken to seek out and consider disadvantaged business enterprises for those portions of the work to be subcontracted, and that such affirmative actions have been carefully documented, that said documentation is open to inspection, and that said affirmative action will remain in effect for the life of any contract awarded hereunder. Furthermore, Bidder certifies that affirmative action will be taken to meet all equal employment opportunity requirements of the contract documents.

Bidder understands that no contract will be awarded to a Contractor who has not been licensed in accordance with the provisions of Chapter 9, Division III, or the Business and Professions Code of the State of California. Bidder has also received Section 7028.15(e) of the Business and Professions Code.

BIDDER'S NAME:

BIDDER'S ADDRESS:

TELEPHONE: (____) _____

Subscribed and sworn to before me

this _____ day of _____, 2024.

(Signature of Notary Public)

(SEAL)

By: _____
(Print Name of Owner or President of Corporation/Company)

(Signature)

(Title)

(Date)

(Signature of Secretary of Corporation/Company)

CITY OF ENCINITAS

**BEACON'S BEACH PARKING LOT
CP22A**

**50 PERCENT OWN FORCES REQUIREMENT
SUBLETTING AND SUBCONTRACTING FAIR PRACTICES ACT**

NOTICE: These instructions and forms will be used by the City to determine the percentage of work that the Bidder proposes to perform. Bidders are cautioned that failure to provide complete and correct information may result in rejection of the bid as non-responsive.

FIFTY PERCENT "OWN FORCES" REQUIREMENT: Pursuant to Greenbook paragraph 3.2, as it may be revised by these Contract Documents, any bid that proposes performance of more than 50 percent of the work by subcontractors or owner operator/lessors or otherwise to be performed by forces other than the Bidder's own organization will be rejected as non-responsive. Specialty items of work that may be so designated by the Engineer on the "Contractor's Proposal" are not included in computing the percentage of work proposed to be performed by the Bidder. See further instructions set forth below.

SUBLETTING AND SUBCONTRACTING FAIR PRACTICES ACT:

In accordance with California Public Contract Code § 4104, the Bidder is to prepare and submit the following Bidder's Information Regarding Subcontractors, which will include:

- A. The name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.
- B. The portion of work that will be done by each listed subcontractor.
- C. The bidder shall list only one subcontractor for each portion of the work as is defined by the bidder in his or her bid.

The address, telephone number and license number of each designated subcontractor may be included on this form or must be provided in writing to City Clerk within 24 hours of bid.

Bidder shall use separate disclosure forms for each Subcontractor that it proposes to use to complete the Work. Additional copies of the forms must be attached if required to accommodate the Contractor's decision to use more than one Subcontractor. All items of information must be completely filled out. These forms must be submitted as a part of the Bidder's sealed bid.

Failure to provide complete and correct information may result in rejection of the bid as non-responsive.

Neither the amount, in dollars, of work performed by the Bidder's own forces (as Contractor) nor the Bidder's overhead and profit for subcontracted items of the work is included to compute the percentage of the work performed by Subcontractors.

When the Bidder proposes that any bid item will be installed by a Subcontractor the amount, in dollars, of the bid item installed by each Subcontractor must be entered under the columns "Amount of Subcontracted Bid Item Including Subcontractor's Overhead & Profit" unless the dollar amount of all work performed by any Subcontractor is less than one-half of one percent (0.5%) of the Bidder's total bid or ten thousand dollars (\$10,000) whichever is greater. If a Subcontractor installs or constructs any portion of a bid item the entire amount of the Contract Unit Price, less the Bidder's overhead and profit, shall be multiplied by the Quantity of the bid item that the Subcontractor installs to compute the amount of work so installed.

Suppliers of materials from sources outside the limits of work are not subcontractors. The value of materials and transport of materials from sources outside the limits of work, as shown on the plans, shall be assigned to the Contractor, or the Subcontractor, as the case may be, that the Bidder proposes as installer of said materials. The value of material incorporated in any Subcontractor installed bid item that is supplied by the Bidder shall be included as a part of the work that the Bidder proposes to be performed by the Subcontractor installing said item.

The item number from the Bid Schedule shall be entered in the "Bid Item No." column.

Bidders shall make any additional copies of the disclosure forms as may be necessary to provide the required information. The page number and total number of additional form pages shall be entered in the location provided on each type of form so duplicated.

When the Bidder proposes using a subcontractor or owner operator/Lessor to construct or install less than 100 percent of a bid item the Bidder shall attach an explanation sheet to the designation of subcontractor forms as applicable. The explanation sheet shall be provided by the Contractor to clearly apprise the Agency of the specific tasks that show the Bidder proposes to perform no less than fifty percent (50%) of the work with its own forces.

Determination of the subcontract amounts for purposes of award of the contract shall be determined by the City Council in conformance with the provisions of the contract documents and these Special Provisions. The decision of the City Council shall be final.

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DESIGNATION OF SUBCONTRACTOR AND
AMOUNT OF SUBCONTRACTOR'S BID ITEMS
 (To Accompany Proposal)

The Bidder MUST complete a form for each subcontractor that it proposes to use. Additional copies of this form may be attached to accommodate the Contractor's use of more than one subcontractor. This form(s) must be submitted as a part of the Bidder's sealed bid. Failure to provide complete and correct information may result in rejection of the bid as non-responsive.

The Bidder certifies that it has used the sub-bid of the following listed subcontractors in preparing this bid for the Work and that the listed subcontractors will be used to perform the portions of the Work as designated in the list in accordance with applicable provisions of the specifications and section 4100 et seq. of the Public Contracts Code "Subletting and Subcontracting Fair Practices Act." The Bidder further certifies that no additional subcontractor will be allowed to perform any Work 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 and that no changes in the subcontractors listed work will be made except upon the prior approval of the Agency.

Full Company Name of Subcontractor: _____

Subcontractor's Location of Business: _____
 Street

 City State Zip

Subcontractor's Telephone Number including Area Code: _____

Subcontractor's California State Contractors License No. _____

SUBCONTRACTOR'S BID ITEMS

Bid Item No. (Do <u>not</u> combine Bid items on 1 line)	Amount of Subcontracted Bid Item Including Subcontractor's Overhead & Profit	Amount of Work in Bid Item Performed by Contractor Excluding Overhead & Profit	Amount of Contractor's Overhead & Profit in Bid Item
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$

Column 1 – Bid Item No. from the bid proposal.

Column 2 – The dollar amount of the item to be performed by the Subcontractor.

Column 3 – The dollar amount of the item to be performed by Contractor's own forces.

Column 4 – The dollar amount of the Contractor's overhead and profit for work done by both the Contractor's and the Subcontractor's forces on the item.

Total dollar amount of Columns 2, 3, and 4 must be equal the bid price of the item on the bid proposal.

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BIDDER'S STATEMENT OF FINANCIAL RESPONSIBILITY

(To Accompany Proposal)

Copies of the latest Annual Report, audited financial statements or Balance Sheets shall be submitted under separate cover marked "CONFIDENTIAL BIDDER FINANCIAL RECORDS", including the name of the Bidder.

Please Attach

**CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
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BIDDER'S INFORMATION AND EXPERIENCE FORM

A. INFORMATION ABOUT BIDDER

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

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

1.0 Name of Bidder: _____

2.0 Type, of Entity: _____

3.0 Bidder Address: _____

Email

Telephone Number

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

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

5.1 Under what other or former names has Bidder's organization operated?

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

6.1 Date of Incorporation: _____

6.2 State of Incorporation: _____

6.3 President's Name: _____

6.4 Vice President's Name(s): _____

6.5 Secretary's Name: _____

6.6 Treasurer's Name: _____

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

7.1 Date of Organization: _____

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

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

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

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

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

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

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

B. LIST OF CURRENT PROJECTS (Backlog)

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

Project	Description of Bidder's Work	Completion Date	Cost of Bidder's Work

C. LIST OF COMPLETED PROJECTS - LAST THREE YEARS

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

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

Project Client & Contact Information	Description of Bidder's Work	Period of Performance	Cost of Bidder's Work

D. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

Personnel:

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

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

2. Summarize each person's specialized education:

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

4. Summarize such experience:

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

Similar Comparable Projects:

Please list all comparable similar projects as the **BEACON'S BEACH PARKING LOT**. Specifically, list all projects within the last 5 years involving the rehabilitation and/or construction of pavements, curb ramps, mobility improvements, similar to those required by this project.

Project Client & Contact Information	Description of Bidder's similar comparable projects	Period of Performance	Description of Similar/Comparable Work

Additional Bidder's Statements:

The Bidder is invited to provide any 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:

E. VERIFICATION AND EXECUTION

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

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

Name of Bidder _____
Signature _____
Name _____
Title _____
Dated _____

END OF BIDDER'S INFORMATION AND EXPERIENCE FORM

**CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
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**BIDDER'S CERTIFICATES OF INSURANCE FOR COMMERCIAL
GENERAL LIABILITY, AUTOMOTIVE LIABILITY, WORKER'S COMPENSATION
EMPLOYER'S LIABILITY, BUILDER'S RISK & POLLUTION LEGAL LIABILITY**

(To Accompany Proposal)

As a required part of the Bidder's proposal the Bidder must attach the following to this page.

Certificates of insurance and showing conformance with the insurance requirements stipulated in Section 5-4 of the Special Provisions or elsewhere in the contract:

Commercial General Liability, Automobile Liability, Workers Compensation, Employer's Liability, Builder's Risk, Pollution Legal Liability and required endorsements;

Certifications of insurance must be specific to this project and meet the terms and conditions included in this contract.

All certificates of insurance for auto policies offered to meet the specification of this contract must:

- (1) Meet the conditions stated in the Notice Inviting Bids, the Standard Specifications for Public Works Construction and the Special Provisions for this project for each insurance company that the Contractor proposes.
- (2) Cover any vehicle used in the performance of the contract, used onsite or offsite, whether owned, non-owned, or hired, and whether scheduled or non-scheduled. The auto insurance certificate must state the coverage is for "any auto" and cannot be limited in any manner.

Failure to meet project insurance requirements will be considered nonresponsive.

Please Attach

CITY OF ENCINITAS

**BEACON'S BEACH PARKING LOT
CP22A**

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

State of California, County of San Diego:

_____, being first duly sworn, deposes and says that he

or she is _____ of _____ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Signature of Bidder

Business Address

Place of Residence

Subscribed and sworn to before me this ____ day of _____, 2024.

_____ Notary Public

in and for the County of _____, State of California.

My Commission Expires _____, _____.

CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
CP22A

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

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

Name of Bidder _____

Signature _____

Name _____

Title _____

Dated _____

Bond Number: _____

**CITY OF ENCINITAS
BEACON’S BEACH PARKING LOT
CP22A**

BID BOND

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

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted
the accompanying bid dated _____, 2024, for

**BEACON’S BEACH PARKING LOT
CP22A**

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

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

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

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their
several seals this _____ day of _____, 2024, the name and corporate seal of each
corporation.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

CITY OF ENCINITAS

BEACON'S BEACH PARKING LOT

CP22A

CERTIFICATE OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT

The bidder is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC 1101-1525) and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this CONTRACT.

The undersigned represents that the undersigned is authorized to bind the bidder. This document is signed by an individual clearly authorized to bind the Bidder. The undersigned hereby declares, under penalty of perjury, that this document is true.

BIDDER NAME: _____

ADDRESS: _____

PHONE: _____

BY: _____

Signature

Date

Printed Name

Title

END OF CERTIFICATION OF IMMIGRATION REFORM REQUIREMENTS FORM

CITY OF ENCINITAS

**BEACON'S BEACH PARKING LOT
CP22A**

BIDDER'S STATEMENT REGARDING DEBARMENT

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

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

If there are any exceptions to this certification, describe below:

1. Have you or any of your subcontractors ever been debarred as an irresponsible bidder by another jurisdiction in the State of California?

Yes ☐

No ☐

2. If yes, what was/were the name(s) of the agency(ies) and what was/were the period(s) of debarment(s)? Attach additional copies of this page to accommodate more than two debarments.

Party Debarred

Party Debarred

Agency

Agency

Period of Debarment

Period of Debarment

By Contractor: _____

Name of Contractor

By:

Signature

Date

Print Name and Title

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

END OF BIDDER'S STATEMENT REGARDING DEBARMENT FORM

CITY OF ENCINITAS

**BEACON'S BEACH PARKING LOT
CP22A**

BIDDER'S DISCLOSURE OF DISCIPLINE RECORD

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

1. Have you ever had your contractor's license suspended or revoked by the California Contractor's State License Board two or more times within an eight-year period?

Yes ☐

No ☐

2. Has the suspension or revocation of your contractors' license ever been stayed?

Yes ☐

No ☐

3. Have any subcontractors that you propose to perform any portion of the Work ever had their contractor's license suspended or revoked by the California Contractors' State License two or more times within an eight year period?

Yes ☐

No ☐

4. Has the suspension or revocation of the license of any subcontractors that you propose to perform any portion of the Work ever been stayed?

Yes ☐

No ☐

5. If the answer to either of 1 or 3 above is yes, fully identify, in each and every case, the party disciplined, the date of and violation that the disciplinary action pertain to, describe the nature of the violation and the disciplinary action taken therefor.

- [illegible]

By Contractor: _____
Name of Contractor

Date _____

Print Name and Title

END OF BIDDER'S DISCLOSURE OF DISCIPLINE RECORD FORM

CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
CP22A

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 (DIR).

See <http://www.dir.ca.gov/PublicWorks/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 works.

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.

Name of Bidder: _____

DIR Registration Number: _____

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 contract 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.

Name of Bidder _____

Signature _____

Name _____

Title _____

Dated _____

END OF PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

**CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
CP22A**

PROJECT BID SCHEDULE AND BID

The Contractor shall fully complete this Project Bid Sheet for use by Agency for comparison of bids and compensation to the Contractor for this project. The Contractor shall submit a balanced bid. The estimated quantities and itemized descriptions listed in the Project Bid Sheet are supplied to give an indication of the general size and amount of the work. The accuracy of the estimated quantities is not guaranteed. The City reserves the right to increase or decrease the amount of any item of work or to omit portions of the work as may be deemed necessary by the Engineer. Unit prices are intended to be the basis for additions, deletions or substitutions to the work, if required. Lump sum prices and/or quantities shall be considered all inclusive and shall not be considered for price and/or quantity adjustment. The work to be performed shall include, but not be limited to, the items described. The bid shall include the furnishing of labor, services, tools, equipment, materials, appurtenances, and incidentals necessary to install or complete all work contemplated per the plans and specifications.

BID SCHEDULE

Item No.	Unit of Measure	Quantity	Bid Item	Unit Price (dollars)	Bid Item Total (dollars)
1	LS	1	Mobilization	\$	\$
2	LS	1	Clearing and Grubbing	\$	\$
3	LS	1	Erosion Control and Water Pollution Control	\$	\$
4	LS	1	Temporary Traffic Control	\$	\$
5	CY	150	Unclassified Excavation	\$	\$
6	LF	440	6" Curb and Gutter	\$	\$
7	LF	260	6" AC Dike	\$	\$
8	SF	10250	Asphalt Concrete	\$	\$
9	SF	10250	Class II Aggregate Base	\$	\$
10	EA	15	4" Wheel Stops	\$	\$
11	EA	1	Curb Ramps	\$	\$
12	SF	4500	4" PCC Sidewalk	\$	\$
13	LF	1500	Parking Lot Striping	\$	\$
14	LF	200	Street Signage and Striping	\$	\$
15	LF	360	Post-and-Cable Safety Fence	\$	\$
16	SF	3100	Decomposed Granite	\$	\$
17	EA	3	Remove and Relocate Existing Benches	\$	\$
18	LS	1	Remove and Relocate Existing Planter/Signage/Bike Racks	\$	\$

Total Base Bid Calculation on Next Page

The Basis of Award will be based on the sum total of the BID.

_____ DOLLARS
Total BASE BID in Words

\$ _____
Total BASE BID in Figures

In case of discrepancy between the unit price and the total price shown by the bidder, the unit price shall prevail. In case of discrepancy between words and figures, the words shall prevail.

The Bidder shall note that if the contract is awarded, it will be based on the lowest properly submitted responsive and responsible bid provided that the Bidder has met all requirements. The Agency reserves the right to reject any or all bids.

Attached hereto in cash, a certified check, a cashier's check or a bidder's bond in the amount of ten percent (10%) of the amount bid, which is agreed shall be retained by the Agency if the undersigned fails or refuses to execute the agreement and furnish the required bonds and certificates of insurance within the time provided.

It is understood that:

1. The Bidder has carefully examined the location of the proposed work and the Contract Documents, and Bidder proposes, and agrees if this proposal is accepted, that Bidder will contract with the City of Encinitas to provide all necessary means, methods, labor, machinery, tools, apparatus and other requirements of construction, and to do all the work and furnish all the materials specified in the Contract Documents, in the time therein prescribed, and that the bid provided represents full payment for all such work.
2. The undersigned has carefully examined all contract documents which will form a part of the Contract including the following: Notice Inviting Bids, Instructions to Bidders, Proposal, Contract Agreement, General Specifications, General Provisions, Technical Specifications, Plans, and Addenda.
2. The undersigned has carefully examined and fully understands all the limitations, requirements and possible consequences in the specific sections related to subcontracting, certified payroll records, claims, disclosures of past experience, payment, liquidated damages and waiver of claims.
3. The Agency does not warranty the completeness or accuracy of the plans and specifications and that submission of a bid is sufficient evidence that the undersigned has investigated the site of the work, is satisfied as to the nature and location of the work, and is fully informed as to all conditions and matters which can in any way affect the work or the cost thereof.
4. The undersigned fully understands the scope of work and has cleared carefully all words and figures inserted in the Proposal and further understands that the Agency will be in no way responsible for any errors or omissions in the preparation of the Proposal.

5. The undersigned agrees, acknowledges and is aware of the provisions of Section 3700 of the Labor Code which requires every employee to be insured against liability of worker's compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the Contract it is awarded to the undersigned.
6. The undersigned will begin work after Notice to Proceed has been given, as herein specified; will meet all requirements in regard to bonds and insurance; and will complete said work within the time specified in the Instructions to Bidders.
7. The undersigned hereby certifies that this Proposal is genuine and not sham or collusive, or made in the interest or in behalf of a person not herein named, and the undersigned has not directly or indirectly induced or solicited any other bidder to put in a sham bid or any other person, firm, or corporation to refrain from bidding. The undersigned has not in any manner sought by collusion to secure any advantage over any other bidder.
8. The undersigned will accept an award and enter into a Contract for all work scheduled herein on which he submitted this bid. The awards for such work are to be entirely at the discretion of the Agency after evaluation of the bids as submitted.
9. Submission of a bid will be deemed a binding offer to enter into the attached contract on the terms contained therein for 90 days from the bid opening.
10. If awarded the Contract, Contractor agrees to begin and to complete the work per specifications. Contractor further agrees to execute and return the Contract Documents, bonds and insurance certificates within ten (10) working days after the date of the Notice to Award. This is a valid and binding proposal to do all the work herein described.

I hereby certify that the enclosed bid represents a balanced bid and therefore each line item bears its proportionate share of profit.

Respectfully submitted,

Contractor's Business Name

Signed

Business Address

Name and Title

City/State/Zip

Date

Business Telephone Number

CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
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BIDDER'S DECLARATION

Bidder declares under penalty of perjury under the laws of the State of California that the representations made hereto are true and correct and is bound to the bid as set forth above.

Name of Bidder: _____

Signature: _____

Name (Printed): _____

Title: _____

License No. _____

In witness whereof, bidder executes and submits this proposal with the names, title, hands and seals of all forenamed principals this _____ day of _____, 2024.

Bidder _____

Subscribed and sworn to this _____ day of _____, 2024.

Notary Public

ACKNOWLEDGEMENT OF ADDENDA

[illegible]

CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
CP22A

CONTRACT

(To be executed by successful bidder after Award)

THIS CONTRACT is made this ____ day of _____ 2024, in the County of San Diego, State of California, by and between the City of Encinitas, a municipal corporation, hereinafter called "City", and _____, [Specify type of Entity, i.e. an individual, a corporation (specify state, i.e., "a California Corporation", Limited Liability Company, Sole Proprietorship, etc.) hereinafter referred to as "Contractor".

Whereas the City completed project design for BEACON'S BEACH PARKING LOT (CP22A), "Project" and advertised it for construction bids; and

Whereas the Contractor submitted lowest responsive and responsible bid for the Project; and
Whereas, the work to be completed is specified in the following contract documents: the Project Plans, Specifications, Standard Specifications, incorporated Specifications, General and Special Provisions, Addenda, Reference Drawings, Permits and Environmental Document.

The City and the Contractor for the considerations stated herein agree as follows:

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

BEACON'S BEACH PARKING LOT
CP22A

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

ARTICLE 2. TIME FOR COMPLETION. The Work shall be commenced on the date stated in City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within forty-five (45) working days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE. City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of

Dollars (\$_____). Payment shall be made as set forth in the General Conditions.

ARTICLE 4. LIQUIDATED DAMAGES. It is agreed that the Contractor shall pay to the City of Encinitas the sum of \$3,600 (three thousand six hundred dollars) per day for each and every calendar day of unexcused project delay in completing the work in excess of the number of working days prescribed above as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT DOCUMENTS. The "Contract Documents" which form this Contract include the following: the entire Contract Documents, Specifications and Standard Drawings bid book including: Notice Inviting Bids, Information and Instruction to Bidders, Bid Forms, Contract Form, Performance Bond, Payment Bond, Worker's Compensation Insurance Certificate, Guaranty, General Specifications, Special Provisions, Technical Provisions and Final Close out Agreement. The Contract Documents also include Addenda, Project Plans, Standard Specifications, Standard Plans, incorporated Specifications, Reference Documents, Certificate(s) of Insurances and Endorsements, Permits, Environmental Documents, and Right of Way Documents.

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. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of the California Labor Code applicable to this Project, including, but not limited to prevailing wage requirements.

ARTICLE 7. INSURANCE AND INDEMNIFICATION. Contractor shall provide insurance and indemnification as both set forth in the Contract Documents and as included below.

5-4 INSURANCE. The Contractor shall obtain and for the full term of this Contract maintain in full force and effect, comprehensive general liability and property damage insurance, or commercial general liability insurance, from an insurance company approved by City having a Best Rating of A- : VII or better and licensed and authorized by the Insurance Commissioner of the State of California Department of Insurance to be transacting business in the State of California, in the following minimum limits:

- A. General liability (Including operations, Products and completed operations)
 - Combined Single Limit per Occurrence \$3,000,000.00
 - General Aggregate \$5,000,000.00
- B. Automobile Liability
 - Combined Single Limit Per Occurrence
 - (For bodily injury and property damage) \$1,000,000.00

Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to City, and shall not preclude City from taking such other actions available to City 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 Agency harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by City 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 this Agreement, relating to liability for injury to or death of persons and damage to property.

Deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City. 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, City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as any possible excess DocuSign Envelope ID: C080399D-D1C8-46E2-93C1-3CD45E2338F9 F-45 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.

For any claims related to this Project, the Contractor's insurance coverage shall be primary insurance as respects the City, its sub-entities, officers, officials, employees, and volunteers. Any insurance of self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

5-4.1 Workers Compensation Insurance. The Contractor shall Provide, during the life of this Contract, workers' compensation insurance for all of the employees engaged in Project under this Contract, on or at the Project site, and, in case any of sublet Work, the Contractor shall require each Subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Project site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code. The Contractor shall file with City certificates of his insurance protecting workers and shall provide certificates at any time

upon request. Company or companies providing insurance coverage shall be acceptable to Agency, if in the form and coverage as set forth in the Contract Documents. Contractor shall assume the immediate defense of and indemnify and save harmless Agency and its officers and employees, agents, and consultants from all claims, loss, damage, injury, and liability of every kind, nature, and description brought by any person employed or used by Contractor, or any Subcontractor, to perform the Project under this contract regardless of responsibility or negligence.

5-4.2 Employer's Liability Insurance. Contractor shall provide during the life of this Contract, Employer's Liability Insurance, including Occupational Disease, in the amount of, at least, one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide Agency 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 Agency.

5-4.3 Evidence of Insurance. The insurance policy shall provide that the policy shall remain in force during the term of this contract and shall not be canceled, terminated, or allowed to expire, nor shall it be changed so that it no longer meets the City's insurance requirements, without 30 days prior written notice to City from the insurance company. Contractor agrees to provide evidence of insurance required herein, satisfactory to City, consisting of a) certificate(s) of insurance evidencing all of the coverages required and b) the additional insured endorsement as required below. Contractor agrees, upon request, to provide City with a certified copy of the policy within 10 days of request.

5-4.4 Coverage. The insurance shall cover all operations of the Contractor, its agents and employees, performed in connection with this Contract including but not limited to premises and automobile.

5-4.5 Additional Insured Requirements. The City, its sub-entities (specifically including the San Dieguito Water District) its officers, elected officials, employees, City contractors, construction managers, architect and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to all liability arising out of the Project or operations performed by or on behalf of the Contractor including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to the Contractor's insurance, or the City, its officers, agents, and employees shall be named as additional named insureds on Contractor's policies, evidenced by an additional insured endorsement, using form ISO CG 20-10-10-01 and GC 20-37-10-01 or their exact combined equivalent.

5-4.6 Responsibility. Maintenance of insurance by the Contractor as specified in this Contract shall in no way be interpreted as limiting the Contractor's responsibility whatsoever. The Contractor may carry, at its own expense, such additional insurance as it deems necessary.

5-4.7 Adjustment. Any insured loss is to be adjusted with the City and made payable to the City on behalf of the insureds, as their interests may appear. The City shall have the power to adjust and settle any loss with the insurers unless, within five working days after the loss, one of the parties in interest shall object in writing to the City's exercise of this

power; and if such objection be made, the matter shall be subject to resolution as provided herein.

5-4.8 Waiver of Subrogation. Contractor's insurance policy must contain a provision which provides that the insurer waives any rights of subrogation it has or may have against the City, or any of its officers or employees. Further, any insurance maintained by the City shall apply in excess of and not contribute together with, insurance provided by Contractor.

5-4.9 City May Obtain Insurance for Contractor. In the case of any breach of any insurance provision of this Contract, City may, at City's sole discretion, take out and maintain, at Contractor's expense, any insurance in the name of Contractor or any Subcontractor, as City deems proper. In such case, City may deduct the cost of taking out and maintaining the insurance from any sum to which Contractor is entitled or may become entitled under this Contract.

5-4.10 Indemnification and Hold Harmless. To the greatest extent allowed by law, Contractor shall immediately defend (with counsel approved by City), indemnify and hold City, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, negligence (including the active or passive negligence of City as allowed by law), causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, consultants, Subcontractors and Contractors arising out of or in connection with the performance of the Project or this Contract, including without limitation the payment of all damages and attorney's fees, fines, penalties and other related costs and expenses.

Contractor shall immediately defend, upon the City's tender, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its officials, officers, agents, employees and representatives notwithstanding whether liability is or can be established against City. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse City, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code Section 2782 or other applicable provisions of law.

Contractors defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans With Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the Work or after the Project is complete, as the result of violations of accessibility law, regulation or negligence in Contractor's construction or protection of the Work. By inspecting, approving, or accepting the Work, City shall not have waived the protections afforded herein to City and City's officers, officials, employees, and agents or diminished the obligation of Contractor who shall remain obligated in the same degree to indemnify and hold City and City's officers, officials, employees, and agents, harmless as provided above.

Contractor's obligation herein includes, but is not limited to, alleged defects in the construction of the Work; alleged defects in the materials furnished in the construction of the Work; alleged injury to persons or property; alleged inverse condemnation of property as a consequence of the construction or maintenance of the Work; any regulatory violations (including but not limited to Stormwater Pollution Control BMP/Erosion Control and regulatory requirements) ; and any accident, loss or damage to the Work prior to the acceptance of same by City.

By inspecting, approving, or accepting the Work, City shall not have waived the protections afforded herein to City and City's officers, elected officials, appointed officials, volunteers, employees, and agents or diminished the obligation of Contractor who shall remain obligated in the same degree to indemnify and hold City and City's officers, elected officials, appointed officials, volunteers, employees, and agents, harmless as provided above.

Contractor's obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages, or costs that arise out of the City's intentional wrongful acts, violations of law, or the City's sole active negligence.

ARTICLE 8. PREVAILING WAGES. Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City or may be obtained online at <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html> and which must be posted at the job site. The prevailing wage determination for this project is 2024-1.

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

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

(INSERT CONTRACTOR NAME)

CITY OF ENCINITAS

By: _____

By: _____

Name: _____

Pamela Antil, City Manager

Title: _____

Date: _____

License No. _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM

Date: _____

Tarquin Preziosi, City Attorney

NOTE: Pursuant to California Corporations Code Section 313, if Contractor is a corporation or nonprofit organization, this Contract must be signed by (a) the Chairperson of the Board, President or Vice-President and (b) the Secretary any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.

END OF CONTRACT

Bond Number: _____

CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
CP22A

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Encinitas (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for BEACON'S BEACH PARKING LOT (CP22A) (hereinafter referred to as the "Project").

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

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

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

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

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

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if

Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect City 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. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit City'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.

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

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

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

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 202X.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this Performance 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)

Bond Number: _____

CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
CP22A

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that:

WHEREAS, the City of Encinitas (hereinafter designated as "City"), by action taken or a resolution passed _____ has awarded to _____

hereinafter designated as the "Principal," a contract for the work described as follows:

BEACON'S BEACH PARKING LOT (CP22A), (the "Project"); and

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 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 City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 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 the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 8400, 8402 or 8404 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 202X.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

[illegible]

On this _____ day of _____, in the year 202x, before me, _____, a Notary Public in and for said state, 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 as the Attorney-In-Fact of the (Surety) acknowledged to me that he/she executed the same in his/her authorized capacity, and subscribed the name of the _____ (Surety) thereto and his/her own name as Attorney-In-Fact.

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.

Notary Public in and for said State

(SEAL)

Commission expires: _____

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

CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
CP22A

WORKER'S COMPENSATION INSURANCE CERTIFICATE

Pursuant to Section 1861 of the State Labor Code Amended by Stats. 1979, C.373, p1343, each contractor to whom a public works contract has been awarded shall sign the following certificate and shall submit same to the Agency prior to performing any work on the contract:

"I am aware of the provisions of Section 3700 of the Labor Code which requires 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 work of this contract."

Contractor

By _____
Print Name

Signature

Title

Date

Section 3700 of the State Labor Code reads as follows:

"Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employee."

CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
CP22A

GUARANTY

In accordance with the terms of the BEACON'S BEACH PARKING LOT (CP22A) project in the City of Encinitas approved _____, between the City of Encinitas, (hereinafter referred to as the Agency) and the undersigned, under which contract the undersigned shall complete work as described in the contract documents, the following guarantee of said work is hereby made.

Should any of the items installed pursuant to said contract, prove defective or should the item as a whole prove defective, due to faulty workmanship, material furnished or methods of installation, or should the said item or any part thereof fail to operate properly, as planned, due to any of the above causes, all within one (1) year after date on which the work is accepted by the Agency, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within thirty (30) days after the receipt of demand from the Agency. In the event repairs are not made within thirty (30) days, the Agency shall have the unqualified option to make any needed repairs or replacements itself or by any other Contractor. The undersigned agrees to reimburse the Agency, upon demand, of its expenses incurred in restoring said items to the condition contemplated in said contract, including the cost of any equipment or materials replaced, or upon demand by the Agency, to replace any such equipment and repair said items completely without cost to the Agency so that they will operate successfully as originally contemplated.

Emergency repairs must necessarily be made by the Agency; therefore, when defective material or workmanship results in emergency repairs, the undersigned agrees to reimburse the Agency, upon demand, expenses incurred.

Said items will be deemed defective within the meaning of this Guaranty in the event that they fail to operate as originally intended thereof and in accordance with the plans and specifications included in said contract. The Faithful Performance Bond for this project shall remain in full force and effect for the entire guarantee period as required in the specifications and contract documents.

Date _____

Contractor _____

CITY OF ENCINITAS
BEACON'S BEACH PARKING LOT
CP22A

GENERAL SPECIFICATIONS

LAWS TO BE OBSERVED

Contractor is deemed to be aware of all existing laws, ordinances, rules and regulations. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, Contractor shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, he shall bear all costs arising therefrom.

TRAFFIC REQUIREMENTS

No public street or lane shall be closed to through traffic at any time except when approved by the Engineer. Pedestrians and cyclist routes shall remain intact or shall have a detour route identified with appropriate signage. Other requirements are included under Section 600 and Section 601 in the Special Provisions herein.

The proposed work area includes the pedestrian beach access to Beacon's Beach. It is the responsibility of the contractor to provide access and signage to the satisfaction of the City throughout the duration of the project. Costs for providing these items shall be considered included in the various applicable items of work and no separate payment shall be provided.

ACCESS

Contractor's operations shall cause no unnecessary inconvenience to pedestrians, bicyclists or traffic. All work shall be done between the hours of 7:00am-5:00pm. No lane closures will be permitted prior to 7:00 a.m. or after 5:00 p.m. The Contractor shall furnish and install all flagmen, sign boards, arrow boards, lights, signs, and barricades with steady flashing lights, and other safety devices and equipment required. The access rights of the public and disabled shall be considered at all times. Unless otherwise authorized, pedestrian, bicyclist and vehicular traffic shall be permitted to pass through the Work, or an approved detour or alternative path of travel shall be provided.

The Contractor shall cooperate and coordinate with State Parks Department throughout construction.

Grading operations, roadway excavation and fill construction shall be conducted by the Contractor in a manner to provide a reasonably satisfactory surface for pedestrians, bicyclists and traffic. When rough grading is completed, the walkway and roadbed surface shall be brought to a smooth, even condition satisfactory for pedestrians, bicyclists and traffic.

REMOVAL OF GRAFFITI/REMOVAL OF USA MARKINGS

The Contractor shall constantly monitor the worksite and all equipment and appurtenances associated with the project for vandalism/graffiti. Any vandalism/graffiti found within the project limits or worksite by the Contractor or the Agency shall be removed or repaired by the Contractor within 24 hours.

Failure to correct the situation to the satisfaction of the Agency within 24 hours will result in the Agency taking corrective action and deducting the cost from any monies due the Contractor.

Prior to final acceptance of the project the Contractor shall remove all markings including, but not limited to, USA markings from the project area to the satisfaction of the City Engineer.

DIVERSION OF RECYCLABLE WASTE MATERIALS

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

PROJECT CONSTRAINTS

The Beacon's Beach Parking Lot sits on top of a steep coastal bluff. The Contractor is expected to protect the bluff from erosion and concentrated runoff from the project site. A potential failure plane at the bluff top has been identified and is delineated on the plans. The contractor shall make sure to only use equipment west of the failure plane that permitted by the plans and specifications.

CONTRACTOR'S YARD

The Contractor shall be responsible for coordinating with the City Engineer to establish and provide on-site communication facilities for the Owner and the Engineer, including telephones, wifi, and computer access. If approved by the City Engineer, the Contractor may consider coordinating with the City's Public Works Department to lease space at the Public Works Yard, located at 160 Calle Magdalena, Encinitas, CA, 92024. The location of the on-site facilities must be approved by the City Engineer prior to establishment.

WAIVER OF ALL CLAIMS

At the completion of the project the Contractor shall execute, and the Agency shall approve, a "Final Closeout Agreement and Release of All Claims" concurrently with the final acceptance of the project and the filing of the Notice of Completion.

The "Final Closeout Agreement and Release of All Claims" shall be based on the final contract amount minus any damages.

The Agency, at its sole discretion, may insert a clause into the subject agreement limiting or restricting the Contractor and/or individuals from the company from bidding on any future projects with the Agency.

City of Encinitas

**BEACON'S BEACH PARKING LOT
CP22A**

SPECIAL PROVISIONS

Introduction

These Special Provisions amend the Standard Specification as indicated and take precedence over the Standard Specifications.

STANDARD SPECIFICATIONS

The Standard Specifications of the Agency are contained in the 2021 Edition of the Standard Specifications for Public Works Construction, including all supplements, as written and promulgated by the Joint Cooperative Committee of the Southern California Chapter of the American Public Works Association and the Southern California District of the Associated General Contractors of California. Copies of these Standard Specifications are available from the publisher, BNI Publications, Inc., 990 Park Center Drive, Suite 6, Vista, California, 92081, (760) 734-1113.

The said Standard Specifications will control the general provisions, construction materials, and construction methods for this contract except as amended by the Plans, these General Specifications, Special Provisions, Technical Specification or other contract documents.

The section numbers of the following Special Provisions coincide with those of the said Standard Specifications. Only those sections requiring amendment or elaboration, or specifying options, are call out.

References in the Special Provisions and Technical Specifications to Standard Plans shall mean the latest edition of the Standard Plans of the Orange County Environmental Management Agency, and where applicable, the State Department of Transportation. For reference, copies of Applicable Standard Plans for this project may be contained in the Appendix of these Specifications.

Where the Plans and Specifications describe portions of the work in general terms, but not in complete detail, it is understood that the item is to be furnished and installed complete and in place, that only the best general price is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals, and do all the work involved in executing the contract.

SECTION 1 - GENERAL

1-2 TERMS AND DEFINITIONS.

Add the following:

Act of God - includes, but is not limited to, an earthquake in excess of a magnitude of 3.5 on the Richter scale and tidal waves.

Agency - The City of Encinitas, California.

Attorney General - Wherever used in the Standard Specifications shall refer to the City Attorney.

Board - The City Council of the City of Encinitas

City - City of Encinitas, a political municipality in the County of San Diego, State of California, as created by law.

City Council, also Council - Refers to the governing body created by law and the awarding authority for the City, acting either directly or through its duly appointed officials.

City Engineer - The City Engineer, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

MUTCD – The California Manual on Uniform Traffic Control Devices (2014 Revision 7)

NCTD – North County Transit District

Project -The Work planned by City as provided in these Contract Documents.

SDRSD - San Diego Area Regional Standard Drawings (2022 edition)

Standard Drawings - The *Regional Standard Drawings* for Agencies in the San Diego Region, November 2022 Edition.

Standard Specifications - Greenbook, 2021 Edition.

State Standard Plans - The *Standard Plans* of the State of California, Department of Transportation, 2022 Edition.

State Standard Specifications -The *Standard Specifications* of the State of California, Department of Transportation, 2022 Edition.

Work - The entire improvement planned by City pursuant to the Contract Documents, including the furnishing of all labor, materials, equipment, and services.

W.A.S. Standards - Water Agencies Standards (Current Edition, see www.SDWAS.com)

ADD the following subsection:

1-6.1.1 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, 9821 Business Park Drive, Sacramento, CA 95827

ADD the following subsection:

1-6.1.2 Pre-Bid Site Inspection.

The Contractor shall be required to inspect the Project site prior to submitting a Bid (in order to examine the existing conditions such as existing survey monument covers, manhole covers, drainage inlets, utility vaults, etc., adjoining the Project site).

Any portion of the Project that is not described in complete detail in the Specifications, but can be clarified by the site inspection, shall not be considered unforeseen conditions and no additional compensation will be made thereto for Extra Work. It is the Contractor's responsibility to inspect the site and include any costs in the Bid Proposal for work that is not called out in complete detail in the Specifications prior to submitting a Bid.

1-7 AWARD AND EXECUTION OF THE CONTRACT

1-7.2 Contract Bonds.

ADD the following:

If the Surety on any Bond furnished by the Contractor is declared bankrupt, becomes insolvent, or its right to do business terminated in any state where any part of the Project is located, the Contractor shall immediately substitute another Bond and Surety acceptable to the City of Encinitas. The Contractor shall require the Surety to mail its standard "Bond Status" form to the City at the following address:

City of Encinitas
Engineering Department
505 South Vulcan Avenue
Encinitas, CA 92024

SECTION 2 - SCOPE OF THE WORK

2-2 PERMITS.

ADD the following:

The Contractor shall obtain and pay for any construction or license fees required to perform the Work. The cost of such construction or license fees shall be considered as included in the various applicable items of Work, and no additional allowance will be made therefor. The Contractor shall also obtain all necessary City permits at no cost to the Contractor. Traffic Control Permits will be required from the City for this job.

Permit fees from other agencies, such as but not limited to encroachment permits from NCTD shall be included in the various bid items and no additional compensation will be made therefor.

The regulations and requirements of all permits shall be strictly adhered to in the performance of the contract. The enforcement of such requirements under the Contract shall not be made the basis for additional compensation.

Encroachment Permit

The Contractor shall obtain an encroachment permit from the City for all work within the public right-of-way. The Contractor shall comply with all the requirements in the encroachment permit. All costs for compliance with the encroachment permit shall be included in the various bid items and no additional compensation will be made therefor. This permit will be issued at no charge to the Contractor. Included with the Encroachment Permit, the Contractor must submit the following:

1. Copy of their Certificate of Insurance (including workmen's compensation).
2. Copy of Contractor's License.
3. Traffic control plans shall be done in accordance with both the California Manual of Traffic Controls for Construction and Maintenance Work Zone (latest Edition) and the current edition of the California Manual of Uniform Traffic Control Devices (CAMUTCD). Traffic control plans shall indicate how the Work will be phased with a separate plan to be submitted for each phase. Traffic control plans must accommodate vehicular traffic, pedestrian traffic and bicyclist traffic. Traffic control plans must be stamped by a California Registered Professional Civil Engineer whose primary area of practice is traffic engineering or a California Licensed Traffic Engineer. The traffic control plans must be approved by the City's Traffic Engineer prior to the approval of the Encroachment Permit. Furthermore, the Encroachment Permit must be approved prior to the start of construction. It shall be the Contractor's responsibility to contact the City's Traffic Engineer at (760) 633-2705 to obtain the requirements for traffic control prior to the bid submittal. The Contractor shall include all costs for these requirements including traffic control and traffic control plans in the Bid Item for Traffic Control including costs for all labor, equipment, and materials and no additional compensation will be allowed therefor.
4. Signed City of Encinitas Right-of-Way Standard Conditions Form
5. Stormwater Intake Form (if applicable to the project)

Full compensation for all work involved in the preparation of traffic control plans, the furnishing, installation, maintaining and removal of temporary barricades, temporary striping, temporary pavement markers, construction signs, warning signs including electric message boards, or any device for the temporary control of traffic or safety of the workers, including flagmen (i.e. all traffic control as required by City's Traffic Engineer) shall be considered as included in the bid item for Traffic Control and no additional compensation will be made therefor. The traffic control plans included in the plan set are to be used as a general guide. Specific traffic control plans that demonstrate each subphase of work to be done (block by block) will be required.

For any lane shift, lane closure, or detour route, notice must be provided to:

1. Encinitas Fire Department

2. Sheriff
3. USPS
4. Impacted Trash Removal Services
5. NCTD for Bus stop relocations/impacts or if the impact is on a Bus Route

Grading Permit

The Contractor shall obtain a grading permit from the City for all work within the park parcel. The Contractor shall comply with all requirements in the grading permits. All costs for compliance with the Grading Permit shall be included in the various bid items and no additional compensation will be made therefor. The permit will be issued at no charge to the Contractor.

2-4 COOPERATION AND COLLATERAL WORK.

ADD the following subsection:

2-4.1 Separate Contracts.

City reserves the right to let other contracts in connection with this Work or on the Project site. This includes any of those items that are identified in these Contract Documents as alternate bid items. Contractor shall permit other contractors' reasonable access and storage of their materials and execution of their Work and shall properly connect and coordinate its Work with theirs.

To ensure proper execution of its subsequent Work, Contractor shall immediately inspect Work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.

Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by City in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously.

City 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 Project site.

2-5 THE CONTRACTOR'S EQUIPMENT AND FACILITIES.

2-5.1 General.

Delete the second paragraph of 2-5.1 and replace with the following:

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 not be placed on, near, or adjacent to a storm drain inlet,

and shall be placed upon a secondary containment tray. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by CAL-OSHA regulation. The toilets shall be maintained in a sanitary condition at all times. Use of toilet 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.

2-8 EXTRA WORK.

ADD the following:

All Claims for Extra Work by the Contractor shall be presented in writing before the expense is incurred and will be adjusted as provided herein. No work shall be allowed to lag pending such adjustment, but shall be promptly executed as directed, even if a dispute arises. No Claim will be considered after the work in question has been done unless a written Contract Change Order has been issued or a timely Written Notice of Claim has been made by Contractor. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract.

- 1) City Initiated Change. The Contractor must submit a complete cost proposal, including any change in the Contract time, within seven (7) Days after receipt of a scope of a proposed Change Order, unless City requests that proposals be submitted in less than seven (7) Days.
- 2) Contractor Initiated Change. The Contractor must give written notice of a proposed Change Order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed Change Order.
- 3) Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by City.
- 4) If the Contractor fails to submit the cost proposal within the seven (7) Day period (or as requested), City has the right to order the Contractor in writing to commence the Work immediately on a force account basis and/or issue a lump sum change to the contract price in accordance with City's estimate of cost. If the change is issued based on City estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) Days following completion of the added/deleted Work, the Contractor presents written proof that City's estimate was in error.
- 5) A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract amount or the Contract time, and the full and final settlement of all costs (direct, indirect, ripple impacts and overhead) related to the Work authorized by the Change Order.
- 6) Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order for Work. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or

clarifications. The Contractor may not change or modify City's change order form in an attempt to reserve additional rights.

- 7) If City disagrees with the proposal submitted by Contractor, it will notify the Contractor and City will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with City, a Change Order will be issued by City. If no agreement can be reached, City shall have the right to issue a unilateral Change Order setting forth its determination of the reasonable additions or savings in costs and time attributable to the Extra Work or deleted Work. Such determination shall become final and binding if the Contractor fails to submit a Claim in writing to City within fifteen (15) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order.
- 8) No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the Work, including Extra Work, promptly and expeditiously.
- 9) Any alterations, extensions of time, Extra Work or any other changes may be made without securing consent of the Contractor's Surety or Sureties.

2-9 CHANGED CONDITIONS.

REPLACE in its entirety with the following:

The Contractor shall notify the Engineer of the following Work site conditions (hereinafter called "changed conditions", in writing, promptly upon their discovery and before they are disturbed:

- a) Subsurface or latent physical conditions at the site differing from those indicated by information about the site available to Bidders prior to the deadline for submitting bids.
- b) Unknown physical conditions of an unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- c) Material that the Contractor believe may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of the existing law.

Upon prompt receipt of prompt written notice before the conditions are disturbed, the City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause an increase or decrease in the Contractor's cost or, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in the Contract Documents.

In the event that a dispute arises between the local public entity and the Contractor regarding whether the conditions materially differ, or involve hazardous waste, and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

Contractor's failure to give notice of changed conditions promptly upon their discovery and before they are disturbed shall constitute a waiver of all Claims in connection therewith.

Pursuant to Public Contract Code Section 7105(a), the City may make changes in this Contract in the course of construction to bring the completed Work into compliance with environmental requirements of standards established by state or federal statutes or regulations enacted after the Contract has been entered into. The Contractor shall be paid for the changes in accordance with the provisions of the Contract Documents governing payment for changes in the Work.

ADD the follow subsection:

2-9.1 Disallowance of Entitlement.

The Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:

- a) The Contractor knew of the existence of such conditions at the time the Contractor made a final commitment to the City in respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
- b) The existence of such condition could reasonably have been discovered or revealed as a result of any record search, examination, investigation, exploration, test, or study of the Project site and contiguous areas suggested or required by the Bidding Documents.

2-10 DISPUTED WORK.

ADD the following:

No dispute, disagreement, or failure of the parties to reach an agreement on the terms of the Change Order or any other contract dispute shall relieve the Contractor from the obligation to proceed with performance of the Work, including Extra Work, promptly and expeditiously.

ADD the following subsection:

2-11 CONSTRUCTION CLAIMS.

Claim is a written demand by the Contractor that seeks an adjustment in the Contract Price or the Contract Time, or other relief associated with a dispute arising under or relating to the Contract, including a breach of any provision thereof. A voucher, invoice, or other routine request for payment is not a Claim.

A Claim shall conform to these specifications and may be considered after the City has previously denied a request by the Contractor for a Change Order seeking the demanded relief.

The Contractor shall submit a Claim to the City if a dispute occurs that arises from or relates to the Contract. The Claim shall seek all relief to which the Contractor asserts it is entitled as a result of the event(s) giving rise to the dispute.

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

Public Contract Code Section 9204; provides procedures for claims related to the services performed by Contractor under this Agreement and are to be set forth in these contract documents. Section 9204 provides as follows:

- 1) Claim Definition. "Claim" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City.
- B) Payment by the City of money or damages arising from the Services performed by, or on behalf of, the Contractor pursuant to the Agreement and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.
- C) Payment of an amount that is disputed by the City.

2) Claim Process.

- A) Timing. Any Claim must be submitted to City in compliance with the requirements of this Section no later than fourteen (14) days following the event or occurrence giving rise to the Claim. This time requirement is mandatory; failure to submit a Claim within fourteen (14) days will result in its being deemed waived.
- B) Submission. The Claim must be submitted to City in writing, clearly identified as a "Claim" submitted pursuant to this Section, and must include reasonable documentation substantiating the Claim. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Agreement, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.
- C) Review. Upon receipt of a Claim in compliance with this Section, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days from receipt, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the City and Contractor may, by mutual agreement, extend the time period provided in this paragraph 2.
- D) If City Council Approval Required. If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City Council 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, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion. In accordance with Public Contract Code Sections 9204 and 20104 et seq. and other applicable law, public works claims of \$375,000 or less which arise between the Contractor and City shall be resolved under the following procedure unless City has elected to resolve the dispute pursuant to Public Contract Code Section 10240 et seq.
- E) Payment. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement. If the City fails to issue a written statement, paragraph 3, below, shall apply.

3) Disputed Claims

- A) **Meet and Confer.** If the Contractor disputes the City's written response, or if the City fails to respond to a Claim submitted pursuant to this Section within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute. 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, the City 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 City issues its written statement.
- B) **Mediation.** Any remaining disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing by the Contractor. 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 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. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to any other remedies authorized by the Agreement and laws.
- i. For purposes of this paragraph 3.B, 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.
 - ii. Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation, if any, under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.
- 4) **City's Failure to Respond.** Failure by the City 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. A Claim that is denied by reason of the City's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this Section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.
- 5) **Interest.** Amounts not paid in a timely manner as required by this section shall bear interest at seven (7) percent per annum.
- 6) **Approved Subcontractor Claims.** If an approved Subcontractor or a lower tier Subcontractor lacks legal standing to assert a Claim against the City because privity of contract does not exist, the Contractor may present to the City a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a Claim for work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the

Subcontractor. The Subcontractor requesting that the Claim be presented to the City shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the Claim to the City and, if the Contractor did not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

- 7) Waiver of Provisions. A waiver of the rights granted by Public Contract Code Section 9204 is void and contrary to public policy, provided, however, that (1) upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the City may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of Public Contract Code Section 9204, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

8) Personal Certification of Claims.

The Contractor shall attach the following certification, (completely filled out with the name of an officer of the company and the name of the contracting company) on each claim they file with the City:

I, _____, being the _____ (must be an officer) of _____, (general contractor) declare under penalty of perjury under the laws of the state of California, and do personally certify and attest that: I have thoroughly reviewed the attached claim for additional compensation and/or extension of time, and know its contents, and said claim is made in good faith; the supporting data is truthful and accurate; the amount requested accurately reflects the contract adjustment for which the contractor believes the owner is liable; and that I am familiar with the California penal code section 72 and California government code section 12650 et seq, pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment, and/or other severe legal consequences.

9) Public Contract Code 20104 Claims Resolution Procedures.

Subject to Public Contract Code Section 9204 requirements, in accordance with Public Contract Code Sections 20104 et seq. and other applicable law, public works claims of \$375,000 or less which arise between the Contractor and City shall be resolved under the following procedure unless City has elected to resolve the dispute pursuant to Public Contract Code Section 10240 et seq.

a. All Claims. All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" under this section means a separate demand by the Contractor for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the Contractor and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled, or (3) an amount the payment of which is disputed by City.

b. Claims Under \$50,000. City shall respond in writing to the claim within 45 days of receipt of the claim, or, City may request, in writing, within 30 days of receipt of the

claim, any additional documentation supporting the claim or relating to defenses or claims City may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of City and the Contractor. City's written response shall be submitted 15 days after receiving the additional documentation, or within the same period of time taken by the Contractor to produce the additional information, whichever is greater.

c. Claims over \$50,000 but less than or equal to \$375,000. City shall respond in writing within 60 days of receipt, or, may request in writing within 30 days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims City may have against the Contractor. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between City and the Contractor. City's response shall be submitted within 30 days after receipt of the further documents, or within the same period of time taken by the Contractor to produce the additional information or documents, whichever is greater. The Contractor shall make these records and documents available at all reasonable times, without any direct charge.

d. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Agreement, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a detailed critical path schedule analysis and narrative depicting and explaining claimed time impacts. The Claim shall be submitted with a cover letter and certification of validity of claim.

e. If the Contractor disputes City's response, or if City fails to respond within the statutory time period(s), the Contractor may so notify City within 15 days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, City shall schedule a meet and confer conference within 30 days.

f. Notwithstanding any other claims procedure contained within these Contract Documents, the Contractor must comply with the Government claims filing procedures set forth in Government Code section 900 et seq. for any claim or any portion thereof C-20 that remains in dispute after the meet and confer conference. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the Contractor submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.

g. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by City, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Contractor.

h. Government Code Claim. In addition to any and all contract and statutory requirements pertaining to notices of and requests for 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 the City. 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 extra work, disputed work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

SECTION 3 - CONTROL OF THE WORK

3-1 ASSIGNMENT.

REPLACE the entirety with the following:

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 City. Any assignment without the written consent of City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, or the Government Code. Further, any assignment of money shall be subject to all proper withholdings in favor of the Agency and to all deductions provided for in the Contract. All money withheld, whether assigned or not, shall be subject to being used by the Agency for completion of the Work should the Contractor be in default.

ADD the following subsection:

3-1.1 Change in Name and Nature of Contractor's Legal Entity.

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

3-3 SUBCONTRACTORS.

REPLACE the entirety with the following:

Contractor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of the Work. Contractor shall be as fully responsible to City for the Work, 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 City.

City reserves the right to approve all Subcontractors. City's Approval of any Subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.

Prior to substituting any Subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

In addition to the requirements 1-6.2, before the Work of any Subcontractor is started, the Contractor shall submit to the Engineer for approval a written statement listing the name, contractor license number, and business address of each Subcontractor and a description and value of each portion of the Work to be so subcontracted.

3-4 AUTHORITY OF BOARD AND THE ENGINEER.

ADD after the first paragraph:

Any modification to the Contract Documents is void and additional payment for Extra Work, time extensions or delay damages will not be made unless the modification, including, but not limited to Change Orders, is in writing and executed by the City Engineer of the City of Encinitas or City Engineer's designated representative, authorized to make such modifications.

ADD the following subsection:

3-4.1 Prohibited Interests.

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

3-5 INSPECTION.

REPLACE the entirety of 3-5 with the following:

City shall designate representatives, who shall have the right to be present at the Project site at all times. City may designate an inspector or inspectors who shall have the right to observe all of the Contractor's Work. Contractor shall provide safe and proper facilities for such access.

The inspector is not authorized to make changes in the Contract Documents. The inspector shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Inspection of the Work shall not relieve the Contractor of the obligation to fulfill the conditions of the Contract.

If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or Approved, Contractor shall provide the Engineer before noon of the City working day before inspection is required of its readiness for observation or inspection. If inspection is by a public authority other than City, Contractor shall promptly inform City of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for City testing and City inspection shall be paid by City. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

If any Work is completed without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.

Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by City, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify City so that City may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.

If the manufacture of materials to be inspected or tested will occur in a plant or location outside the geographic limits of City, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

Reexamination of the Work may be ordered by City. If so ordered, the Work must be uncovered or deconstructed by Contractor. If the Work is found to be in accordance with the Contract Documents, City shall pay the costs of reexamination and reconstruction. If such Work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

3-7 CONTRACT DOCUMENTS.

ADD the following:

“Standard Specifications” as used herein refers to The Standard Specifications for Public Works Construction “Greenbook” (2021 Edition), including the Regional Standard Drawings for use with said Standard Specifications approved and adopted by Regional Standards Committee, prepared by County of San Diego, Department of Public Works, 2018 edition.

“State Standard Specifications”, “Reference Specifications” or “Reference Plans” as used herein refers to the State of California, Department of Transportation Standard Specifications or Standard Plans, 2018 Edition.

Reference made to “Standard Drawings” shall be understood to mean “San Diego Area Regional Standard Drawings” (2018 edition), which are hereby made a part of these Specifications.

If Contractor observes that any documents are in conflict, the Contractor shall promptly notify the Engineer in writing.

3-7.1 General.

ADD the following subsection:

3-7.1.1 Integration.

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

3-7.2 Precedence of the Contract Documents.

ADD after the last paragraph:

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 executed Change Orders govern over Contract Specifications
- 4) Contract Specifications govern over Standard Drawings
- 5) Contract Specifications govern over Shop Drawings

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

Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

Quality of Parts, Construction and Finish. All parts of The Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish. In no case shall Contractor proceed with The Work without obtaining first from the Engineer such Approval may be necessary for the proper performance of Work.

Contractor's Variation from Contract Document Requirements. If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade, or replaced by the Contractor at the Contractor's expense.

ADD the following subsections:

3-7.3 Record ("As Built") Drawings.

Contractor shall prepare and maintain a complete set of record drawings (herein referred to as "As-Builts") and shall require each trade to prepare its own As-Builts in CAD format with changes properly bubbled and noted. The As-Builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire alarm, gas, and plumbing.

Contractor shall mark the As-Builts to show the actual installation where the installation varies from the Work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and where Shop Drawings are used, Contractor must record a cross-reference at the corresponding location on the Contract Plans. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the Work. As-Builts

shall be reviewed regularly with the City's Engineer to ensure concurrence with the changes. Contractor shall make modifications to the As-Builts as required by the City representative.

Contractor shall note related Change Order numbers where applicable. Contractor shall organize As-Builts into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. Contractor to also provide an electronic version of the As-Builts. The suitability of the final As-Builts will be determined by the Engineer.

A set of final As-Builts shall be completed, signed, and submitted to the City prior to acceptance of the Project and final payment.

ADD the following subsection:

3-7.3.1 Ownership of Drawings.

All Contract Documents furnished by City are City property. They are not to be used by Contractor or any Subcontractor on other work nor shall Contractor claim any right to such documents. With exception of one complete set of Contract Documents, all documents shall be returned to City on request at completion of the Work.

ADD the following subsection:

3-7.4 Document Retention and Examination.

In accordance with Government Code Section 8546.7, records of both City and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

Contractor shall make available to City any of the Contractor's other documents related to the Project immediately upon request of City.

In addition to the State Auditor rights above, City shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to City, for a period of four (4) years after final payment.

ADD the following subsection:

3-7.4.1 Notice of Taxable Possessory Interest.

In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

3-8.3 Shop Drawings.

ADD the following:

Shop Drawings and Certificates of Compliance shall be required for all materials used. No material shall be used until the Shop Drawings/Certificates of Compliance are approved by the City. Contractor shall confirm with the manufacturer, these provisions and permitting staff to determine

if additional Shop Drawings are required. No material shall be used until the Shop Drawings/Certificates of Compliance are approved by the City. A catalog cut/Shop Drawing transmittal form, shall be filled out and attached to each Shop Drawing and Certificate of Compliance submittal. Shop drawings and Certificates of Compliance shall be submitted at the pre-construction meeting.

Shop Drawings and Certificates of Compliance submittals shall be required for, but are not limited to, concrete, asphalt, aggregate, storm drain pipeline and structure components, traffic signal components, water pipeline materials, pavement marking materials, plantings, and irrigation submittals, custom enclosures and cabinets, site furnishings, installed electrical connections, prefabricated structures and footings, playground equipment and footings, metal fabrication, metal fabricated signs, fabricated steel edges and accessories. Contractor shall confirm with the manufacturer, these Project Specifications and permitting staff to determine if additional Shop Drawings are required. No material shall be used until the Shop Drawings/Certificates of Compliance are approved by the City. Shop Drawings and Certificates of Compliance shall be submitted at the pre-construction meeting.

3-9 SUBSURFACE DATA.

ADD the following:

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

3-10 SURVEYING.

ADD the following:

Should the Contractor damage any existing survey monuments during construction, the Contractor shall have a Professional Land Surveyor licensed to practice in the State of California tie out the damaged survey monument, install a new survey monument and cover per SDRSD M-10, where applicable, and file a Corner Record for the new monument.

The cost for all work related to replacement of the survey monument including surveying and recording services shall be borne by the Contractor and no additional compensation will be made therefor.

The Contractor shall furnish all construction surveys and staking where required for laying out the work by a Land Surveyor who is licensed in the State of California to practice Land Surveying.

The cost for all survey work required to complete the work including all cost for labor, equipment, and materials shall be considered included in the various bid items of work and no additional compensation will be made therefor.

3-10.2 Line and Grade.

ADD the following:

Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.) and all other federal and state disability access laws, codes and regulations. The Work will be performed in compliance with all current rules, guidelines and regulations, including, but not limited to, meeting all required vertical, horizontal, slope and all other dimensional requirements.

The Contractor shall be responsible to ensure and verify that that all temporary and finished sidewalk, ramp, entry access grades, and travel paths strictly meet ADA requirements, including using a 2-foot-long electronic smart level or other approved measuring device. General construction tolerances are unacceptable. If these requirements cannot be met with the existing grades or other physical or practical limitations, Contractor shall immediately notify City for direction before work takes place. Contractor shall be responsible for the costs of any corrective work due to Contractor's failure to meet these requirements.

3-11.2 Electric Message Boards (Project Specific).

A minimum of one electronic message board shall be required at all times on Leucadia Roadside Park, during project construction. It shall be placed at in a safe area easily seen by residents and motorists, and not blocking pedestrian or cyclist routes. All message boards shall be placed a minimum of one week before any work starts. Additional electronic message board signs may be required for significant lane shifts and/or lane closures at the direction of the Engineer.

All electronic sign boards shall include the following information, as approved by the City Traffic Engineer:

- A) Notice of Closure of the Beacon's Beach Parking Lot
- B) Start and completion dates of the work
- C) Closures will occur from 9:00 p.m. to 6:00a.m. (*hours are subject to approval by the City Traffic Engineer*).

Payment for the electric sign boards including all labor, equipment, and materials shall be included in the bid item for Traffic Control and no additional compensation will be made therefor.

3-12 WORK SITE MAINTENANCE.

3-12.1 General

ADD the following:

Contractor shall strictly comply with all clean-up, disposal, stormwater pollution prevention, environmental and dust control requirements of this Contract and fully cooperate with all directions from City and City consultants regarding control of all airborne and waterborne particulates disturbed on-site or transported from site, including on weekends and other non-working days, as necessary

When ordering and using trash dumpsters on the Project, the Contractor shall only use EDCO dumpsters. To order trash dumpsters from EDCO, call (760) 436-4151. Cleanup and dust control shall conform to Section 3-12.2, "Air Pollution Control," of the Standard Specifications and shall be executed even on weekends and other non-working days at the City's request.

During construction, the Contractor shall keep the work site free from rubbish and debris resulting from their operations. They shall also keep their haul routes free from dirt, rubbish, and unnecessary obstruction resulting from their operations. Equipment and material storage shall be confined to areas approved by the City Engineer. Disposal of all rubbish and surplus materials shall be off the site of construction, at the Contractor's own expense, and in accordance with all local codes and ordinances governing locations and methods of disposal including the City of Encinitas' Construction and Demolition Debris Ordinance (Chapter 11.22). After completion of all other work on the project and before making application for acceptance of the Work, the Contractor shall clean the site of his operations, including all areas under the control of the Owner that have been used by him in connection with the work on the Project, removing all debris, surplus material, equipment, and all temporary construction for facilities of whatever nature, unless otherwise approved by the Owner. Final acceptance of the Work by the Owner will be withheld until the Contractor has satisfactorily complied with the foregoing requirements for final cleanup on the Project site.

Full compensation for furnishing all labor, materials, equipment, and incidentals to clean up and to control the dust as specified above shall be considered as included in Clearing and Grubbing Bid Item and no additional compensation will be allowed therefor.

3-12.3 Noise Control.

ADD the following:

The noise level from the Contractor's operations, between the hours of 7:00 a.m. and 7:00 p.m., shall not exceed 86 DBA at a distance of fifty feet.

Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.

Full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various contract items of work involved and no additional compensation will be allowed therefor.

3-12.6 Water Pollution Control.

3-12.6.1 General.

ADD the following:

Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Plan (WPCP)

Construction projects that result in disturbance of less than one (1) acre of total land area and are not part of a larger common plan of development or sale must develop and implement a Water Pollution Control Plan (WPCP) approved by the City of Encinitas.

Construction projects that result in disturbance of one (1) acre or more of total land area or are part of a larger common plan of development or sale must obtain coverage under the State Water Resource Control Board's (SWRCB's) National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Construction General Permit Order No. 2022-0057-DWQ. The CGP requires developing and implementing a Storm Water Pollution Prevention Plan (SWPPP).

3-12.6.2 Best Management Practices (BMP's).

Add the following:

The Contractor shall be responsible for complying with all the City of Encinitas' Storm Water Treatment requirements as outlined in the City's Best Management Practices Design Manual and the Encinitas Municipal Code, Chapter 20.08 Stormwater Management.

The following mandatory minimum BMPs shall be required throughout the duration of the project:

- a. Stabilized Construction Entrance/Exit
- b. Perimeter Control(s)
- c. Waste Controls (trash container(s), concrete washout(s), etc.)

In addition to the BMPs listed above, appropriate site-specific conditions and construction phase-specific BMPs will be evaluated by City inspection staff through frequent site visits. These include, but are not limited to:

- a. Slope Protection/Stabilization
- b. Inlet Protection
- c. Sediment and Erosion Control

Lastly, the following expectations should be considered throughout the course of construction, and may dictate determination of compliance with City Stormwater Standards:

- a. All inactive areas (defined as seven (7) days or more of inactivity) must be protected with the appropriate erosion and sediment control BMPs. This includes building pads, unfinished roads, and slopes. The ability to install BMPs in a prompt manner is **NOT** sufficient; **BMPs must be installed for these areas.**
- b. Contractor shall be able to demonstrate the ability to deploy standby erosion control BMPs as needed to completely protect the exposed portions of the site within 24 hours of a predicted storm event (a predicted storm event is defined as 40% or greater chance of rain).
- c. **All construction workers,** including sub-contractors, must be trained on BMP implementation and maintenance prior to commencing construction activity.

The contractor shall properly maintain all sediment and erosion control measures and BMPs.

It is anticipated that storm, surface, irrigation, or other run-off or run-on may be encountered at various times during the project. The Contractor, by submitting a bid, acknowledges that they have investigated the risk arising from such waters and have prepared the bid accordingly and, by submitting a bid, assumes all said risk.

Failure to comply with the minimum BMP requirements may result in escalated enforcement actions which may include, but not be limited to, Stop Work Notice, Notice of Violation, and Assessment of Administrative Fines.

Full compensation for all work involved in the implementation of the approved WPCP, including proper maintenance of all erosion control measures, BMP's, etc. throughout the duration of the project and as required by the City, including all labor, equipment, and materials shall be included in the bid item for Water Pollution Control Plan and no additional compensation will be made therefor.

The minimum BMPs required on site for all Construction projects are detailed in the City of Encinitas Stormwater Standards Manual and reference California Stormwater Quality Association (CASQA) standards. The BMPs selected for this project must meet all applicable state and local stormwater requirements. The City has BMP requirements that must be followed that are in addition to the Regional Water Quality Control Board Requirements.

3-12.6.3 Storm Water Pollution Prevention Plan (SWPPP).

REPLACE in its entirety with the following:

3-12.6.3 NPDES Construction General Permit (CGP) Compliance.

If CGP coverage is applicable to the project, the Contractor shall have a Qualified SWPPP Developer (QSD) prepare a project specific Storm Water Pollution Prevention Plan (SWPPP). The SWPPP shall be submitted to the City for review two (2) weeks before the start of construction and incorporate all comments from the City into the SWPPP. The City has BMP requirements that must be followed that are in addition to the Regional Water Quality Control Board Requirements. The contractor's SWPPP will subsequently be submitted to the State Water Resources Control Board (SWRCB). No soil disturbing activities can take place prior to SWRCB issuance of a Waste Discharge Identification (WDID) number. Contractor is obligated to comply with provisions in Construction General Permit, as well as NPDES requirements as described in section 3-12.6.1, through the duration of the project.

The Contractor shall designate, in writing, an accredited Qualified SWPPP Practitioner (QSP) who is responsible for the implementation of the site specific SWPPP and serves as the primary contact for stormwater pollution prevention and control work. The QSP shall have the authority to purchase materials and mobilize resources to make immediate repairs to water pollution control devices and practices. The QSP shall be responsible for the Construction Site Monitoring Program (CSMP), BMPs installation and maintenance, water quality monitoring, site inspections, and reporting in compliance with the State Water Resources Control Board's CGP.

All fines from the Regional Water Quality Control Board due to non-compliance with the approved SWPPP or the Current Construction General Permit shall be passed on to the contractor in their entirety. It shall be the sole responsibility of the contractor to pay for all fines from the Regional Water Quality Control Board due to non-compliance with the approved SWPPP or the Current Construction General Permit.

The SWPPP shall be updated as required with the various construction phases by the Contractor.

The Contractor shall promptly notify the City regarding any events or modifications that could necessitate changes to the SWPPP and require additional BMPs. The Contractor shall notify the City immediately regarding any concerns, threats to water quality, or deficiencies observed in the storm water pollution control practices employed on the project site. The Contractor shall respond promptly to any supplemental instruction for stormwater pollution control issued by the City. The Contractor's QSP shall provide a 24-hour emergency contact number to be used in the case of an emergency affecting stormwater pollution control.

The Contractor shall ensure that persons under the Contractor's direct or indirect supervision who are responsible for implementing storm water pollution control measures such as those identified in the erosion control plan and SWPPP shall be appropriately trained in accordance with the CGP. Training should be both formal and informal, occur on an ongoing basis, and should include training offered by recognized governmental agencies or professional organizations.

Costs for all these requirements, preparation and implementation of the SWPPP, including BMPs, and for all erosion control and stormwater pollution control measures including, but not limited to all measures called out on approved SWPPP and as required by the City, including all labor, equipment, and materials shall be included in the bid item for Storm Water Pollution Prevention Plan and no additional compensation will be made therefor.

3-12.6.4 Dewatering.

ADD the following:

The Contractor shall provide and maintain at all times during construction ample means and devices to promptly remove and properly dispose of all the water to the satisfaction of the City Engineer. This may include, but not be limited to, cofferdams, well points, piping pumps, French drains, etc., as necessary to accomplish the above.

The disposal of water from dewatering operations shall be the sole responsibility of the Contractor. Disposal methods shall conform to the Porter-Cologne Water Quality Act, 1974, the Federal Water Pollution Control Act Amendments of 1972, and the California Administrative Code, Title 23, Chapter 3.

3-13 COMPLETION, ACCEPTANCE, AND WARRANTY.

3-13.3 Warranty.

ADD the following:

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.

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

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

Contractor shall furnish City with all warranty and guarantee documents prior to final Acceptance of the Project by City.

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

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

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

- 1) Obtain for City all warranties that would be given in normal commercial practice;
- 2) Require all warranties to be executed, in writing, for the benefit of City; and
- 3) Enforce all warranties for the benefit of City, unless otherwise directed in writing by City.

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

The Contractor shall arrange to have Contractor's faithful performance Bond run for a period of one year after the date of completion of the Contract to cover Contractor's guarantee as set forth above.

ADD the following section:

3-14 PARTNERING.

The City encourages the Contractor to participate in a "partnering" program; however, there will be no penalties imposed if the Contractor elects not to participate. One of the primary objectives of the program is to quickly resolve potential Claims and disputes and at the lowest level possible. The program must be based on City staff and Contractor using trust and open communication throughout the construction phase.

If the Contractor elects to participate in a partnering program the Contractor will, prior to the commencement of construction, set up an initial partnering meeting with the assistance of a professional facilitator as mutually agreed to by both parties. The purpose of the meeting is to reach a consensus of respective goals and methods in successfully completing the Project. Thereafter, the parties will continue to meet on a regular basis to openly discuss problems of mutual concern.

The partnering program will not alter the City's or Contractor's legal rights and obligations under the Contract.

Generally the goals of partnering include:

- a) City and Contractor's representatives, including Subcontractors, actively working together as partners.
- b) Mutual understanding on how work is to be conducted
- c) Mutual understanding of how success will be defined.
- d) Establishment of an atmosphere of team work, trust, and open communication.
- e) Establishment of a process to resolve disputes at the lowest level.
- f) Avoidance of destructive confrontation and litigation among the parties.

If the Contractor elects to participate in partnering, the meeting costs shall be split 50/50 between the City and the Contractor. Meeting costs include facilitator fee, room rental, lunch and incidental costs. Meeting costs do not include salaries and costs of the participants. The City will reimburse the Contractor for their half of the partnering costs via Change Order.

SECTION 4 - CONTROL OF MATERIALS

4-1 GENERAL.

ADD the following:

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

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.

Materials shall be stored and maintained on the Project site in such manner so as not to interfere with any operations of City, the public or any independent contractor.

No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the Project, to City free from any claims, liens, or charges.

4-2 PROTECTION.

ADD the following:

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

protection of workers, City staff and the public, and shall post danger signs warning against hazards created in the course of construction.

Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.) and all other federal and state disability access laws, codes and regulations, including for temporary site conditions. The Work will be performed in compliance with all current rules, guidelines and regulations, including, but not limited to, meeting all required vertical, horizontal, slope and all other dimensional requirements.

The Contractor shall be responsible to ensure and verify that that all temporary and finished sidewalk, ramp, entry access grades, and travel paths strictly meet ADA requirements, including using a 2-foot-long electronic smart level or other approved measuring device. General construction tolerances are unacceptable. If these requirements cannot be met with the existing grades or other physical or practical limitations, Contractor shall immediately notify City for direction before work takes place. Contractor shall be responsible for the costs of any corrective work due to Contractor's failure to meet these requirements.

- b) In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if so authorized or instructed by the Engineer or City. Any compensation claimed by Contractor on account of emergency work shall be determined by and agreed upon by City and the Contractor.
- c) Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions. All packaged, manufactured products for use on the work shall be delivered to the site in their original unopened containers, bearing thereon the manufacturer's name and the brand name of the product. Whenever any product or material is selected to be used on the work, all such products or materials shall be of the same brand and manufacturer throughout the work. All materials shall be stored in such a manner that they will be completely protected from weather damage.
- d) Contractor shall take adequate precautions to protect existing door, hallways, enclosures, work spaces, equipment, wiring, floors, walls, ceilings, finishes, sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:
 - 1) Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
 - 2) Provide substantial barricades around any shrubs or trees indicated to be preserved.
 - 3) Deliver materials to the Project site over a route designated by the Engineer.
 - 4) Provide any and all dust and hazardous materials control required and follow the Applicable air quality and environmental regulations as appropriate. If the Contractor does not comply, City shall have the immediate authority to provide dust control and deduct the cost from payments to the Contractor.

- 5) Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the Engineer. Contractor shall not unreasonably encumber the Project site with its materials.
 - 6) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, at no cost to City.
 - 7) Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to City.
 - 8) Preserve and protect from injury all buildings, pole lines and all direction, warning and mileage signs that have been placed within the right-of-way.
 - 9) At the completion of work each day, leave the Project site in a clean, safe condition.
 - 10) Comply with any stage construction and traffic handling plans. Access to City Hall, residences and businesses shall be maintained at all times.
- e) 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.
 - f) Should damage to persons or property occur as a result of the Work, Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. City shall be entitled to inspect and copy any such documentation, video, or photographs.
 - g) Should Contractor, after reasonable notice by City, fail to take such preservation and protective measures required, the City may proceed with protecting and preserving the site as necessary and may deduct the cost from Contractor's next progress payment, Contract balance or retention.

4-3 INSPECTION.

4-3.1 General.

ADD the following:

At the option of the City Engineer, the source of supply of each of the materials shall be approved by him 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 trial, it is found that sources of supply which 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 materials from other approved sources. After approval, any material that becomes unfit for use due to improper storage, handling or any other reason shall be rejected.

A City inspector may be on the job site at all times work is in progress as determined by the City Engineer. Inspection will be required for but not limited to the following types of work: trenching, shoring, special or sand bedding, pipe laying, welding, backfill, subgrade compaction, fill placement, aggregate base, asphalt pavement placement, landscape and all structures.

Payment for inspection services beyond a normal eight-hour work day, Saturdays, Sundays or union observed holidays will be deducted from the Contractor's payment at the rate of 2.5 times the Inspector's hourly pay rate.

4-4 TESTING.

ADD the following:

Except as elsewhere specified, the City will bear the cost of testing material where the results of such tests meet or exceed the requirements indicated in the Standard Specifications and the Special Provisions. The cost of all other tests shall be borne by the Contractor.

At the option of the City Engineer, the source of supply of each of the materials shall be approved by City before the delivery is started. All materials proposed for use may be inspected or tested at any time during their preparation and use. If it is found that sources of supply which 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 materials from other approved sources. After approval, any material which becomes unfit for use due to improper storage, handling or any other reason shall be rejected.

All coarse aggregates used in the production of Hot Mix Asphalt (HMA), excluding RAP, must be mined only from a hard rock- blasted quarry. All coarse aggregates used in the production of Hot Mix Asphalt shall also have a minimum Durability Index (California Test 229) of 35.

All backfill and subgrade shall be compacted in accordance with the Standard Specifications. Compaction tests may be made by the City and all costs for passing tests shall be borne by the City. All costs for failed testing shall be borne by the Contractor. Said tests may be made at any place along the work as deemed necessary by the City Engineer. The costs of any retests made necessary by non-compliance with the Specifications shall be borne by the Contractor.

4-6 TRADE NAMES.

REPLACE in its entirety with the following:

- a) Pursuant to Public Contract Code Section 3400(b) City may make a finding that is described in the invitation for bids that designates certain products, things, or services by specific brand or trade name.
- b) Unless specifically designated in the Contract Documents, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall always be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process, equipment or article which shall be substantially equal or better in every respect to that so indicated or specified in the Contract Documents. However,

City may have adopted certain uniform standards for certain materials, processes and articles which Contractor shall consider.

- c) Contractor shall submit requests, together with substantiating data, for substitution of any “or equal” material, process or article no later than ten (10) City working days before bid submission. Provisions regarding submission of “or equal” requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed “or equal” substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with the Contractor. City has the complete and sole discretion to determine if a material, process or article is an “or equal” material, process or article that may be substituted.
- d) Data required to substantiate requests for substitutions of an “or equal” material, process or article data shall include a signed affidavit from the Contractor stating that, and describing how, the substituted “or equal” material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, reports and other relevant data including catalog information which describes the requested substituted “or equal” material, process or article, and substantiates that it is an “or equal” to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted “or equal” material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to City within the time requirement of these Contract Documents shall result in the rejection of the proposed substitution.
- e) The Contractor shall bear all of City’s costs associated with the review of substitution requests.
- f) The Contractor shall be responsible for all costs related to a substituted “or equal” material, process or article.
- g) Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

SECTION 5 - LEGAL RELATIONS AND RESPONSIBILITIES

5-1 LAWS AND REGULATIONS.

REPLACE in its entirety with the following:

Contractor is deemed to be aware of all existing laws, ordinances, rules and regulations. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Contractor observes that the Plans and specifications are at variance therewith, Contractor shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, he shall bear all costs arising therefrom.

5-3 LABOR.

5-3.1 General.

ADD the following:

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

Any person in the employ of the Contractor whom City has a reasonable basis to believe is incompetent, unfit or a danger to Project health, safety or security shall be dismissed from the Work upon written notice by City and shall not be employed on this Project except with the written approval of City.

5-3.2 Prevailing Wages.

REPLACE in its entirety with the following:

This Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Subject to exceptions as set forth in Labor Code section 1771.1, Contractor or Subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined by statute, unless it is currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. The City may not accept a Bid or any contract or subcontract entered into without proof of the Contractor or Subcontractor's current registration to perform public work pursuant to Section 1725.5. For more information, go to <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>

The Contractor shall be fully aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Wage Determination for this Project is 2024-1.

The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at City. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

The Contractor and each Subcontractor shall forfeit as a penalty to City not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any 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 calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

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

Employment of Apprentices: The Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Contractor or any Subcontractor. The Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices. For more information and requirements, go to <http://www.dir.ca.gov/Public-Works/Apprentices.html>

Section 1777.5 requires the Contractor or Subcontractor employing tradesmen in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of the public works project which administers the apprenticeship program for that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen to be used in the performance of the contract.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade and if other Contractors on the public works site are making such contributions. Information relative to apprenticeship standards, contributions, wage schedules and other requirements may be obtained from the State Director of Industrial Relations or from the Division of Apprenticeship Standards.

ADD the following subsection:

5-3.2.1 Anti-kickback.

The Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3)

5-3.3 Payroll Records.

REPLACE in its entirety with the following:

Notice: Subject to exceptions as set forth in Labor Code section 1771.1, Contractor or Subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined by statute, unless it is currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. The City may not accept a Bid or any contract or subcontract entered into without proof of the Contractor or Subcontractor's current registration to perform public work pursuant to Section 1725.5. For more information and requirements, go to <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>

Pursuant to Labor Code Section 1776:

- a) Contractor and each Subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - 1) The information contained in the payroll record is true and correct.
 - 2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.
- b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - 1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - 2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the Contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.
 - 3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the Contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, Subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the Contractor.
- c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).
- d) A Contractor or Subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.
- e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor performing the Contract

shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

- f) 1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.
- 2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.
- g) The Contractor shall inform the body awarding the Contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.
- h) The Contractor or Subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the Contractor or Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the Contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
- i) The body awarding the Contract shall cause to be inserted in the Contract stipulations to effectuate this section.

Certified Payroll records shall be maintained by the Contractor and copies of the certified payroll shall be electronically sent to the Department of Industrial Relations and be delivered to the City at the end of each month during the entire duration of the Project.

Any Contractor who is awarded a public works project and intends to use a craft or classification not shown on the general wage determinations shall be required to pay the wage rate of that craft or classification most closely related to it as shown in the general determinations effective at the time of the call for bids.

Pursuant to Labor Code Section 1777.5, the Prime Contractor shall be responsible for compliance for all apprenticeable occupations under the section.

5-4 INSURANCE.

REPLACE in its entirety with the following:

Contractor shall procure a standard, commercial general liability insurance policy and property damage insurance, or commercial general liability insurance, from an insurance company approved by City having a Best Rating of A-: VII or better and licensed and authorized by the Insurance Commissioner of the State of California Department of Insurance to be transacting business in the State of California. Policies shall be in protection of the City, its officers and employees indemnifying and defending such parties against direct or contingent loss or liability for damages for personal injury, death or property damage related to the possession, operation or performance of the work of the project. The insurance shall extend for the full term of this Contract and remain in full force and effect, in the following minimum limits:

A. Commercial General liability (Including operations, Products and completed operations):

Combined Single Limit per Occurrence	\$3,000,000.00
General Aggregate	\$5,000,000.00

B. Automobile Liability:

Combined Single Limit Per Occurrence (For bodily injury and property damage)	\$1,000,000.00
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Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to City, and shall not preclude City from taking such other actions available to City under other provisions of the Contract Documents or law.

Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City.

Contractor shall make certain that any and all Subcontractors hired by Contractor are insured in accordance with this Contract. If any Subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the City harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by City 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 this Agreement, relating to liability for injury to or death of persons and damage to property.

Deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City. 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, City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as any 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.

For any claims related to this Project, the Contractor's insurance coverage shall be primary insurance as respect to the City, and their sub-entities, officers, officials, employees, and volunteers. Any insurance of self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

If the contractor maintains broader coverage and/or higher limits than the minimums shown herein, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Workers Compensation Insurance

The Contractor shall Provide, during the life of this Contract, workers' compensation insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease for all of the employees engaged in Project under this Contract, on or at the Project site, and, in case any of sublet Work, the Contractor shall require each Subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Project site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code. The Contractor shall file with City certificates of his insurance protecting workers and shall provide certificates at any time upon request. Company or companies providing insurance coverage shall be acceptable to Agency, if in the form and coverage as set forth in the Contract Documents. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

Contractor shall assume the immediate defense of and indemnify and save harmless Agency and its officers and employees, agents, and consultants from all claims, loss, damage, injury, and liability of every kind, nature, and description brought by any person employed or used by Contractor, or any Subcontractor, to perform the Project under this contract regardless of responsibility or negligence.

Employer's Liability Insurance

Contractor shall provide during the life of this Contract, Employer's Liability Insurance, including Occupational Disease, in the amount of, at least, one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide Agency 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 Agency.

Evidence of Insurance

The insurance policies shall provide that the policies shall remain in force during the term of this contract and shall not be canceled, terminated, or allowed to expire, nor shall it be changed so that it no longer meets the City's insurance requirements, without 30 days prior written notice to City from the insurance company. Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Coverage

The insurance shall cover all operations of the Contractor, its agents and employees, performed in connection with this Contract including but not limited to premises and automobile.

Additional Insured Requirements

The City, its sub-entities (specifically including the San Dieguito Water District) its officers, elected officials, employees, contractors, agents, construction managers, architect and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to all liability arising out of the Project or operations performed by or on behalf of the Contractor including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to the Contractor's insurance, or the City, its officers, agents, and employees shall be named as additional named insureds on Contractor's policies, evidenced by an additional insured endorsement, using form ISO CG 20-10-10-01 and GC 20-37-10-01 or their exact combined equivalent.

Proof of Insurance

The Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, signed by the carrier, in a form satisfactory to the City, upon the City's request.

Responsibility

Maintenance of insurance by the Contractor as specified in this Contract shall in no way be interpreted as limiting the Contractor's responsibility whatsoever. The Contractor may carry, at its own expense, such additional insurance as it deems necessary.

Adjustment

Any insured loss is to be adjusted with the City and made payable to the City on behalf of the insureds, as their interests may appear. The City shall have the power to adjust and settle any loss with the insurers unless, within five working days after the loss, one of the parties in interest shall

object in writing to the City's exercise of this power; and if such objection be made, the matter shall be subject to resolution as provided herein.

Waiver of Subrogation

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

Contractor's insurance policy must contain a provision which provides that the insurer waives any rights of subrogation it has or may have against the City, or any of their officers or employees.

Further, any insurance maintained by the City shall apply in excess of and not contribute together with, insurance provided by Contractor.

City May Obtain Insurance for Contractor

In the case of any breach of any insurance provision of this Contract, City may, at City's sole discretion, take out and maintain, at Contractor's expense, any insurance in the name of Contractor or any Subcontractor, as City deems proper. In such case, City may deduct the cost of taking out and maintaining the insurance from any sum to which Contractor is entitled or may become entitled under this Contract.

ADD the following subsection 5-4.5:

5-4.5 Indemnification and Hold Harmless.

To the greatest extent allowed by law, Contractor shall immediately defend (with counsel approved by City), indemnify and hold City, and its officers, agents, employees, and representatives free and harmless from any and all claims, demands, negligence (including the active or passive negligence of City as allowed by law), causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, consultants, Subcontractors and Contractors arising out of or in connection with the performance of the Project or this Contract, including without limitation the payment of all damages and attorney's fees, fines, penalties and other related costs and expenses.

Contractor shall immediately defend, upon the City's tender, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its officers, agents, employees and representatives notwithstanding whether liability is or can be established against City. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City, its officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse City, and its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in

enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code Section 2782 or other applicable provisions of law.

Contractors defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans With Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the Work or after the Project is complete, as the result of violations of accessibility law, regulation or negligence in Contractor's construction or protection of the Work. By inspecting, approving, or accepting the Work, City shall not have waived the protections afforded herein to City and City's officers, officials, employees, and agents or diminished the obligation of Contractor who shall remain obligated in the same degree to indemnify and hold City and City's officers, officials, employees, and agents, harmless as provided above.

Contractor's obligation herein includes, but is not limited to, alleged defects in the construction of the Work; alleged defects in the materials furnished in the construction of the Work; alleged injury to persons or property; alleged inverse condemnation of property as a consequence of the construction or maintenance of the Work; any regulatory violations (including but not limited to Stormwater Pollution Control BMP/Erosion Control, State Construction General Permit, and other and regulatory requirements) ; and any accident, loss or damage to the Work prior to the acceptance of same by City.

By inspecting, approving, or accepting the Work, City shall not have waived the protections afforded herein to City, its officers, elected officials, appointed officials, volunteers, employees, and agents or diminished the obligation of Contractor who shall remain obligated in the same degree to indemnify and hold City, and its elected officials, appointed officials, volunteers, employees, and agents, harmless as provided above.

Contractor's obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages, or costs that arise out of the City's intentional wrongful acts, violations of law, or the City's sole active negligence.

5-6 PATENT FEES OR ROYALTIES.

REPLACE in its entirety with the following:

The Contractor shall include in its bid amount the patent fees or royalties on any patented article or process furnished or used in the Work. Contractor shall assume all liability and responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices, or processes used in or incorporated with the Work, and shall defend, indemnify, and hold harmless City, its officers, elected officials, agents, employees and representatives from and against any and all liabilities, demands, claims, damages, losses, costs and expenses, of whatsoever kind or nature, arising from such use.

SECTION 6 - PROSECUTION AND PROGRESS OF THE WORK

6-1 CONSTRUCTION SCHEDULE AND COMMENCEMENT OF THE WORK.

6-1.1 Construction Schedule.

ADD the following requirements:

- a) **Estimated Schedule.** Within fourteen (14) days after the issuance of the Notice to Proceed, Contractor shall prepare an as-planned baseline Project schedule and shall submit this to the Engineer for review. The receipt or review of any schedules by the Engineer or City shall not be inferred or implied as City adoption of any duration or sequences of work proposed by Contractor and shall not in any way relieve the Contractor of its obligations under the Contract Documents to complete the Project in a timely manner. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract time period. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until a baseline Project schedule is received and reviewed by the Engineer.
- b) **Schedule Contents.** The schedule shall be prepared using construction industry recognized project management software such as Microsoft Project or Primavera. Contractor shall provide the City with electronic copies of all data as requested. The baseline schedule and all schedules thereafter shall allow enough time for inclement weather. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the time specified for completion. Schedule duration shall match the Contract time. All 'float' in the schedule will not be "owned" by either party for the purpose of delay analysis.
- c) **Schedule Updates.** Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the Engineer within 5 days of a written request to do so by Engineer and also with each progress payment request. The Engineer may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule. If any change in the progress schedule is to be made or becomes necessary due to unforeseen circumstances, the Contractor shall so notify the City Engineer immediately in writing.

As the work progresses, and upon written request by the City Engineer, the Contractor shall submit within five (5) working days of the date of the written request a supplementary schedule consistent with the actual progress of the work.

Work shall only be done on Monday through Friday during the hours prescribed in these Project Specifications excluding holidays. Work scheduled on Saturdays, Sundays, and holidays must receive prior approval by the City Engineer.

The Contractor shall conduct his operations so as to have under construction no greater length or amount of work than he can prosecute properly. Prior to starting any phase of the work, the Contractor shall be prepared and shall have sufficient materials and labor on hand to prosecute the work to its completion.

6-1.2 Commencement of the Work.

REPLACE 6-1.2 in its entirety with the following:

The Contract time shall commence upon the commencement date contained in the Notice to Proceed issued by the City. The Work shall commence on that stated date and be diligently prosecuted to completion within the Contract time.

ADD the following subsection:

6-1.3 Preconstruction Meeting

A pre-construction meeting will be held after the award and execution of the contract and prior to construction. The Contractor (Principal and Project Superintendent) and any Subcontractor for five percent or more of the work shall attend and be prepared to provide or discuss the following information:

- 1) Project schedule, construction phasing, and production rates.
- 2) Subcontractors.
- 3) Survey requirements.
- 4) Materials and delivery schedule.
- 5) Local phone numbers for supervisory personnel.
- 6) Required permits.
- 7) Coordination with other agencies.
- 8) Fully executed contract and bonds.
- 9) All required shop drawings and certificates of compliance.
- 10) Stormwater Pollution Prevention Plan (SWPPP) Implementation

6-3 TIME OF COMPLETION.

6-3.1 General.

ADD the following:

The Contractor shall finish all Work complete and in place within forty-five (45) working days of the Commencement Date in the Notice to Proceed.

ADD the following subsection:

6-3.3 Working Days and Hours of Work.

It shall be noted by Contractor that the City offices are closed every other Friday of the month. The Contractor is required to make note of those Fridays and schedule its Work, notices and communications with City Engineer and staff accordingly. These City offices closed days shall not affect the determination of a Project working day.

Work scheduled on Saturdays, Sundays, and observed holidays must receive prior approval by the City Engineer. The following is a list of holidays observed by the City:

1. New Year's Day (January 1)
2. Martin Luther King, Jr. Birthday (Third Monday in January)
3. President's Day (Third Monday in February)

4. Memorial Day (Last Monday in May)
5. Juneteenth (June 19th)
6. Independence Day (July 4)
7. Labor Day (First Monday in September)
8. Veteran's Day (November 11)
9. Thanksgiving (Fourth Thursday in November)
10. Day after Thanksgiving (Fourth Friday in November)
11. Christmas Eve (December 24)
12. Christmas Day (December 25)
13. New Year's Eve (December 31)

City hall shall be closed from Christmas Eve through New Year's Day.

City holidays which fall on a Saturday shall be observed on the preceding Friday. When a City holiday falls on a Sunday, the following Monday shall be observed.

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

Work shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis.

It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours approved Monday through Friday, with no Work allowed on City-observed holidays, unless otherwise approved by the Engineer:

- 1) Powered Vehicles
- 2) Construction Equipment
- 3) Loading and Unloading Vehicles
- 4) Domestic Power Tool.

The Contractor shall conduct Contractor's operations so as to have under construction no greater length or amount of work than he can prosecute properly. Prior to starting any phase of the work, the Contractor shall be prepared and shall have sufficient materials and labor on hand to prosecute the work to its completion.

6-4 DELAYS AND EXTENSIONS OF TIME.

6-4.1 General.

ADD the following:

City's liability to Contractor for delays for which City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay, including delays caused by items that are the responsibility of City pursuant to

Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

Contractor shall abide with the Engineer's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the controlling critical path of the Project schedule.

The City will not consider delay damages for early completion of Contractor's baseline Project schedule; and the Contract completion date shall not be amended by City's receipt or acceptance of the Contractor's Project schedule or a proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from City (including but not limited to indirect, general, administrative, or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date.

6-5 USE OF IMPROVEMENT DURING CONSTRUCTION.

ADD the following:

Such take over or use shall not constitute Acceptance of any part of Contractor's Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

6-6 SUSPENSION OF THE WORK.

6-6.1 General.

ADD the following:

If there is any suspension in the Contractor's activity for any reason, Contractor shall clean the site of all construction debris, accessible to the public and prepare the site to remain undisturbed and accessible until such time as Contractor may return to complete the Contract Work. If conditions exist during the period of suspension such as rain, wind, or other conditions, which could damage work already performed or which could present a hazard to surrounding improvements, property or to the public, it shall be the Contractor's responsibility during the period of suspension to protect and/or repair such improvements from erosion, saturation, or other damage, to the satisfaction of the Engineer.

6-7 TERMINATION OF THE CONTRACT FOR DEFAULT.

6.7.3 Notice of Termination for Default.

ADD the following:

Upon termination for default, Contractor shall take all necessary steps to protect the site. Contractor shall not be entitled to receive any further payment until the Project has been finished. City may take over and complete the Work by any method it may deem appropriate. Contractor and its surety shall be liable to City for any excess costs or other damages incurred by City to complete the Project or protect the site. If City takes over the Work, City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Project site.

6-8 TERMINATION OF THE CONTRACT FOR CONVENIENCE.

ADD the following:

Pursuant to Public Contract Code 7105, the Contract may be terminated for convenience due to an Act of God or for environmental considerations at the discretion of the City of Encinitas.

In addition to any other obligations set forth herein, after receipt of Notice of Termination for Convenience, and except as directed by City, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

- 1) 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.
- 2) Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
- 3) Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
- 4) Place no further subcontracts or orders, except as necessary to complete the remaining portion of the Work.
- 5) Contractor shall submit complete backup documentation substantiating costs actually incurred and reasonable expenses directly attributable to termination as a result of City's exercise of its right to terminate this Contract pursuant to this Article, which costs the Contractor is authorized under the Contract Documents. Said documentation shall (i) describe the costs incurred with particularity; and (ii) be conspicuously identified as "Termination Costs Occasioned by City's Termination for Convenience."
- 6) Contractor shall have no right to recover lost profits, unabsorbed overhead or any other consequential or collateral damages arising from a termination for convenience.

- 7) These provisions are in addition to and not in limitation of any other rights or remedies available to City.

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

6-9 LIQUIDATED DAMAGES.

REPLACE in its entirety with the following:

The Contractor shall diligently prosecute the work to completion within forty-five (45) working days from the commencement date contained in the Notice to Proceed. If the Work is not completed within the time allowed in the Contract Documents, it is understood that City will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to City as fixed and liquidated damages, and not as a penalty, the stipulated the sum of **\$3,600 (Three Thousand Six Hundred Dollars)** for each and every *calendar day* of unexcused total project delay in completing the work in excess of the time specified for completion of the Work, as may be adjusted in accordance with 6-6, unless otherwise specified in the Contract Documents. 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. Pursuant to Public Contract Code Section 7203, these liquidated delay damages shall not limit the other express terms of this public works contract.

SECTION 7 – MEASUREMENT AND PAYMENT

7-1 MEASUREMENT OF QUANTITIES FOR UNIT PRICE WORK.

7-1.1 General.

ADD the following:

Before proceeding with any work, the Contractor shall carefully check and verify all dimensions and quantities and shall immediately inform the City Engineer of any discrepancy between the Plans and/or Specifications and actual conditions. No work shall be done in any area of such discrepancy until approval has been given in writing by the City Engineer. Payment will be as per the Contract Unit Price as shown in the Bid Schedule and shall be considered full compensation for furnishing all labor, materials, tools, equipment, placement of materials, and incidentals.

The cost of all work to be performed as required by the Specifications or that can be reasonably inferred to be required by the Specifications, and for which no Bid Item is provided in the proposal, will be considered to be included in the various other items of work.

Furnishing Water (Payment)

Full compensation for furnishing and applying water will be considered as included in the prices paid for various items of work and no additional compensation will be made therefor. The Contractor shall be responsible for the application and for all costs incurred for procuring a temporary water meter and water as required by the San Dieguito Water District and/or Olivenhain Municipal Water District.

7-3 PAYMENT.

7-3.1 General.

ADD the following:

City shall make monthly progress payments following receipt of undisputed and properly submitted payment requests. Contractor shall be paid a sum equal to ninety percent (95%) of the value of Work performed up to the last day of the previous month, less the aggregate of previous payments.

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.

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.

When no bid item is provided for work shown or indicated on the Plans and Specifications, payment for such work will be considered to be included in various applicable items of work and no separate payment shall be provided.

The City reserves the right to add or delete work based on the values provided in the Contractor provided Schedule of Values.

Acceptance by Contractor of the final payment shall constitute a waiver of all claims against City arising from this Contract.

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.

The Contractor shall submit with each payment request the Contractor's conditional waiver of lien for the entire amount covered by such payment request, as well as a valid unconditional waiver of lien from the Contractor and all Subcontractors and suppliers for all work and materials included in any prior invoices. Waivers of lien shall be in the forms prescribed by California Civil Code. Prior to final payment by City, the Contractor shall submit a final waiver of lien for the Contractor's work, together with releases of lien from any and all Subcontractors and suppliers.

Payments Withheld and Back charges

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

- a) Stop 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 City for claims against Contractor.
- g) Failure of Contractor to keep the record ("As-Built") drawings up to date or provide As-Built to City at time of Project completion.
- h) Failure to provide an approved baseline schedule or updates to 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.
- m) Corrective or emergency work performed by or on City's behalf necessitated by failure of Contractor.

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

Compliance with Public Contract Code 20104.50

The City shall comply with the prompt payment provisions of Public Contract Code 20104.50 (a) which, in summary, provides that any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth by statute. Upon receipt of a payment request, each local agency shall act in accordance with both of the following: (1) each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request. (2) any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper. The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement. A "progress payment" includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings. A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.

The cost of all work to be performed as required by the Specifications or that can be reasonably inferred to be required by the Specifications, and for which no Bid Item is provided in the proposal, will be considered to be included in Other Items of Work.

Field Orders

Field orders are to facilitate decisions made in the field by the Resident Engineer and reduce approval delays. The Resident Engineer is authorized to approve field orders for changes

necessary for the successful completion and function of the Project in accordance with 2-8, "EXTRA WORK" or 2-9, "CHANGED CONDITIONS" within the dollar limit established in the bid schedule.

The Resident Engineer will prepare a field order form for each approved change, up to \$20,000 per field order, and submit such form with the next monthly progress payment. The field order form shall describe the reason the change is required, the agreed work to be performed, and the agreed amount of compensation to be paid to the Contractor. It shall also contain the Contractor's signature acknowledging that the compensation constitutes full payment for the work to be performed.

A Field Order does not change the Contract Price or Contract Time or the intent of the Contract. The unused portions of the Field Orders shall revert to the City upon Acceptance.

7-3.4 Mobilization

Replace 7-3.4 in its entirety with the following:

If no separate bid item is provided for Mobilization, payment for costs outlined below will be deemed to be included in the other items of The Work.

- 1) Obtaining and paying for all bonds, insurance, and permits.
- 2) Moving on to the Project site of all Contractor's plant and equipment required for first month's operations.
- 3) Installing temporary construction power, wiring, and lighting facilities.
- 4) Establishing fire protection system.
- 5) Developing and installing a construction water supply.
- 6) Providing and maintaining the field office trailers for the Contractor and the Engineer, complete, with all specified furnishings and utility services including telephones, telephone appurtenances, computer and printer, and copying machine.
- 7) Providing on-site communication facilities for the Owner and the Engineer, including telephones, radio pagers, and fax machines.
- 8) Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.
- 9) Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.
- 10) Arranging for and erection of Contractor's work and storage yard.

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

Mobilization shall also include:

1. The submission of all mix designs and material submittals for the project and shall be completed under this item.
2. Work under this bid item shall also include Section 7-9 "Protection and Restoration of Existing Improvements" of Standard Specifications.

Add the following:

7-3.4.1 Payment

The Contract Lump Sum price paid for Mobilization shall include full compensation for providing bonds and insurance, financing, establishing temporary construction yard, field office, moving equipment to the project site for the establishment of facilities necessary for work on the project, applying for and obtaining all required permits, and for all other work and operations which must be performed or costs incurred prior to beginning work on the various contract items, including all related administration throughout its duration, and demobilization.

The total price bid for Mobilization shall include the cost of all mobilization, administration for the entire CONTRACT period, and demobilization and clean-up at the end of Project prior to vacating the site.

7-3.5 CONTRACT UNIT PRICES

ADD the following:

7-3.9 Bid Item Measurement and Payment Clauses

The following are the measurement and payment clauses for the bid items of the work. This section does not necessarily contain a complete list of all items the Contractor may need to consider in formulating their bid. The Contractor shall carefully examine all the contract documents and work site conditions.

Where any conflicts may be discovered in the measurement and payment clauses of the various contract documents, this Section shall have precedence.

1. Mobilization

Payment for "**Mobilization**" shall be paid per Section 7-3.4.1 of these Specifications and shall include all items per Section 7-3.4.

2. Clearing and Grubbing

Payment for “**Clearing and Grubbing**” shall be measured and paid for on a lump sum basis. Payment shall include full compensation for removal and disposal of all resulting material including, but not limited to; dumping fees, haul off, removal of excess soil, trees, stumps, bushes, vegetation, roots, shrubs, stone, signs, fencing, irrigation, and all rubbish and debris, whether above or below ground per the project plans and specifications.

3. Erosion Control and Water Pollution Control

Payment for “**Erosion Control and Water Pollution Control**” shall be paid for on a lump sum basis. Payment shall include all costs for the installation, maintenance, inspection, and removal of water pollution control items, generation of a Water Pollution Control Plan (WPCP), BMP's and additional items required in the approved WPCP including but not limited to; rock berms, gravel bags, fiber rolls, silt fence, inlet filters, construction entrances, covering of stockpiles, non-irrigated hydroseed mix, QSD & QSP services, treatment of bypassed or pumped groundwater/storm water, and all other erosion and water pollution control items. This item shall include all costs associated with the handling of storm water during construction, including rain events and nuisance water.

4. Temporary Traffic Control

Payment for “**Temporary Traffic Control**” shall be paid for on a lump sum basis. Payment shall include, but not limited to, preparation of traffic control plans, cones, signs, electronic message boards, flashing arrow signs, flaggers, detours, delineators, barrels, k-rail, removal of striping, temporary lane lines, construction signing, barricades, construction pavement markings and all other work associated with temporary traffic control. The Contractor shall be required to maintain all traffic control items throughout the duration of the project.

5. Unclassified Excavation

Payment for “**Unclassified Excavation**” shall be measured and paid for per cubic yard (CY). Payment shall include full compensation for labor, materials, and equipment for the removal and stockpile of suitable material, recompaction, mixing, grading, disposal of unsuitable materials not included in the bid item Clearing and Grubbing, all cut and fill including import fill, removal and recompaction of unsuitable soil, salvaging clean excavated material and filling areas to the required grades and cross sections. Payment shall also include the removal and haul off of all the existing asphalt concrete grindings, concrete surfacing, curb, gutter and sidewalk, AC dike, and curb ramps on the project site.

6. 6" Curb and Gutter

Payment for “**6" Curb and Gutter**” shall be measured and paid for per linear foot (LF). Payment shall include full compensation for all labor, material, and equipment costs for the installation of concrete curb and gutter per the project plans and specifications, including but not limited to: material testing, subgrade preparation, setting forms, pouring concrete, removing forms, and finishing.

7. 6" AC Dike

Payment for “**6” AC Dike**” shall be measured and paid for per linear foot (LF). Payment shall include full compensation for all labor, material, and equipment costs for the installation of asphalt concrete dike per the project plans and specifications, including but not limited to: material testing, tack coat, preparation, setting forms, laying Asphalt concrete, shaping, removing forms, and finishing.

8. Asphalt Concrete

Payment for “**Asphalt Concrete**” shall be measured and paid for at the unit price per square foot (SF). Unit price bid shall include full compensation for furnishing all labor, materials, tools, equipment, cold milling, trimming cuts, subgrade preparation, tack coat, asphalt, compaction, and all related incidentals required to complete the work in place per the Project Plans and specifications.

9. Class II Aggregate Base

Payment for “**Class II Aggregate Base**” shall be measured and paid for on a square foot (SF) basis at the thickness shown on the project plans and specifications. Unit price bid shall include full compensation for furnishing all labor, materials, tools, equipment, hauling, excavation, removal and disposal of surplus materials, compaction, and all related and appurtenant work to complete the work in place.

10. 4” Wheel Stops

Payment for “**4” Wheel Stops**” shall be measured and paid for per each (EA). Unit price bid shall include full compensation for all labor, material, and equipment costs for the procurement and installation of 4” Wheel Stops per the project plans and specifications.

11. Curb Ramps

Payment for “**Curb Ramps**” shall be measured and paid for per each (EA). Unit price bid shall include full compensation for all labor, material, and equipment costs for the installation of concrete curb ramps per the project plans and specifications, including but not limited to: material testing, subgrade preparation, setting forms, pouring concrete, removing forms, finishing, and ADA truncated domes as required.

12. 4” PCC Sidewalk

Payment for “**4” PCC Sidewalk**” shall be measured and paid for on a square foot (SF) basis. Payment shall include all labor, materials, and equipment for the installation of sidewalk per the project plans and specifications, including but not limited to: form work, pre-molded expansion joint fillers and construction joints, subgrade preparation, pouring concrete, and finishing.

13. Parking Lot Striping

Payment for “**Parking Lot Striping**” shall be measured and paid for on a linear foot (LF) basis. Payment shall include full compensation for labor, materials, and equipment for all parking lot striping, hatching, legends and incidentals as shown on the project plans and specifications.

14. Street Signage and Striping

Payment for “**Street Signage and Striping**” shall be measured and paid for on a linear foot (LF) basis. Payment shall include full compensation for labor, materials, and equipment for all striping, hatching, legends, signage, and incidentals as shown on the project plans and specifications.

15. Post-and-Cable Safety Fence

Payment for “**Post-and-Cable Safety Fence**” shall be measured and paid for on a linear foot (LF) basis. Unit price bid shall include full compensation for all labor, material, and equipment costs for the procurement and installation of post-and-cable fencing per the project plans and specifications.

16. Decomposed Granite

Payment for “**Decomposed Granite**” shall be measured and paid for on a square foot (SF) basis. Unit price bid shall include full compensation for all labor, material, and equipment costs for the installation of decomposed granite per the project plans and specifications.

17. Remove and Relocate Existing Benches

Payment for “**Remove and Relocate Existing Benches**” shall be measured and paid for per each (EA). Unit price bid shall include full compensation for all labor, material, and equipment costs for removal, storage, and relocation of existing on-site benches to new locations per the project plans and specifications.

18. Remove and Relocate Existing Planter/Signage/Bike Racks

Payment for “**Remove and Relocate Existing Planter/Signage/Bike Racks**” shall be measured and paid for on a lump sum (LS) basis. Payment shall include full compensation for all labor, material, and equipment costs for removal, storage, and relocation of existing on-site features including planters, signage, and bike racks to new locations per the project plans and specifications.

7-4 PAYMENT FOR EXTRA WORK.

7-4.3 Markup.

7-4.3.1 Work by the Contractor.

DELETE in its entirety and replace with the following:

For Change Orders, whether additive or deductive, and work classified as Extra Work the allowance for overhead and profit shall include full compensation for superintendence, insurance premiums, taxes, field office expense, extended overhead, home office overhead, and any other items of expense e.g., Change Order estimating and preparation cost, claims preparation cost, schedule analysis, project management, and field engineering.

Extended overhead shall be any and all costs incurred either in the field or at the Contractor's office resulting from Extra Work excluding direct costs related to direct hourly labor, equipment, or materials necessary to complete the Extra Work.

- a) The allowance for overhead and profit shall not exceed the values in Table 7-4.3(A) **unless specified otherwise** in the Special Provisions.

Table 7-4.3(A)

Component	Overhead	Profit
Labor	10%	10%
Material	10%	5%
Equipment	10%	5%

- b) To the sum of the costs and markups provided for in this subsection, the actual increase in the Contractor's Bond premium caused by the Extra Work may be added as compensation for Bonds, up to a maximum of 2% of the cost of the Extra Work.
- c) Work paid under Allowance Bid items for permits, governmental fees, or direct payments specified in the Contract Documents will not be subject to markup **unless specified otherwise** in the Special Provisions.
- d) When all or any part of the Extra Work is performed by a Subcontractor, the allowance specified herein shall be applied to the labor, materials, and equipment costs of the Subcontractor, to which the Contractor may add 5% of the Subcontractor's total cost for the Extra Work.

Regardless of the number of hierarchical tiers of Subcontractors, the 5% which is the Contractor's allowance 3.5% (for overhead) and 1.5% (for profit) may be applied one time only to the performing Subcontractor's total cost. Markup is not allowed on Change Orders utilizing unit costs as provided by the Contractor in the Bid Schedule.

- e) The Contractor shall only be reimbursed, with 6% markup, for the warranty extensions beyond the time required by the Contract Documents if requested by the City.

7-4.3.2

Work by a Subcontractor. Delete in its entirety.

SECTION H TECHNICAL SPECIFICATIONS

Beacon's Beach Parking Lot Relocation

CP22A



CONSTRUCTION MATERIALS

SECTION 200- ROCK MATERIALS

200-2.2 CRUSHED AGGREGATE (add the following)

All concrete curb and gutter shall have 7 inches of Crushed Aggregate Base placed under the concrete. The class 2 Aggregate Base shall extend to the outside edge of the concrete.

Full compensation for providing and installing Crushed Aggregate Base that conforms to Section 200-2.2 of the Standard Specifications shall be paid for under the bid item for Class 2 Aggregate Base. Payment shall include full compensation for the cost of all labor, equipment, and materials. Cost for 7 inches of Crushed Aggregate Base to be placed under all Concrete Curb and Gutter shall be included in the bid item for Class 2 Aggregate Base. Bid items shall include all costs for labor, equipment and materials and no additional compensation will be made therefor.

SECTION 201 - CONCRETE, MORTAR, AND RELATED MATERIALS

201-1 PORTLAND CEMENT CONCRETE

201-1.1.1 General (add the following)

Contractor shall submit concrete mix design at least 15 working days prior to commencement of work. The same brand, type, and source of cement and aggregate shall be used for all Portland cement concrete.

MATERIALS

A. Formwork

Set, brace, and secure edge forms, bulkheads, and intermediate screed guides to required lines, grades, and elevations. Install forms to allow continuous progress of work and so forms can remain in place at least 24 hours after concrete placement.

Forms: use plywood in good condition; metal or smooth-paned boards free from large knots.

Clean forms after each use and coat with form-release agent to ensure separation from concrete without damage.

B. Form Release Agent

Form release agent shall effectively prevent absorption of moisture and prevent bond with the concrete. It shall be a commercially formulated form-release agent that will not bond with, stain, or adversely affect concrete surfaces and that will not impair subsequent treatments of concrete surfaces. Agent shall be non-staining and nontoxic after 30 days.

C. Stamped Detectable Warning Materials

Detectable Warning Stamp: Semirigid polyurethane mats with formed underside capable of imprinting detectable warning pattern on plastic concrete; perforated with a vent hole at each dome.

Size of Stamp: One piece, matching detectable warning area shown on Drawings, 36 by 48 inches

Liquid Release Agent: Manufacturer's standard, clear, evaporating formulation designed to facilitate release of stamp mats.

D. Aggregates

Aggregates shall comply with ASTM C33 and shall be free from asbestos and any substances that will react with the cement alkalis. Provide aggregates from a single source with documented service-record data of at least 10 years' satisfactory service in similar paving applications and service conditions using similar aggregates and cementitious materials.

E. Steel Reinforcement

Bar Supports: Bolsters, chairs, spacers, and other devices for spacing, supporting, and fastening reinforcing bars, welded-wire reinforcement, and dowels in place. Manufacture bar supports according to CRSI's "Manual of Standard Practice" from steel wire, plastic, or precast concrete of greater compressive strength than concrete specified, and as follows:

Equip wire bar supports with sand plates or horizontal runners where base material will not support chair legs.

CONCRETE MIX DESIGN

Conform to ASTM C94, except as modified by these specifications. Concrete shall be specified by class per Section 201-1.1.2, table 201-1.1.2 of the Standard Specifications with 4-inch slump. The concrete shall be 520-C-2500.

A. Concrete Tests

1. To facilitate concrete sampling and testing, the Contractor shall:
 - a. Furnish labor to assist the City's representative in obtaining and handling samples at the project site.
 - b. Advise the City's representative 48 hours in advance of concrete placing operations to allow for scheduling and completion of quality testing.
 - c. Provide and maintain facilities for safe storage and proper curing of concrete test specimens on the project site, as required by ASTM C31.

B. Curing Compound

1. Curing compound shall conform to ASTM C309, Type 1, Class B.
2. Curing compound shall be compatible with required finishes and coatings.

3. Cost for curing compound shall be included in the appropriate bid items, and no additional compensation will be made therefor.
- C. Mats, Paper, and Sheeting for Curing
 1. Absorptive Cover: AASHTO M 182, Class 3, burlap cloth made from jute or kenaf or cotton mats.
 2. Moisture-Retaining Cover: ASTM C 171, polyethylene film or white burlap-polyethylene sheet.
 3. Water: Potable.
 4. Evaporation Retarder: Waterborne, monomolecular, film forming, manufactured for application to fresh concrete.
 5. Cost for mats, paper, and sheeting for curing shall be included in the appropriate concrete bid items and no additional compensation will be made therefor.

SECTION 203 – BITUMINOUS MATERIALS

203-1.1 GENERAL (add the following)

The asphalt concrete design mix shall be submitted for approval a minimum of two weeks prior to start of construction.

203-1.3 Test Reports and Certification (Add the following)

The Contractor shall furnish asphalt in conformance with Caltrans "Certification Program for Suppliers of Asphalt." Caltrans maintains the program requirement, procedures, and a list of approved suppliers at: <http://www.dot.ca.gov/hq/esc/Translab/fpmcoc.htm>

The Contractor shall prevent the formation of carbonized particles caused by overheating Asphalt during manufacturing or construction.

203-6 Asphalt Concrete

203-6.1 GENERAL (Add the following)

Materials to be incorporated in the work shall be manufactured, handled, and used in a satisfactory manner.

203-6.3 Job Mix Formula (JMF) and Mix Designs (Add the following)

All asphalt on project shall be type III, Class C2, Performance Grade 64-10 (III-C2-PG-64-10).

203-6.6 Asphalt Curbs

Construct hot-mix asphalt curbs over compacted pavement surfaces. Apply a light tack coat unless pavement surface is still tacky and free from dust. Spread mix at a minimum temperature of 250 deg F (121 deg C).

Asphalt Mix: Same as pavement surface-course mix.

Place hot-mix asphalt to curb cross section indicated or, if not indicated, to local standard shapes, by machine or by hand in wood or metal forms. Tamp hand-placed materials and screed to smooth finish. Remove forms after hot-mix asphalt has cooled.

SECTION 214 - TRAFFIC STRIPING/PAVEMENT MARKING AND RAISED PAVEMENT MARKER REPLACEMENT

214-4.1 General (Add the following)

Materials (paint and thermoplastic), equipment, mixing (paint), surface preparation, application, and tolerances, shall conform to Sections 84-1 and 84-2 of the State of California, Department of Transportation's Standard Specifications (2023 edition) except as modified herein.

All details and dimensions for pavement markings shall conform to City approved stencils.

Contractor must obtain City approval from the City's Traffic Engineer on the striping layout prior to applying any permanent striping.

All traffic stripes and pavement markings shall be reflectorized. The Contractor shall apply two coats on all traffic striping.

The Contractor shall be responsible to mark and/or document the types and limits of existing striping, pavement markings and pavement markers in a manner adequate to ensure its replacement in original location, alignment, color size, and/or type. Control of alignment and layout shall be the responsibility of the Contractor and subject to approval by the Engineer. Raised markings for fire hydrants shall be replaced in kind at all locations.

Two coats of striping paint shall be applied for all street striping. The first coat shall be applied a minimum of seven days after the overlay project is complete. The second coat shall be applied seven days after the first coat is applied. The maximum thickness of the two coats combined shall not be greater than 18 MILS when completely dried.

Pavement marking shall commence a minimum of seven days after the overlay is complete. Any newly overlaid pavement must receive immediate temporary markings (i.e. – temporary tabs, etc.) as directed by the Engineer after any portion of the overlay work is completed. All temporary striping and/or markings shall be maintained by the Contractor until the permanent striping is done.

Payment for the installation, maintenance, and removal of temporary striping and markings including all labor, equipment, and materials shall be included in the Bid Item for striping and legends and no additional compensation will be allowed therefor.

Payment for the installation of all permanent striping, raised pavement markers, thermoplastic legends, thermoplastic crosswalks, and thermoplastic stop bars, shall be included in the bid item for Striping and Legends, and no additional compensation will be made thereto. Payment shall include all costs for labor, equipment, and materials.

Contractor shall be responsible for maintaining safe traffic operation through the work area.

214-6 Pavement Markers (Add the following)

Pavement markers shall conform to Section 81-3, *Pavement Markings*, of the Caltrans Standard Specifications 2023 edition, and these Special Provisions.

Pavement marker height shall be 0.70 inch minimum. "Low profile" type markers will not be acceptable.

PAINT

Traffic line paint shall be rapid dry paint and shall contain reflective material conforming to Section 84-1 and 84-2 of the Caltrans Standard Specifications, 2023 edition. Paint shall comply with all application of local air pollution control regulations.

Glass spheres for traffic paint shall conform to State Specifications 8010-004.

Samples of traffic striping and pavement marking materials shall be submitted to the Engineer at least two weeks prior to application.

All details and dimensions for traffic striping shall conform to the latest edition of the State of California, Department of Transportation's Traffic Design Manual and Maintenance Manual.

All details and dimensions for pavement markings shall conform to City approved stencils.

TRAFFIC CONTROL

Traffic control shall conform to both the California Manual of Traffic Controls for Construction and Maintenance Work Zone (2010 Edition) and the current edition of the California Manual of Uniform Traffic Control Devices (MUTCD).

USE OF SIGNS AND BARRICADES

Work areas shall be adequately signed to the satisfaction of the Engineer. All signs shall be reflectorized or satisfactorily illuminated and shall be approved for use by the Engineer. All barricades and delineators shall have flashing burning lights on them.

ACCESS RESTRICTIONS

Access to fire hydrants shall be maintained at all times.

If it is necessary to restrict access to roadside properties, the Contractor shall first obtain written authorization from the Engineer. Upon approval, Contractor shall notify affected property owners a minimum of 72 hours prior to the restriction. Access to all properties shall be restored after the work is completed or at the close of the working day, whichever is first.

The Contractor shall exercise care to prevent public traffic from tracking or smearing freshly painted areas. The Engineer shall have the option of requiring the Contractor to remove, by wet sandblast method, and repaint all tracked or smeared areas at Contractor's expense.

Full compensation for all work involved in the preparation of traffic control plans and the furnishing, installation and removal of electric sign boards and arrow boards, temporary barricades, construction signs, warning signs or any device for the temporary control of traffic or safety of the workers, including flagmen, shall be considered as included in the Bid Item for traffic control, and no additional compensation will be made therefor.

Payment for all striping, raised pavement markers, thermoplastic legends, and thermoplastic stop bars, shall be included in the bid item for Signing and Striping, and no additional compensation will be made thereto. Payment shall include all costs for labor, equipment, and materials.

The Contractor shall remove any temporary tabs remaining at the application of the second coat of paint.

PART 3 CONSTRUCTION METHODS

SECTION 300 - EARTHWORK

300-1 Clearing and Grubbing

300-1.1 General (Add the following)

Section 4216/4217 of the Government Code requires a Dig-Alert identification number be issued at least two (2) working days prior to a "Permit to Excavate" will be valid. For your Dig-Alert identification number, Contractor shall call all Underground Service Alert, services, and utilities within the project limit of work.

Utility Locator Service. Notify utility providers for are where project is located before site clearing:

1. Dig Alert – 811
2. Sewers – SCD/ESD (760) 633-2770
3. Water – Luecadia Water District (760) 753-0155
4. Gas & Electric – San Diego Gas & Electric (760) 438-6200
5. Telephone – SBC Bell (760) 489-3411
6. Cable Television – Cox Communications (760) 806-8909

Preparation

Protect and maintain benchmarks and survey control points from disturbance during construction.

Temporary Erosion and Sedimentation Control

Do not commence site clearing operations until temporary erosion- and sedimentation-control and plant-protection measures are in place.

Provide temporary erosion- and sedimentation-control measures to prevent soil erosion and discharge of soil-bearing water runoff or airborne dust to adjacent properties and walkways, according to erosion- and sedimentation-control Drawings and requirements of authorities having jurisdiction.

Verify that flows of water redirected from construction areas or generated by construction activity do not enter or cross protection zones.

Remove erosion and sedimentation controls and restore and stabilize areas disturbed during removal.

Maintain dust control at all times.

300-2 UNCLASSIFIED EXCAVATION

300-2.1 General (Add the following)

Asphalt Concrete and Concrete Excavation

Excavation equipment tracks and/or wheels shall not be located west of the predicted failure plane during operation and non-operation. If excavation west of the predicted failure plane cannot be executed by equipment located east of the predicted failure plane, hand operated equipment may be used west of the predicted failure plane.

Excavation and removal shall consist of the sawcutting, excavation, removal, and disposal of existing asphalt concrete pavement, concrete sidewalk, concrete curb and gutter, and underlying soil and base materials to the limits prescribed in the plans.

Prior to actual performance of the work, the Contractor shall, along with the City Engineer, field review the locations and limits of the work to be done.

Areas of existing asphalt concrete pavement, concrete sidewalk, and concrete curb and gutter to be removed shall first be sawcut along, and to the limits marked by, the City Engineer. The depth of sawcut below the finished asphalt concrete surface shall be two inches minimum.

All existing asphalt concrete pavement, concrete sidewalk, concrete curb and gutter, base material, and/or native material shall be removed within the limits of sawcut and to a depth as required for the thickness of pavement specified by the City Engineer. Excavation of said materials shall leave clean, straight edges and square corners free of loose material, water, or debris.

Excavated material shall be removed at the end of that day's operations. Storage or stockpiling of excavated material within the roadway will not be allowed overnight. No temporary storage or stockpiling of any excavated materials will be allowed in any planted or landscaped parkway or within any sidewalk or established walking path, private drive, or access way.

Material obtained from removal and excavation operations shall become the property of the Contractor and shall be disposed of off the site of the work.

The Contractor shall be responsible for obtaining a suitable disposal site for excavated material, and file with the Engineer the written consent of the owner of the property upon which he intends to dispose of such material.

Areas of pavement and concrete removal and excavation shall be properly maintained until permanent surfacing is placed.

After removal of excavated material to the required depth, the base material or soil subgrade shall be graded as it is necessary to obtain a smooth, even surface and compacted to at least 95 percent relative compaction.

Unclassified Excavation

Calculated earthwork quantities are as follows:

Cut: 247 Cubic Yards
Fill: 33 Cubic Yards
Export: 214 Cubic Yards

Unclassified Excavation: Excavate to subgrade elevations regardless of the character of surface and subsurface conditions encountered. Unclassified excavated materials may include rock, soil materials, and obstructions. No changes in the Contract Sum or the Contract Time will be authorized for rock excavation or removal of obstructions.

1. If excavated materials intended for fill and backfill include unsatisfactory soil materials and rock, replace with satisfactory soil materials.
2. Remove rock to lines and grades indicated to permit installation of permanent construction without exceeding the following dimensions:

Quantities of Unclassified Excavation used for payment, other than additional work ordered by or deleted by the Engineer, shall be the quantity indicated in the Proposal for this project and no increase or decrease in this amount will be allowed whether or not the actual amount required to complete the project was less or greater than the amount indicated in said Proposal. No additional compensation will be allowed for hauling excess materials to a disposal site.

300-4.2 Preparation of Placement Areas (Delete in its entirety and substitute the following)

Areas over which unclassified fill is to be placed shall first be cleared and grubbed in accordance with 300-1. The areas shall then be scarified to a minimum depth of 6 inches (150 mm), moisture-conditioned in accordance with 300-4.6, and compacted in accordance with 300-4.7 to a relative compaction of at least 90 percent.

When unclassified fill is shown to be placed over existing surface improvements which are to remain in place, the preparation shall be as specified in the Special Provisions.

SECTION 301 – SUBGRADE PREPARATION, TREATED MATERIALS, AND PLACEMENT OF BASE MATERIALS

301-1.1 General (Add the following)

All of the placement, spreading, compaction and rolling of subgrade beneath the parking lot area shall be performed east of the predicted failure plane.

The sidewalk, curb and gutter will be constructed both east and west of the predicted failure plane. The subgrade beneath the curb, gutter and sidewalk that is east of the predicted failure plane shall be placed, spread, and compacted according to the Greenbook specifications. The subgrade beneath the curb, gutter and sidewalk that is west of the predicted failure plane may be placed and spread with equipment located east of the predicted failure plane and compacted with hand operated equipment. If unable to place and spread with equipment located east of the predicted failure plane, then it shall be placed and spread with hand operated equipment.

301-1.3 Relative Compaction (Delete in its entirety and substitute with the following)

When untreated base or subbase is to be placed directly on subgrade material, the top 6 inches (304.8 mm) of subgrade material shall be compacted to a minimum density of 95% relative compaction. When curb, gutter, or sidewalks are to be placed on the subgrade material, the top 6 inches (152.4 mm) of such subgrade material shall be compacted to a relative compaction of 90%.

After compaction and trimming, the subgrade shall be firm, hard, and unyielding.

301-2.1 General (Add the following)

All of the placement, spreading, compaction and rolling of untreated base shall be performed east of the predicted failure plane.

SECTION 302 – ROADWAY SURFACING

302-4 Slurry Seal Surfacing

302-4.3 Emulsion-Aggregate Slurry (EAS)

302-4.3.1 General (add the following)

The emulsion-aggregate seal applied to the parking lot shall be Type I-EAS.

302-5 Asphalt Concrete Pavement

302-5.1 General (Add the following)

All of the placement, distribution, spreading, and rolling of asphalt concrete shall be performed east of the predicted failure plane.

Promptly correct surface irregularities in paving course behind paver. Use suitable hand tools to remove excess material forming high spots. Fill depressions with hot-mix asphalt to prevent segregation of mix; use suitable hand tools to smooth surface.

302-5.7 Joints (Add the following)

Construct joints to ensure a continuous bond between adjoining paving sections. Construct joints free of depressions, with same texture and smoothness as other sections of hot-mix asphalt course.

1. Clean contact surfaces and apply tack coat to joints.
2. Offset longitudinal joints, in successive courses, a minimum of 6 inches (150 mm).
3. Offset transverse joints, in successive courses, a minimum of 24 inches (600 mm).
4. Asphalt placement not expected to take more than 1 day. There should not be a need for joint to join asphalt placement that occurs on different days.
5. Compact joints as soon as hot-mix asphalt will bear roller weight without excessive displacement.
6. Compact asphalt at joints to a density within 2 percent of specified course density.

SECTION 314 – TRAFFIC STRIPING, CURB AND PAVEMENT MARKINGS, AND PAVEMENT MARKERS

314-4.3.5 Application (Add the following)

Marking-paint manufacturers caution that paint will bleed or tear surface of new asphalt unless asphalt is aged before painting. This aging period may vary from 30 to 90 days. If pavement marking must proceed immediately, consider revising text to a phased application of a thin first coat followed by a thicker second coat once asphalt has aged. Verify that two-coat application is recommended by marking-paint manufacturer. Confirm that pavement is allowed to age the paint manufacturers recommended minimum number of days before starting pavement marking.

Apply graphic symbols and lettering with paint-resistant, die-cut stencils, firmly secured to pavement. Mask an extended area beyond edges of each stencil to prevent paint application beyond stencil. Apply paint so that it cannot run beneath stencil.

Broadcast glass beads uniformly into wet markings per manufacturers recommendations. Ensure that glass beads are spread uniformly and properly embedded.

314-4.6 Protection from Damage (Add the following)

Clean spillage and soiling from adjacent construction using cleaning agents and procedures recommended by manufacturer of affected construction.

PART 4 EXISTING IMPROVEMENTS

SECTION 401 – REMOVAL

401-1 General (Add the following)

Protect and maintain benchmarks and survey control points from disturbance during construction per section 400 – Protection and Restoration.

Do not commence site clearing operations until temporary erosion- and sedimentation-control measures are in place.

Excavation and/or demolition equipment tracks and/or wheels shall not be located west of the predicted failure plane during operation and non-operation. If excavation west of the predicted failure plane cannot be executed by equipment located east of the predicted failure plane, hand operated equipment may be used west of the predicted failure plane.

Traffic: Minimize interference with adjoining roads, streets, walks, and other adjacent occupied or used facilities during site-clearing operations. Do not close or obstruct streets, walks, or other adjacent occupied or used facilities without permission from Owner and authorities having jurisdiction. Provide alternate routes around closed or obstructed trafficways if required by Owner or authorities having jurisdiction.

Section 4216/4217 of the Government Code requires a Dig-Alert identification number be issued at least two (2) working days prior to a "Permit to Excavate" will be valid. For your Dig-Alert identification number, Contractor shall call all Underground Service Alert, services, and utilities within the project limit of work.

Utility Locator Service. Notify utility providers for are where project is located before site clearing:

1. Dig Alert – 811
2. Sewers – SCD/ESD (760) 633-2770
3. Water – Luecadia Water District (760) 753-0155
4. Gas & Electric – San Diego Gas & Electric (760) 438-6200
5. Telephone – SBC Bell (760) 489-3411
6. Cable Television – Cox Communications (760) 806-8909

SECTION 402 – UTILITIES

402-1.1 General (Add the following)

Interrupting Existing Utilities: Do not interrupt utilities serving facilities occupied by Owner or others, unless permitted under the following conditions and then only after arranging to provide temporary utility services according to requirements indicated:

Notify Architect Owner not less than two days in advance of proposed utility interruptions.

Do not proceed with utility interruptions without Owner's written permission.

PART 6 TEMPORARY TRAFFIC CONTROL

SECTION 600 – ACCESS

600-1 General (Add the following)

Contractor's operations shall cause no unnecessary inconvenience to pedestrians, bicyclists, or traffic. All work shall be done between the hours of 7:00am-5:00pm. No lane closures will be permitted prior to 7:00 a.m. or after 5:00 p.m. The Contractor shall furnish and install all flagmen, sign boards, arrow boards, lights, signs, and barricades with steady flashing lights, and other safety devices and equipment required. The access rights of the public and disabled shall be considered at all times. Unless otherwise authorized, pedestrian, bicycle and vehicular traffic shall be permitted to pass through the Work, or an approved detour or alternative path of travel shall be provided.

Safe and adequate pedestrian, bicycle and vehicular access shall be provided and maintained to: City Hall, City Library, fire hydrants; commercial and industrial establishments; churches, schools, and parking lots; service stations and motels; hospitals; residences; streets and alleys; driveways; police and fire stations; and establishments of similar nature. Access to these facilities shall be continuous and unobstructed unless otherwise approved by the Engineer.

Safe and adequate pedestrian zones, bicycle zones and public transportation stops, as well as pedestrian crossings of the Work at intervals not exceeding 90 m (300 feet), shall be maintained unless otherwise approved by the Engineer.

Vehicular and pedestrian access to residential driveways shall be maintained to the property line except when necessary construction precludes such access for reasonable periods of time, as determined by the Engineer. 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.

The Contractor shall cooperate with the various parties involved in the delivery of mail, the collection of trash, and the delivery of equipment, materials and supplies to maintain existing schedules for these services.

Grading operations, roadway excavation and fill construction shall be conducted by the Contractor in a manner to provide a satisfactory surface for pedestrians, bicycles, and traffic. When rough grading is completed, the walkway and roadbed surface shall be brought to a smooth, even condition satisfactory for pedestrians, cyclists, and traffic.

Unless otherwise authorized, work shall be performed in only one-half the roadway at one time. One half shall be kept open and unobstructed until the opposite side is ready for use. If one-half a street only is being improved, the other half shall be conditioned and maintained as a detour.

600-3 Pedestrian Access (Add the following)

Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.) and all other federal and state disability access laws, codes, and regulations, including for temporary site conditions. The Work will be performed in compliance with all current rules, guidelines, and regulations, including, but not limited to, meeting all required vertical, horizontal, slope and all other dimensional requirements.

The Contractor shall be responsible to ensure and verify that that all temporary and finished sidewalk, ramp, entry access grades, and travel paths strictly meet ADA requirements, including using a 2-foot-long electronic smart level or other approved measuring device. General construction tolerances are unacceptable. If these requirements cannot be met with the existing grades or other physical or practical limitations, Contractor shall immediately notify City for direction before work takes place. Contractor shall be responsible for the costs of any corrective work due to Contractor's failure to meet these requirements.

(Add the following section)

600-4 Cyclist Access

Cyclist access shall be maintained unless otherwise approved by the Engineer.

(Add the following section)

600-5 Street Closures, Detours, Barricades, Notices, Protection of the Public, Construction Interferences

600-5.1 General

Work areas shall be adequately signed to the satisfaction of the City Traffic Engineer. All signs shall be reflectorized or satisfactorily illuminated and shall be approved for use by the City Traffic Engineer. The Contractor shall furnish flagmen, electronic message boards, arrow boards, lights, signs, and barricades with steady flashing lights, and other safety devices and equipment as required.

A minimum of one electronic message board at the Leucadia Roadside Park shall be required at all times during active work operations in these locations. Message boards shall be placed a minimum of one week before any work starts.

All electronic sign boards shall include the following information:

- A) That work will occur along the road (specify the limits)
- B) Start and completion dates of the Project.
- C) That the parking lot will be closed during work (hours are subject to approval by the City Traffic Engineer).

When entering or leaving roadways carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

The Contractor shall submit a daily work schedule and traffic and pedestrian routing plan showing the intended construction zone signing and operations for each phase of the work to be accomplished. The initial daily work/traffic plan shall cover a one-week period and shall be submitted within fifteen days after the Notice of Award has been issued to the Contractor. No work shall commence until this plan has been reviewed and approved by the City Engineer.

600-5.2 Street Closures

The Contractor shall comply with all applicable State, County and City requirements for closure of streets. The Contractor shall provide barriers, guards, lights, signs, temporary bridges, flag persons, and watchpersons. The Contractor shall be responsible for compliance with additional public safety requirements which may arise. The Contractor shall furnish and install signs and warning devices and promptly remove them upon completion of the Work. All proposed street closures must be approved by the City during the traffic control submittal process.

At least 72 hours in advance of closing, partially closing or reopening, any street, alley, or other public thoroughfare, the Contractor shall notify the Police, Fire, Traffic and Engineering Departments, and comply with their requirements. Deviations must first be approved in writing by the Engineer.

The Contractor shall secure approval, in advance, from authorities concerned for the use of any bridges proposed by it for public use. Temporary bridges shall be clearly posted as to load limit, with signs and posting conforming to current requirements covering "signs" as set forth in the Traffic Manual published by the California Department of Transportation.

This manual shall also apply to the street closures, barricades, detours, lights, and other safety devices required.

600-5.3 Notices

The Contractor shall be responsible for furnishing, posting, and removing temporary “No Parking” signs along all construction zones. No Parking signs shall be posted at least 72 hours in advance of work. Signs may be attached to existing poles, or whatever is existing in the public right-of-way except for trees. When necessary, the Contractor shall furnish posts. Format of temporary “No Parking” signs shall be reviewed and approved by the Engineer prior to posting. See Section D for sample of “No Parking” sign. Cost for the “No Parking” signs including all labor, equipment, and material shall be included in the various bid items of work and no additional compensation will be made therefor.

The Contractor shall place hung notices on doors of residents and deliver letters to businesses and multi-family homes that are affected by the Project a **minimum of two weeks in advance** of start of construction. The notice shall inform residents and businesses about all work to be done **including all locations requiring night work**. The City has the right to require daytime work on any these streets should the Engineer make the determination or due to unforeseen circumstances prior to the start of construction. Notices shall be reviewed and approved by the City prior to delivery. Affected residents and businesses are located on the following streets:

STREET	FROM	TO
Neptune Avenue	Europa Street	Diana Street
Europa Street	N Coast Hwy 101	Neptune Avenue
W Leucadia Blvd	N Coast Hwy 101	Neptune Avenue
Jasper Street	N Coast Hwy 101	Neptune Avenue
Diana Street	N Coast Hwy 101	Neptune Avenue

Letters and door hangers shall be sent a minimum of two weeks in advance of any work. The letters and door hangers shall contain the following:

- 1) Exact dates when work will be done.
- 2) Phone number of Contractor.
- 3) Phone number and name of City representative.
- 4) Note apologizing for inconvenience.
- 5) Type of work to be done.
- 6) Where the work is going to be done.

The Contractor shall provide a draft of the door hanger notices and all community correspondence to the City a minimum of 72 hours in advance of posting for City approval. Payment for the door notices shall be included in the various bid items of work in the Bid Schedule, and no further compensation will be made therefor.

SECTION 601 – TEMPORARY TRAFFIC CONTROL FOR CONSTRUCTION AND
MAINTENANCE WORK ZONES

601-1 General (Add the following)

Traffic control including traffic control plans shall be done in conformance to both the California Manual of Traffic Controls for Construction and Maintenance Work Zone (latest edition) and the current edition of the California Manual of Uniform Traffic Control Devices (MUTCD). The contractor shall develop and submit traffic control plans for each phase of work and get approval from the City on the traffic control plans prior to the start of any work. Traffic control plans must be stamped by a California Registered Professional Civil Engineer. It is the Contractor's responsibility for calling the City's Traffic Engineer prior to submitting their bid, to find out what will be required for traffic control and include any requirements in their bid. No additional compensation will be made. The Traffic Engineer can be reached at (760) 633-2705.

The Contractor shall obtain any necessary Traffic Control Permits in accordance with Section 7-5, "Permits," of these Project Specifications. The Contractor shall obtain any necessary Traffic Control Permits in accordance with Section 7-5, "Permits," of these Project Specifications.

The Contractor shall be prepared to discuss the traffic control plan and issues related to traffic control and access at the Pre-Construction Meeting. The Contractor shall submit traffic control plans for approval at least ten (10) Working Days prior to commencement of work. All phases of the traffic control plans shall be prepared by California registered Civil Engineer and performed in conformance to the requirements of the latest editions of the California Manual on Uniform Traffic Control Devices (CA MUTCD) for Streets and Highways, Caltrans Standard Specifications and Standard Plans, the Traffic Control Plans included in Appendix A of the latest edition of the San Diego Regional Standard Drawings (SDRSD), and the WATCH Manual (Work Area Traffic Control Handbook). No work shall commence until this plan and each construction phase of the Work that significantly affects existing traffic operations has been reviewed and approved by the Engineer.

It shall be the Contractor's responsibility to contact the City's Traffic Engineer at (760) 633-2705 to obtain the requirements for traffic control prior to the bid submittal. The Contractor shall include all costs for these requirements including traffic control and traffic control plans in the various bid items including costs for all labor, equipment, and materials and no additional compensation will be allowed therefor.

Personal vehicles of the Contractor's employees shall not be parked on the traveled way or shoulders at any time, including any section closed to public traffic, nor in any City parking spot for business or residential parking.

All barricades shall have steady flashing lights on them.

This Final Closeout Agreement and Release of All Claims form pertains to any City of Encinitas project. At the completion of construction of this project, this form may be tailored for this project so that the Agreement and Release will specifically reflect any unusual facts regarding this project and/or the resolution of any outstanding disputes.

FINAL CLOSEOUT AGREEMENT AND RELEASE OF ALL CLAIMS

THIS FINAL CLOSEOUT AGREEMENT AND RELEASE OF ALL CLAIMS is made as of the ____ day of ____ 2024, by and between the City of Encinitas hereinafter referred to as "Agency"; and _____, hereinafter referred to as "Contractor".

RECITALS:

1. Contractor and Agency entered into a Contract on or about ____ day of ____ 2024 pursuant to which Contractor was to construct the BEACON'S BEACH PARKING LOT (CP22A), (hereinafter referred to as "Project No. CP22A").
2. _____ change orders to Project were issued by Agency to Contractor.
3. The total amount to be paid by Agency to Contractor pursuant to the Contract and the ____ change orders is \$_____.
4. Contractor and Agency desire to enter into this "Final Closeout Agreement and Release of All Claims" (hereinafter referred to as the "Agreement and Release") to provide for the completion of the Contract, the payment of all unpaid funds and the resolution of any and all outstanding claims.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. The Contractor, for and in consideration of the payment of \$_____ and the release by Agency of claims against Contractor, does hereby for itself and for each of its owners, partners, successors and assigns, release, acquit and forever discharge the Agency, and each of its officers, employees, agents, servants, consultants, successors and assigns, from any and all claims, demands, debts, obligations, liabilities, actions, damages, losses, costs, and expenses including attorney's fees and other litigation costs, known or unknown, suspected or unsuspected, which have been or might be asserted against Agency relative to or arising out of the following:
 - a. The performance of the terms and conditions of Project No. CP22A to construct the BEACON'S BEACH PARKING LOT.
 - b. Change Order Nos. 1 through ____, inclusive, to the Project No. CP22A, as approved by Agency and Contractor;

- c. The claims for extension of time to complete the work required by Project No. CP22A;
- d. Claims, known or unknown, of subcontractors of Contractor relating to the Project No. CP22A and Change Order Nos. 1 through_____, inclusive.

Excepted from this Agreement and Release is the payment by Agency of the retained cash in the amount of \$_____ and the release of bonds to guarantee labor and materials payment and faithful performance.

2. The Agency, for and in consideration of the Contractor's completion of work required by Project No. CP22A and Contractor's release of claims against the Agency, does hereby for itself and for each of its assigns and successors, release, acquit and forever discharge Contractor, and each of its officers, employees, agents, servants, consultants, successors and assigns, from any and all claims, demands, debts, obligations, liabilities, actions, damages, losses, costs, and expenses including attorney's fees and other litigation costs, known or unknown, suspected or unsuspected, which have been or might be asserted against Contractor relative to or arising out of the following:

- a. Project No. CP22A;
- b. Change Order Nos. 1 through ____, inclusive, to the Project No. CP22A, as approved by Agency and Contractor; and

Excepted from this Agreement and Release is the completion by Contractor of all work required by Project No. CP22A and the warranties required by the Contract as specified in paragraph 13 herein.

3. Nothing contained in this Agreement and Release shall release, waive, discharge or alter the rights, privileges and powers of the Agency or the duties, liabilities and obligations of the Contractor and its surety with respect to the work required by Project No. CP22A.

4. All work required by Project No. CP22A shall be completed to acceptable standards and tolerances as is required by Project No. CP22A.

5. Upon execution of this Agreement and Release, the Agency agrees to immediately file and record a Notice of Completion with the County Recorder's Office to begin the statutory lien and stop notice period. The Agency agrees that the execution of this Agreement and Release commences the running time of any warranty or guarantee periods specified in the Contract.

6. The Agency and Contractor agree that the Contractor is not liable for any damages, including liquidated damages, for delay or for failure to complete the work specified in Project No. CP22A within the working days and time extensions allowed under Project No. CP22A.

7. The presently retained amount of \$_____ is five percent (5%) of the total adjusted contract price of \$_____ for Project No. CP22A. Said retention monies shall be released to the Contractor pursuant to State lien and stop notice law at the expiration of the lien/stop notice period of thirty-five (35) calendar days after recordation of the Notice of Completion by the County Recorder's Office.

8. Contractor and Agency agree that the total adjusted contract price and time of performance for Project No. CP22A is as follows:

ORIGINAL CONTRACT PRICE \$_____

TOTAL CHANGE ORDER NOS. 1 THROUGH ____ \$_____

FINAL ADJUSTED CONTRACT PRICE \$_____

The final completion date of the work required by Contract No. _____ is ____ day of ____ 2024.

9. It is understood and agreed by the parties hereto that the facts with respect to which the foregoing release is given may hereafter turn out to be other than or different from the facts now known to be or believed by said parties to be true, and the parties hereto expressly assume the risk of the facts turning out to be different than they now so appear, and agree that the foregoing release shall be, in all respects, effective and not subject to termination or rescission by and such difference in facts.

10. The parties hereby expressly waive any and all rights the parties have or may have under California Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor."

11. It is understood and agreed by the parties that this settlement is a compromise of doubtful and disputed claims, and that the releases made by the Contractor and Agency herein are not to be construed as an admission or admissions of liability on the part of either party and that the parties deny liability thereof and intend merely to avoid litigation and to buy their peace. The parties agree that they will forever refrain and forebear from commencing, instituting or

prosecuting any lawsuit, action or other proceeding against the other party based on, arising out of, or in any way connected with the claims released by this Agreement and Release.

12. The Contractor hereby releases and agrees to indemnify the Agency for all claims of its subcontractors and suppliers, including those for delay and impact costs resulting from the delays in the completion of the project.

13. The terms of this Agreement and Release do not excuse the Contractor from the provisions of Project No. CP22A, which provide for certain warranties and guarantees of the work required to be performed pursuant to Project No. CP22A. Contractor shall repair and replace any and all improvements that are damaged or fail and shall maintain the original Faithful Performance Bond in full force and effect for the entire warranty period.

14. The Contractor represents and warrants to the Agency that the Contractor has not assigned or transferred or purported to assign or transfer to any person, firm, corporation, association or entity any of the rights, claims, demands, debts, obligations, liabilities, actions, damages, losses, costs, expenses and warranties that are the subject of this Agreement and the Contractor agrees to indemnify and hold harmless the Agency against, without limitation, any and all rights, claims, demands, debts, obligations, liabilities, actions, damages, losses, costs, expenses, warranties and other claims, including attorneys' fees, arising out of or connected with any such assignment or transfer or purported assignment or transfer.

15. The parties acknowledge that they have been represented by counsel of their own choice in connection with the preparation and execution of this Agreement and Release, and that they understand and voluntarily consent and agree to each and every provision contained herein.

16. The parties declare and represent that no promise, inducement or agreement, not herein expressed, has been made to the parties and that this Agreement and Release contains the entire agreement among the parties hereto. Any modification or amendment to this Agreement and Release will be effective only if it is in writing and signed by all parties to this Agreement and Release.

17. The persons executing this Agreement and Release represent and warrant that the execution and performance of the terms of this Agreement and Release have been duly authorized by all requisite corporate, partnership, individual, or other entity requirements and that said persons have the right, power, legal capacity and authority to execution and enter into this Agreement and Release.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

"AGENCY"

CITY OF ENCINITAS

By: _____

Print Name: _____

Title: _____

ATTEST:

Kathy Hollywood
City Clerk

**APPROVED AS TO FORM BY THE
CITY ATTORNEY FOR THE
CITY OF ENCINITAS,
CALIFORNIA**

Tarquin Preziosi
City Attorney

"CONTRACTOR"

a corporation

By: _____

Print Name:_____

Title: _____

By: _____

Print Name:_____

Title: _____

[Signatures of corporate officials must be notarized.]

APPENDIX A - Geotechnical Report



AECOM
401 West A Street
Suite 1200
San Diego, CA 92101
www.aecom.com

619-610-7600 tel
619-610-7601 fax

July 5, 2018

Christopher Magdosku, P.E.
City Engineer
City of Encinitas
505 South Vulcan Avenue
Encinitas, California 92024

Subject: **COASTAL BLUFF AND LANDSLIDE STABILITY
BEACON'S BEACH ACCESS RECONSTRUCTION PROJECT
ENCINITAS, CALIFORNIA
AECOM Project No. 60539890**

Dear Mr. Magdosku:

As requested, this report provides AECOM Technical Services, Inc.'s (AECOM's) summary assessment of the existing landslide at Beacon's Beach. Recognizing the hazard posed by the existing landslide conditions, we understand the City of Encinitas (City) desires to go forward with the proposed beach access reconstruction project as soon as possible. Therefore the City is considering an emergency CEQA exemption per *CEQA 15269 (c)*. According to the City, a primary issue for the CEQA emergency exemption is whether the landslide presents a "*clear and imminent danger demanding immediate action.*"

Our supplemental geotechnical report (dated May 30, 2018) provides additional information for the current site conditions with updated geologic assessments and geotechnical evaluations of the coastal bluff and landslide. Based on our updated stability analyses, the landslide and upper bluff are only marginally stable, i.e., the site factors of safety are low; this condition has been apparent for some time as previously reported (URS, 2003). However, the current site conditions have become increasingly more precarious with further decreased geologic stability as a result of several decades of erosion and landslide movements. It should be recognized that natural, ongoing coastal erosion and the seismic setting of the site present risks that could trigger instability in the short term. Therefore, in our opinion, the CEQA exemption conditions are valid and appropriate, as summarized below.

1) The collapse of the bluff could cause damage to life, health, or property.

A potentially deep landslide as a result of renewed movement of the existing landslide, or slumping of the upper bluff could encroach into the westerly portion of the parking lot. The top section of the trail presents a safety hazard due to slumping that could occur in the oversteepened upper bluff. Landslide movements or slumping of the upper bluff could cause damage to vehicles or harm to people occupying the western edge of the parking lot and cause bluff materials to topple onto people using the access trail.

2) The existing conditions on the project site involve a clear and imminent danger that demands immediate action to prevent or mitigate the loss of, or damage to life, health, property, or essential public services.

APPENDIX A - Geotechnical Report



Coastal Bluff and Landslide Stability

July 5, 2018

Page 2

Two events are potentially hazardous: namely: 1) minor earthquake shaking and 2) continued upper bluff erosion. These events present the risk of renewed landslide movement and instability of the upper bluff that could occur in the short term, as described below.

Renewed Landslide Movement

Based on engineering analyses and monitoring of the landslide over the years, earthquake shaking is believed to be a likely landslide failure trigger. Slope stability analyses were performed on the same cross sections provided previously (URS, 2003) using updated topography; locations of the sections are shown on Figure 1¹. Factors of safety were analyzed for potential deep landsliding and for upper bluff instability.

The analyses indicate the upper bluff is only marginally stable (factor of safety at or less than 1.1) for “static” (without seismic shaking) conditions with potential failures extending to the top of the bluff². The potential deep landslide (i.e., landslide movement involving a deeper portion of the bluff beyond the active landslide) is also marginally stable, with factors of safety ranging between 1.04 (at Section D-D’) and 1.25 (Section C-C’, where the existing landslide is deeper). Table 1 summarizes the stability analyses.

Table 1. Summary of Stability Analyses

Cross-Section	Analysis Conditions	Factor of Safety, F.S.	
		Static	Pseudo-static $K_h^a=0.18g$
D-D’	Existing conditions, upper bluff stability	1.05	0.77
D-D’	Existing conditions with a B.P.S. failure	1.04	0.74
C-C’	Existing conditions, upper bluff stability	1.10	0.80
C-C’	Existing conditions with a B.P.S. failure	1.25	0.90
B-B’	Existing conditions, upper bluff stability	1.10	0.81
B-B’	Existing conditions with a B.P.S. failure	1.10	0.79
A-A’	Existing conditions, upper bluff stability	0.99	Not analyzed
A-A’	Existing conditions with a B.P.S. failure	1.24	0.99
Notes:			
a. A seismic coefficient of $K_h = 0.18g$ (1/2 of the design earthquake peak ground acceleration) was selected for pseudo-static analyses according to procedures outlined by the U.S. Department of Transportation Federal Highway Administration (FHWA, 2011) using the maximum probable earthquake.			
b. “B.P.S.” refers to “bedding plane shear” the same failure plane as at the Beacon’s Landslide and landslides just south of Beacon’s. (URS, 2003).			

¹ Graphic depictions of the slope stability models, including subsurface geology, groundwater and material properties are shown on Figures A-1 through A-15 in Attachment A. The background for development of the stability sections is provided in AECOM’s 2018 updated geotechnical report.

² A factor of safety greater than one generally implies a stable slope, failure of which should not occur assuming the slope is undisturbed. A factor of safety of 1.5 for static conditions is commonly used in practice.



Coastal Bluff and Landslide Stability

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Pseudo-static stability analyses (i.e., analyses considering seismic shaking) were performed to evaluate the effects of potential seismic shaking. The previous seismic hazard assessment (URS, 2003) indicated the expected level of peak ground acceleration associated with about a 10 percent probability of being exceeded in a 50-year period is estimated to be $0.36g^3$. As shown on Table 1, using this approach, all of the factors of safety for the maximum probable earthquake are well below 1.0.

Seismic shaking at relatively low levels (i.e., lower than the maximum probable earthquake) could also create instability. Additional pseudo-static stability analyses were also performed to estimate the minimum “threshold” level of seismic shaking that would trigger instability. Those analyses indicate that relatively low seismic shaking as low as $0.24g$ or less would produce a factor of safety of 1.0 (indicating incipient failure). Seismic shaking at relatively low levels could originate from moderate earthquakes on nearby faults, or a more distant large earthquake. Moderate earthquakes occur more frequently than large earthquakes.

The system of active faults comprising the continental border land offshore from Beacon’s Beach is an active tectonic setting capable of moderate to large earthquakes. The 1986 “Oceanside” earthquake (M5.5) was felt strongly along the North County coastline, but the earthquake epicenter was far enough offshore to not cause significant damage along the coast. Given the site seismic setting, earthquake shaking could occur at any time. Relatively low seismic shaking levels could cause the landslide to be reactivated, or the upper bluff to fail

Upper Bluff Instability

The upper bluff at Beacon’s Beach is a landslide headscarp that will erode and flatten with time and could slump even without renewed movement of the deeper landslide. Due to the headscarp’s very steep inclination, upper bluff instability poses a hazard to persons using the existing beach access trail. Upper bluff instability could also damage the parking lot, vehicles in the lot, and harm people in the lot.

To help evaluate the risk of instability due to erosion, site topographic data bases were compiled from surveys in 2002 and repeated in 2017. Figure 2 is a comparison of the 2002 and 2017 topography for the site with the data sets compiled as overlays. The topographic analysis indicates negative changes in ground elevations (i.e., the ground surface has lowered; representing erosion), shown as varying shades of red. Areas of with positive elevation change (the ground surface has gone up) have received subaerial eroded sediment derived from the headscarp (shown in blue). Areas with only small topographic changes, estimated at less than 0.5 feet are shown in green. Labels are shown on the figure for increased clarity.

The topographic analysis indicates, over the past 15 years the upper bluff slope, i.e., the landslide headscarp, has eroded landward between 4 and 5 feet above and below the beach access trail, and more than 10 feet below the north portion of the parking lot⁴. The subaerial (non-marine) erosion rate of the terrace deposits (which underlie and form the oversteepened head scarp slope) ranges

³ A 10 percent probability of being exceeded in a 50-year period is a typical seismic design consideration in building codes, in this case the seismic shaking level is also considered the “maximum probable earthquake”.

⁴ The erosion indicated for the past 15 years is a minimum amount inasmuch as detailed site topography is not available for the time frame prior to 2002 (the landslide occurred in 1982/83).



Coastal Bluff and Landslide Stability

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between 0.3 feet per year (about 4-inches per year) and more than 1-foot per year near the upper northerly switch back of the beach access trail. The landslide materials have accumulated a several foot thickness of loose eroded/sloughed sandy material derived from the landslide head scarp.

Some amount of elevation change is due to regrading to maintain the trail. According to the City, minor sloughing of the slope just below the top switchback has temporarily closed the trail and required the path to be regraded (notched) several feet landward. The uppermost portion of the trail (just below the highest switch back) has been built up several feet with fill soil to create a relatively uniform grade (indicated by blue contours, Figure 2). In effect, the upper trail is maintained with a thin fill slope placed along the edge of the naturally eroded, partially man-made cut made along the over steepened landslide head scarp (see photo at right).

It will be difficult to keep the trail open at the top section with continuing natural erosion and slope sloughing (URS letter to CCC dated February 16, 2016). Sections of the trail are also becoming increasingly unstable due to the increased accumulation of loose, sloughed material upslope of the trail. Tension cracks have been recently observed within these materials after rain (AECOM, 2017).



The average erosion rate measured at the site over the past 15 years is likely to continue in the short term. Above average weather and/or wave conditions could easily accelerate the average erosion rate. The upper bluff slope can only accommodate minor additional erosion induced steepening until either: 1) the currently over steepened landslide headscarp (below the trail) becomes vertical and collapses, 2) slumping occurs along the crest of the headscarp (above the trail), or 3) the terrace deposits supporting the trail erode and the trail becomes impassable. In each case, the top section of the trail currently presents a safety hazard where it traverses the oversteepened landslide headscarp.

The current landslide conditions and over steepened upper bluff present a clear and imminent danger that demands immediate action to prevent loss of, or damage to life, health, property, or essential public services, i.e., public beach access.



Coastal Bluff and Landslide Stability
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3) The project would mitigate an emergency situation that has a high probability of occurring in the short-term.

The existing Beacon's Landslide was an emergency situation creating an unstable geologic landform that was never mitigated for public beach access. The current site conditions at Beacon's have become increasingly more precarious with further decreased geologic stability as a result of erosion and landslide movements over the past 35 years. The marginally stable site conditions have worsened from the site instability initiated by the unexpected landslide movement in the early 1980's. Ongoing coastal bluff erosion and instability at Beacon's Beach, like similar coastal settings tend to be episodic and can occur in response to waves, rainfall, and/or progressive weathering with steepening of the slope. These naturally recurring conditions are almost certain to happen in the short term. Based on over 15 years of site monitoring, continued average erosion that will further degrade the upper bluff has a high probability of occurring in the short term.

Landslide movements and bluff instability can occur in the short term and are difficult to monitor and predict in the coastal setting. The proposed beach access reconstruction project will increase the parking lot-bluff setback distance, avoid the over steepened landslide headscarp and will stabilize a small portion of the existing landslide. Therefore the project will mitigate an emergency situation that has a high probability of occurring in the short-term.

We appreciate providing this assessment of the existing landslide at Beacon's Beach.

Sincerely,

AECOM Technical Services, Inc.

David L. Schug, C.E.G. 1212
Senior Principal Engineering Geologist

Steven M. Fitzwilliam, G.E. 2501
Principal Geotechnical Engineer

Attachments

Figure 1 Site Plan and Geologic Map
Figure 2 Erosion Assessment (2002-2017)
Attachment A- Stability Sections

APPENDIX A - Geotechnical Report



Coastal Bluff and Landslide Stability

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Page 6

References

AECOM, 2017 Update Geologic Reconnaissance, Proposed Beacon's Beach Access, Encinitas, California, prepared for City of Encinitas, AECOM Project No. 60539890.

AECOM 2018, Supplemental Geotechnical Report, Beacon's Beach Access Reconstruction Project, Encinitas, CA, prepared for City of Encinitas, AECOM Project No. 60539890, dated May 30, 2018.

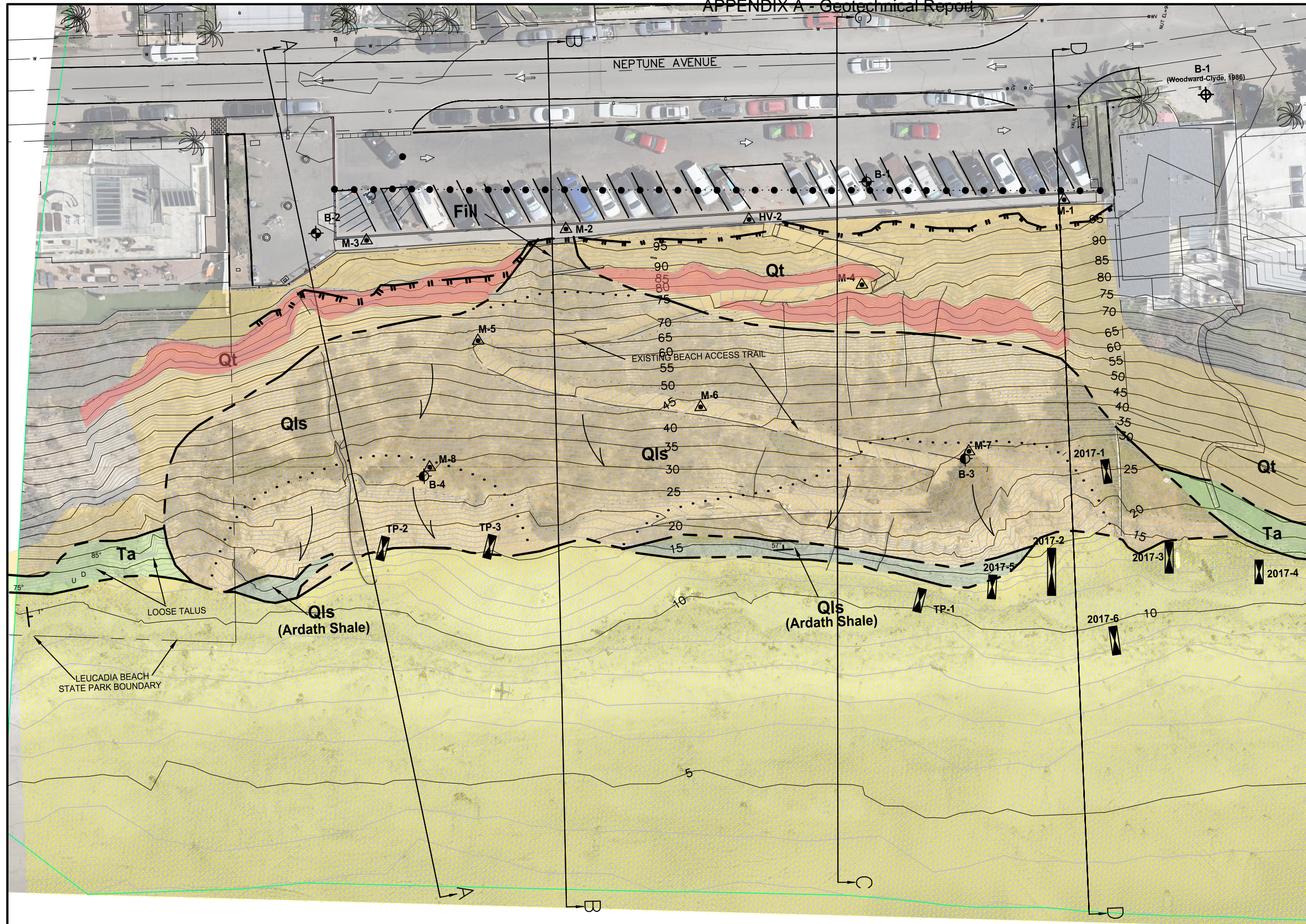
Schug, D.L., 2012, "The Beacon's Beach Landslide" in Waiting for Tsunami: Coastal Hazards of Northern San Diego County, California. Editor: C. Gomes, ed. San Diego Association of Geologists, September.

URS, 2003 Geotechnical Investigation, Beacon's Beach Access, Encinitas, CA, prepared for Schmidt Design Group, Inc., Project No. 27644559.00001.

URS 2014. Update Geotechnical Feasibility Study Beacon's Beach Access, Encinitas, CA. Report prepared for City of Encinitas.

URS 2016. Additional Geotechnical Considerations: Responses to California Coastal Commission, Proposed Beacon's Beach Access, Encinitas, California. Letter prepared for Lisa Rudloff, City of Encinitas dated February 16, 2016.

Woodward-Clyde, 1990 Geotechnical Feasibility Study, Beacon's Beach Access, Leucadia State Beach, prepared for City of Encinitas, Community Services Department, Project No. 9051220D-GE01



LEGEND

- INDICATES APPROXIMATE LOCATION OF TEST BORING (URS, 2003)
- INDICATES APPROXIMATE LOCATION OF TEST BORING WITH INCLINOMETER AND PIEZOMETER (URS, 2003)
- INDICATES APPROXIMATE LOCATION OF MONITORING WELL (URS, 2003)
- INDICATES APPROXIMATE LOCATION OF SLOPE MONITORING POINT (URS, 2003)
- INDICATES APPROXIMATE LOCATION OF TEST PIT
- INDICATES APPROXIMATE LOCATION OF PREVIOUS TEST BORING (WCC, 1986)
- INDICATES APPROXIMATE LOCATION OF GEOLOGIC CROSS SECTION (URS, 2003)
- INDICATES BEDDING STRIKE AND DIP
- INDICATES APPROXIMATE LOCATION OF BLUFF EDGE
- INDICATES GEOLOGIC CONTACT
- APPROXIMATE BOUNDARY OF LANDSLIDE LOBE
- APPROXIMATE LIMITS, BEACH SAND
- APPROXIMATE LIMITS, ACTIVE LANDSLIDE
- INDICATES QUATERNARY TERRACE DEPOSITS
- INDICATES TERTIARY ARDATH SHALE
- OVERSTEEPENED NEAR VERTICAL HEADSCARP
- BLUFF TOP SETBACK

TOPOGRAPHIC MAP SOURCE: Right-Of-Way Engineering, 2017.

SITE PLAN AND GEOLOGIC MAP BEACON'S BEACH ACCESS RECONSTRUCTION PROJECT ENCINITAS, CALIFORNIA

AECOM

20 0 20 40
SCALE: 1" = 40'

CHECKED BY: DLS

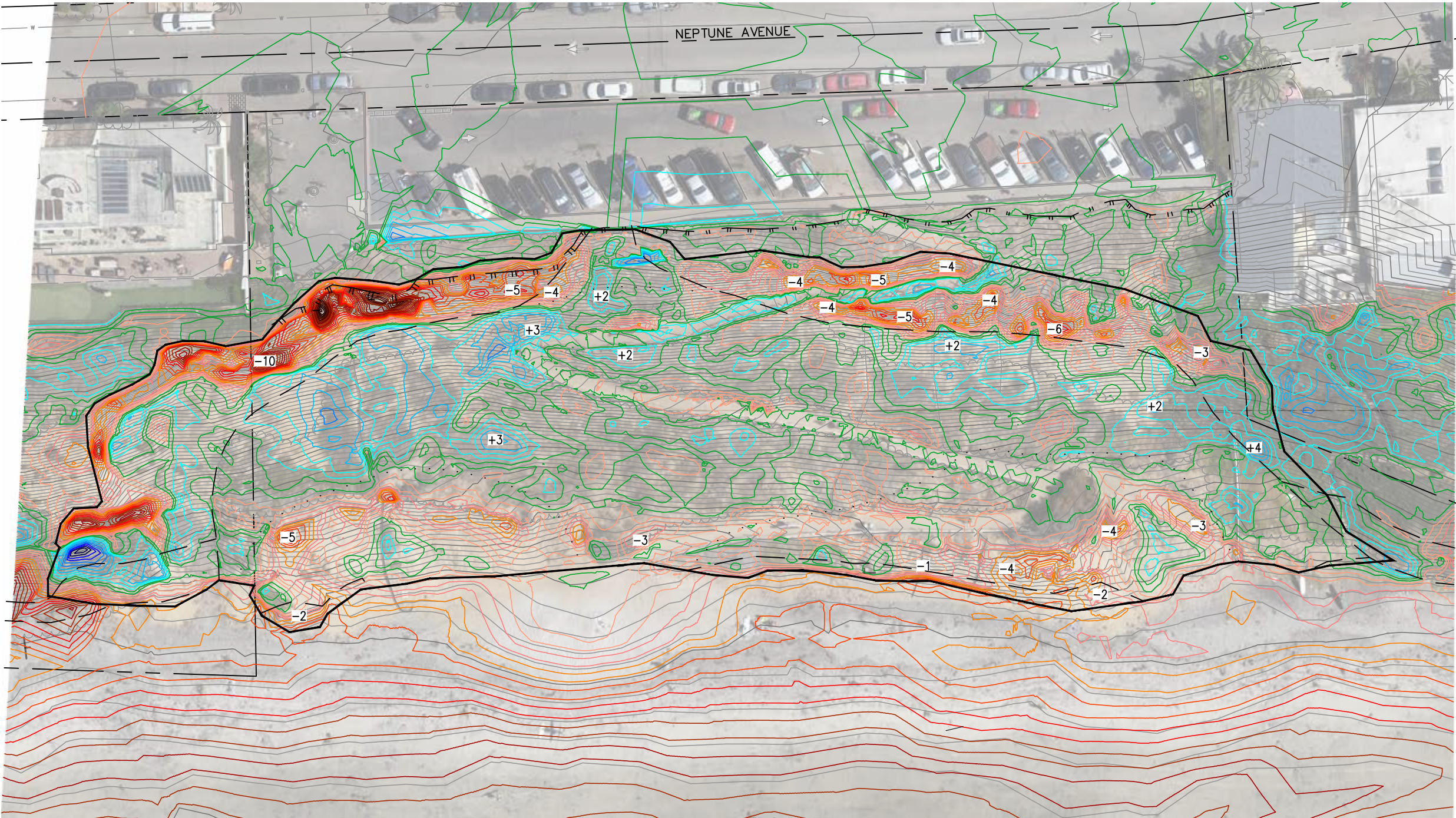
DATE: 3-21-2018

FIG. NO:

PM: DLS

PROJ. NO: 60539890

1



Contours Table (feet)			
Number	Minimum Elevation	Maximum Elevation	Color
1	-14.231	-12.500	
2	-12.500	-11.500	
3	-11.500	-10.500	
4	-10.500	-9.500	
5	-9.500	-8.500	
6	-8.500	-7.500	
7	-7.500	-6.500	
8	-6.500	-5.500	
9	-5.500	-4.500	
10	-4.500	-3.500	
11	-3.500	-2.500	
12	-2.500	-1.500	
13	-1.500	-0.500	
14	-0.500	0.500	
15	0.500	1.500	
16	1.500	2.500	
17	2.500	3.500	
18	3.500	4.500	
19	4.500	5.500	
20	5.500	6.113	

TOPOGRAPHIC MAP SOURCE: Right-Of-Way Engineering, 2017.

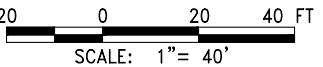
LEGEND

- EROSION BOUNDARY
- LANDSLIDE LIMITS
- BLUFF EDGE (2002)



AECOM

EROSION ASSESSMENT (2002-2017)
BEACON'S BEACH ACCESS RECONSTRUCTION PROJECT
ENCINITAS, CALIFORNIA



CHECKED BY: DS
PM: DL

DATE: 05-15-2018
PROJ. NO: 60539890

FIG. NO:
2

APPENDIX A - Geotechnical Report



Coastal Bluff and Landslide Stability

June 20, 2018

Page 7

Attachment A- Stability Sections

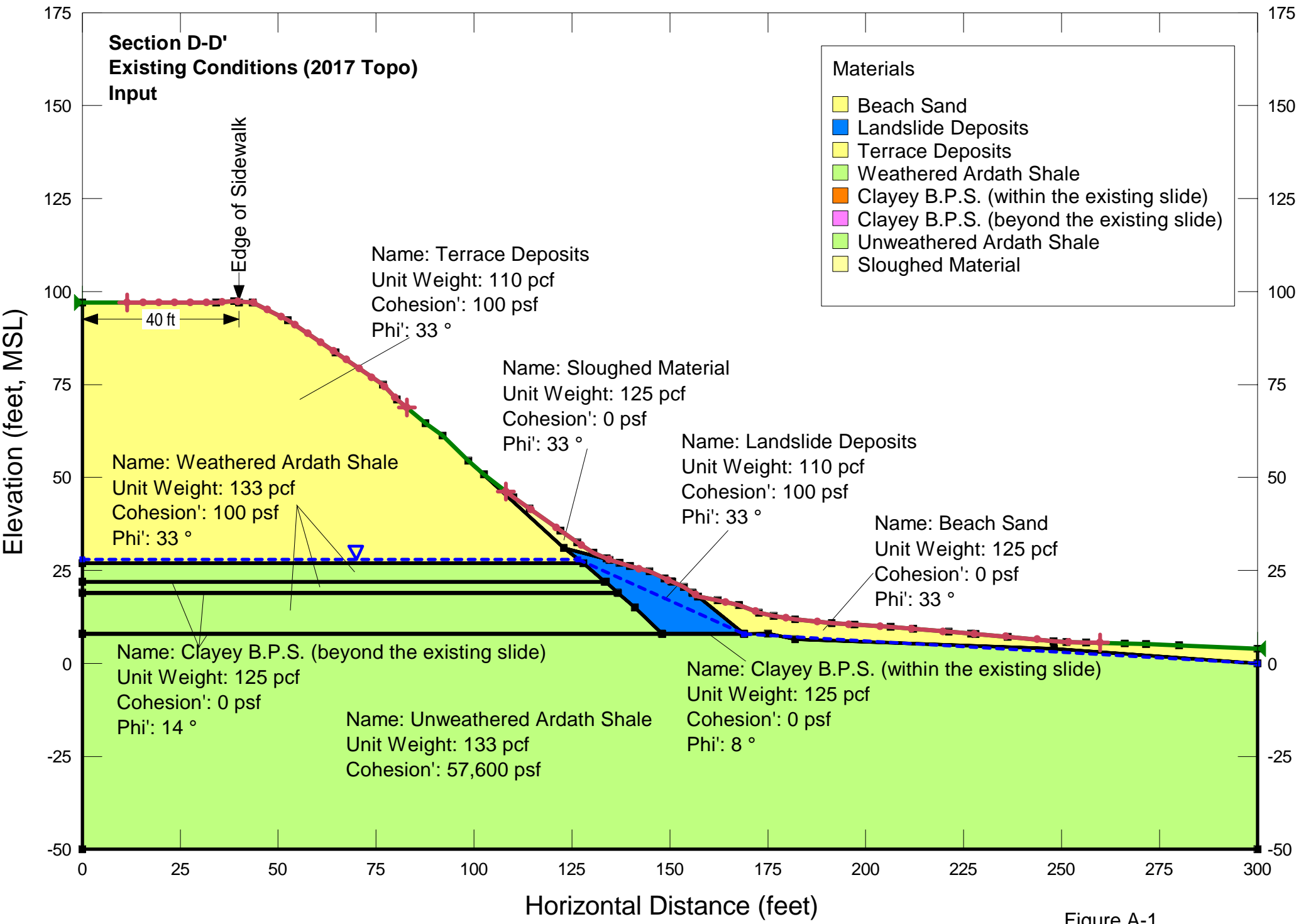


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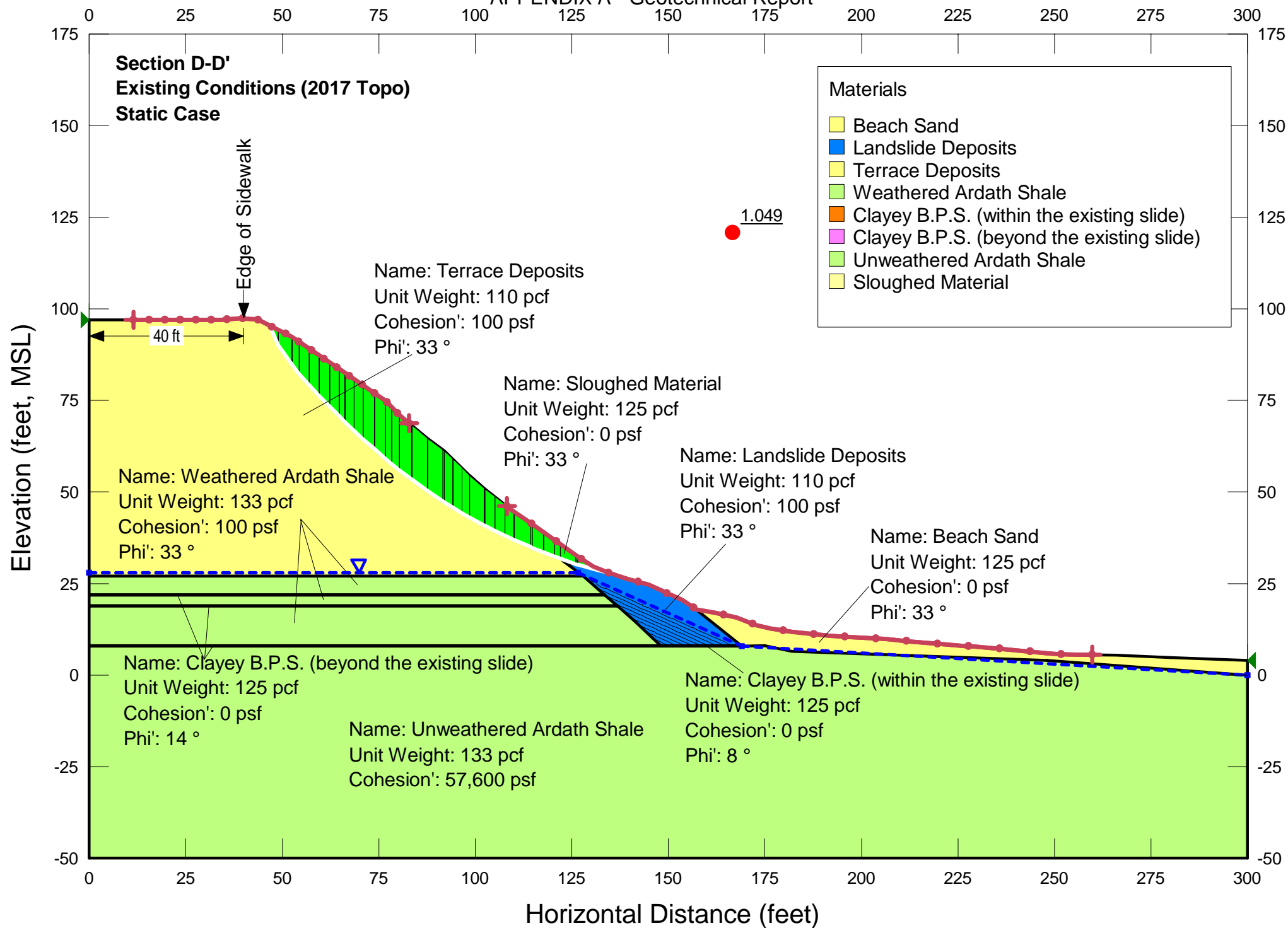


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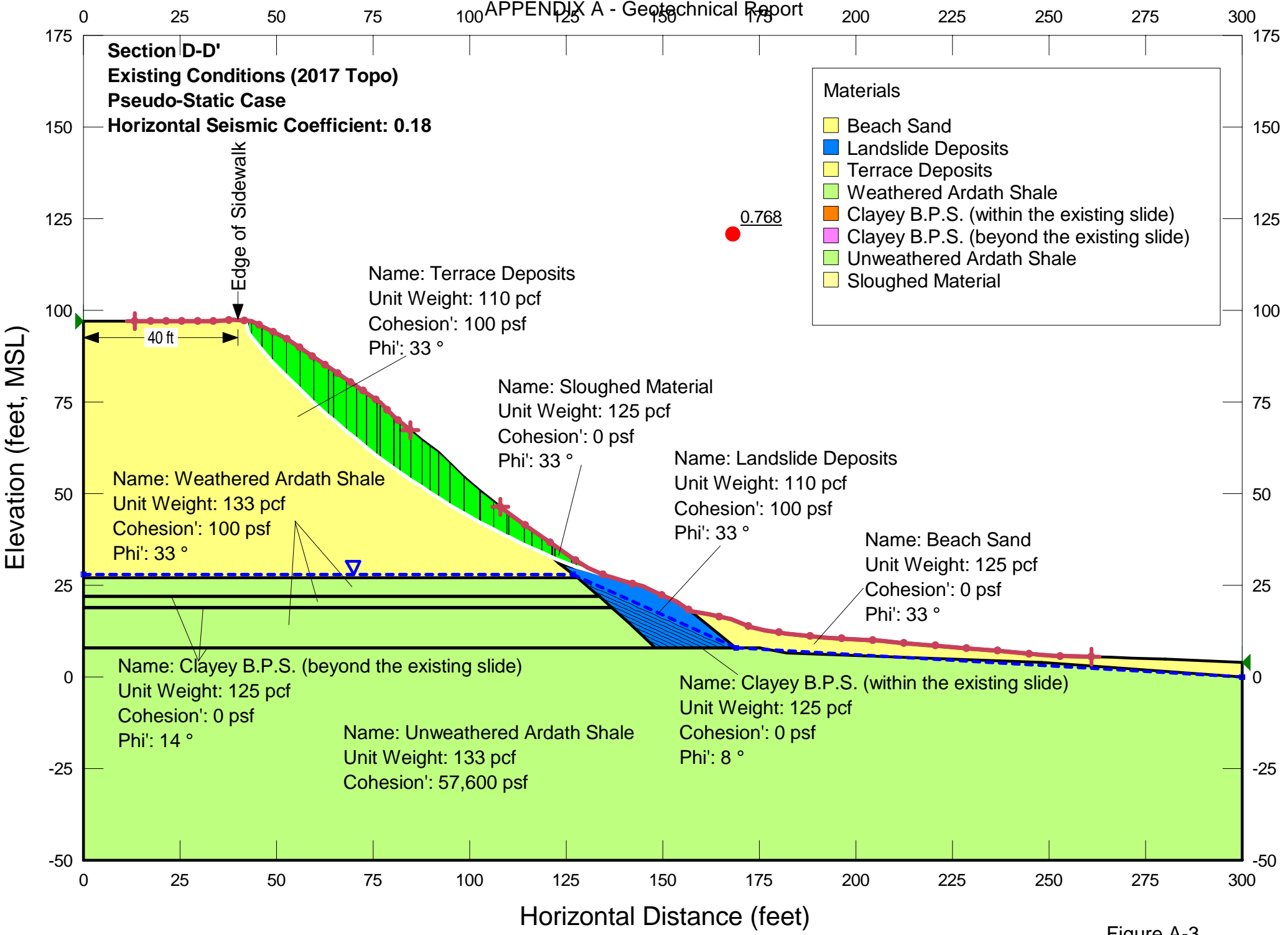


Figure A-3

APPENDIX A - Geotechnical Report

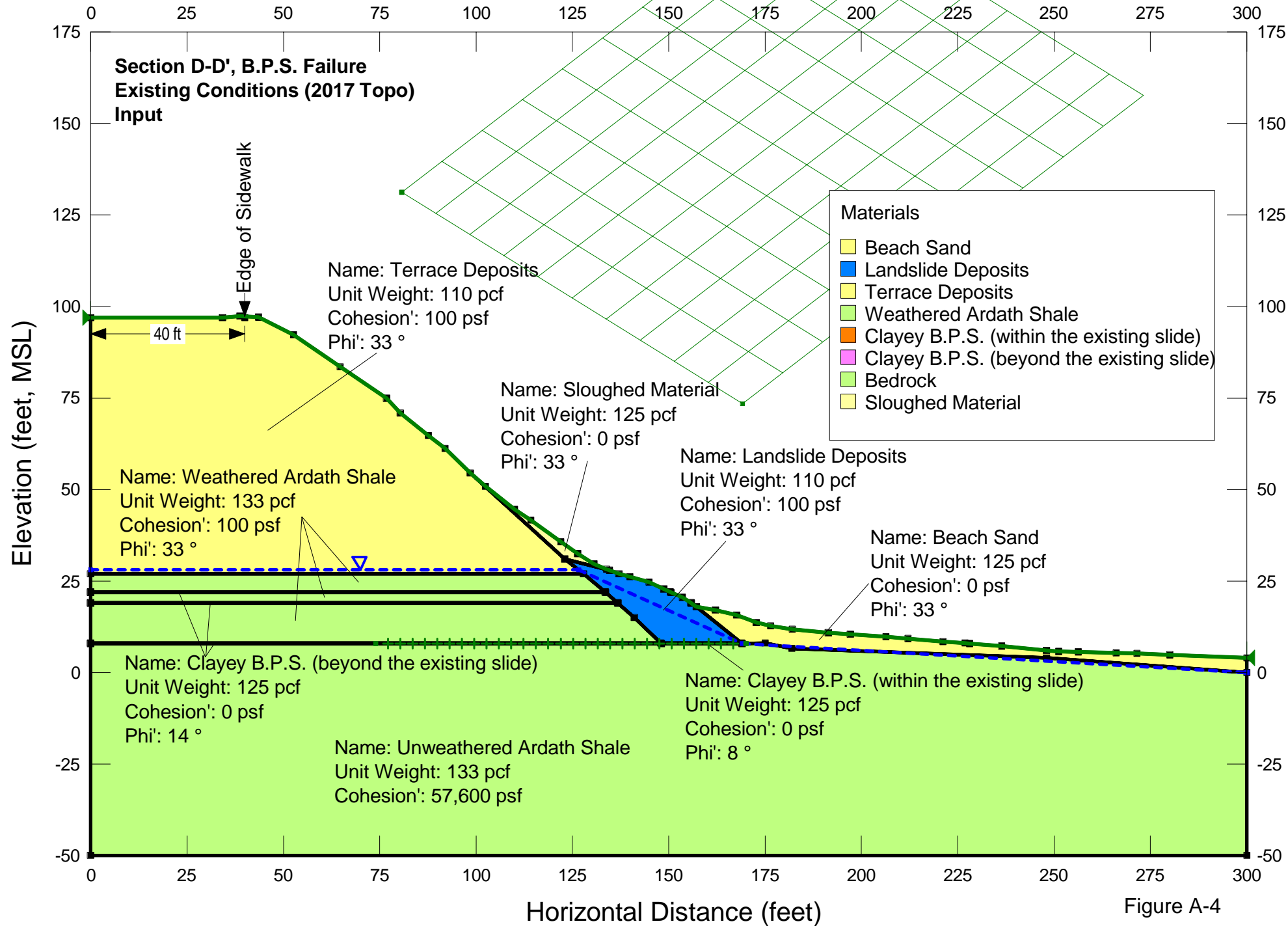


Figure A-4

APPENDIX A - Geotechnical Report

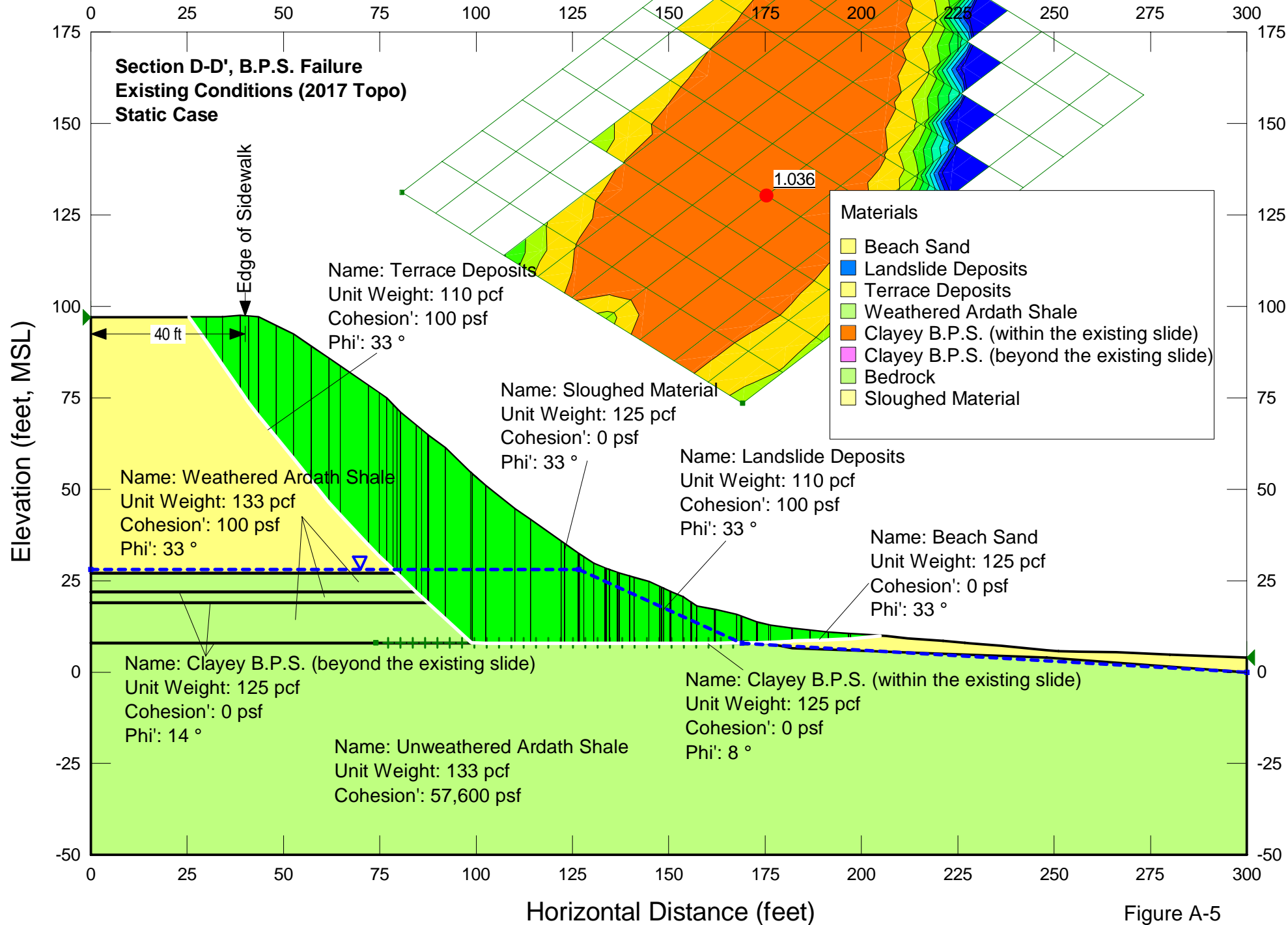


Figure A-5

APPENDIX A - Geotechnical Report

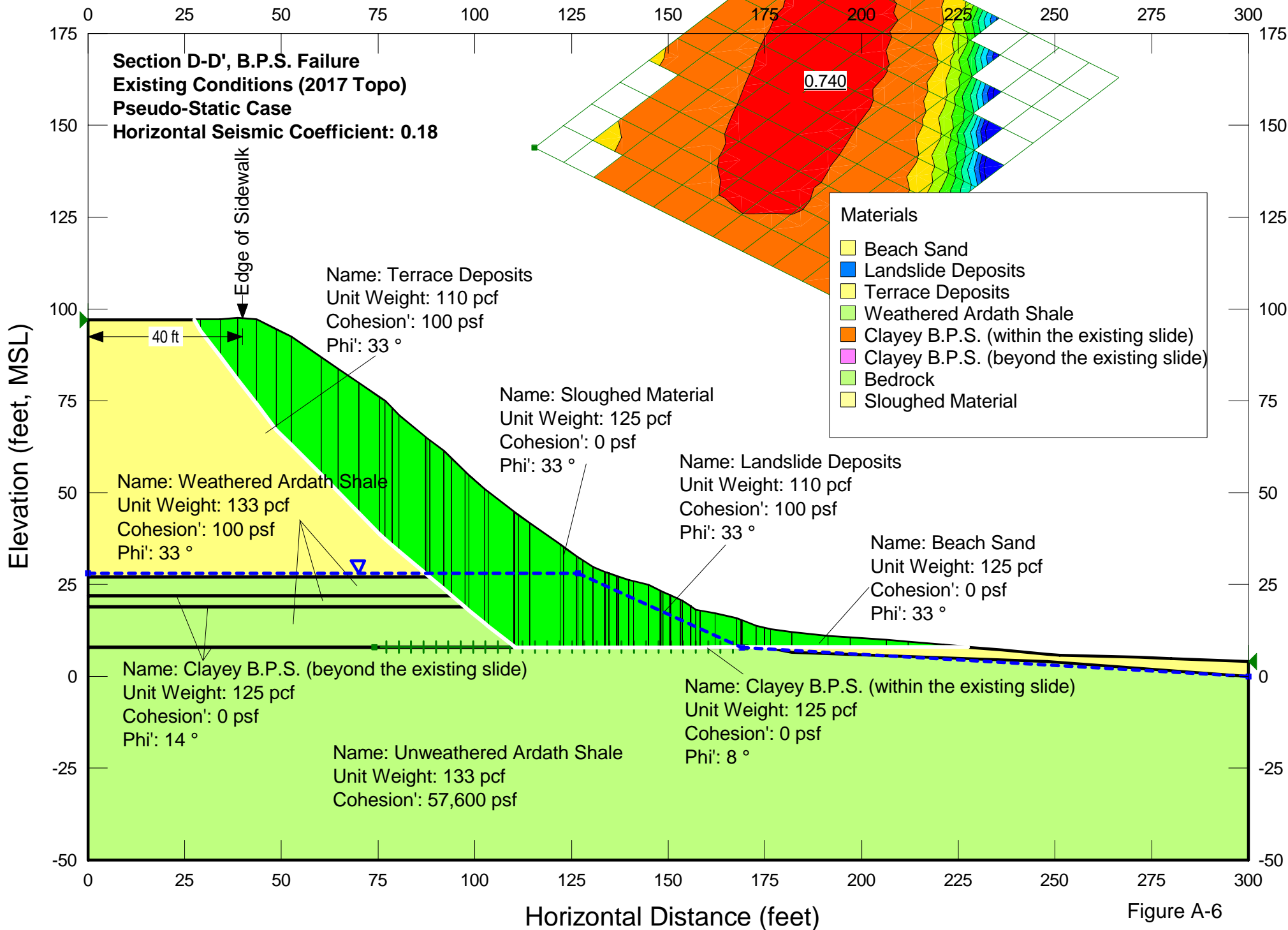


Figure A-6

APPENDIX A - Geotechnical Report

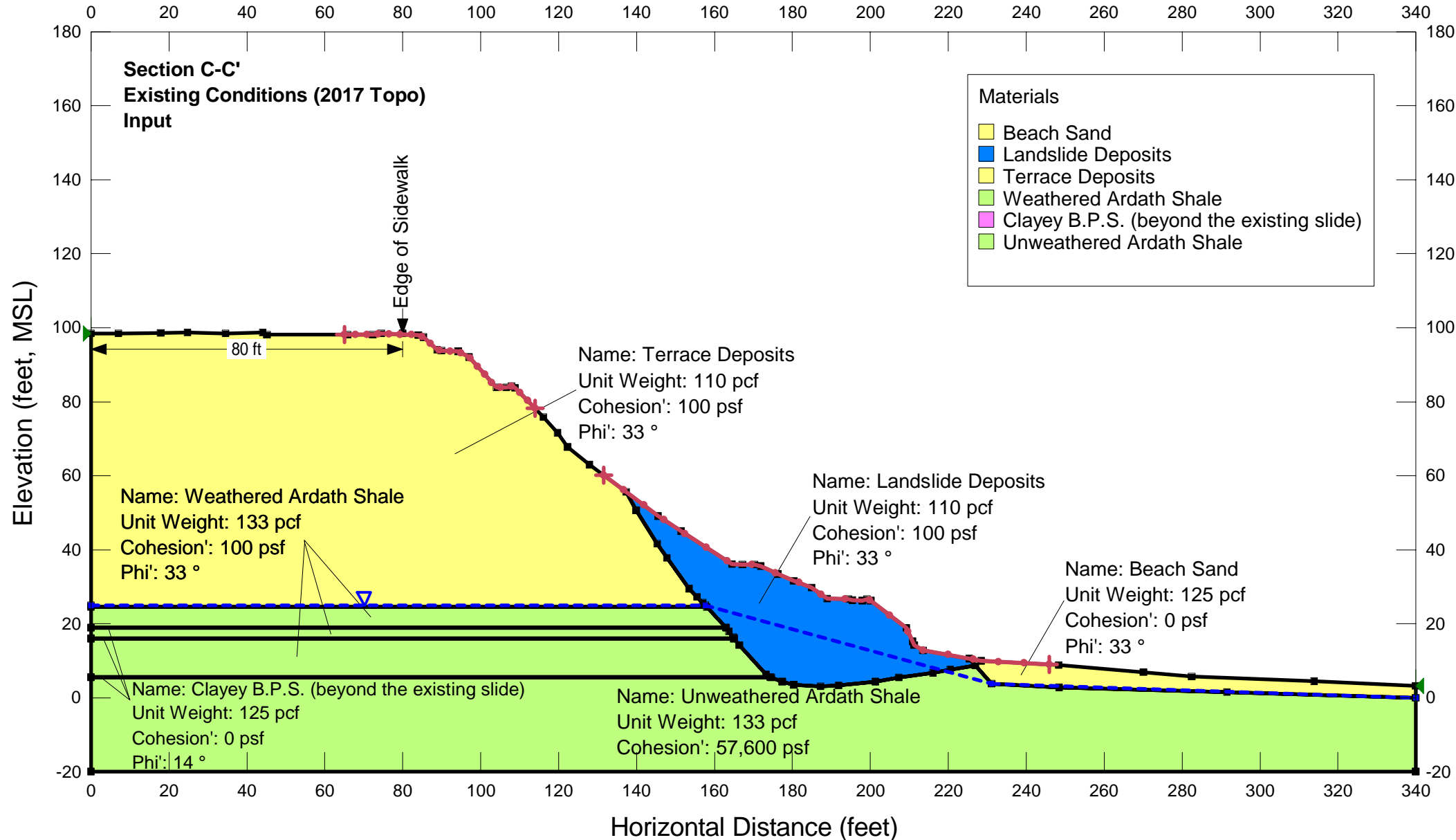


Figure A-7

APPENDIX A - Geotechnical Report

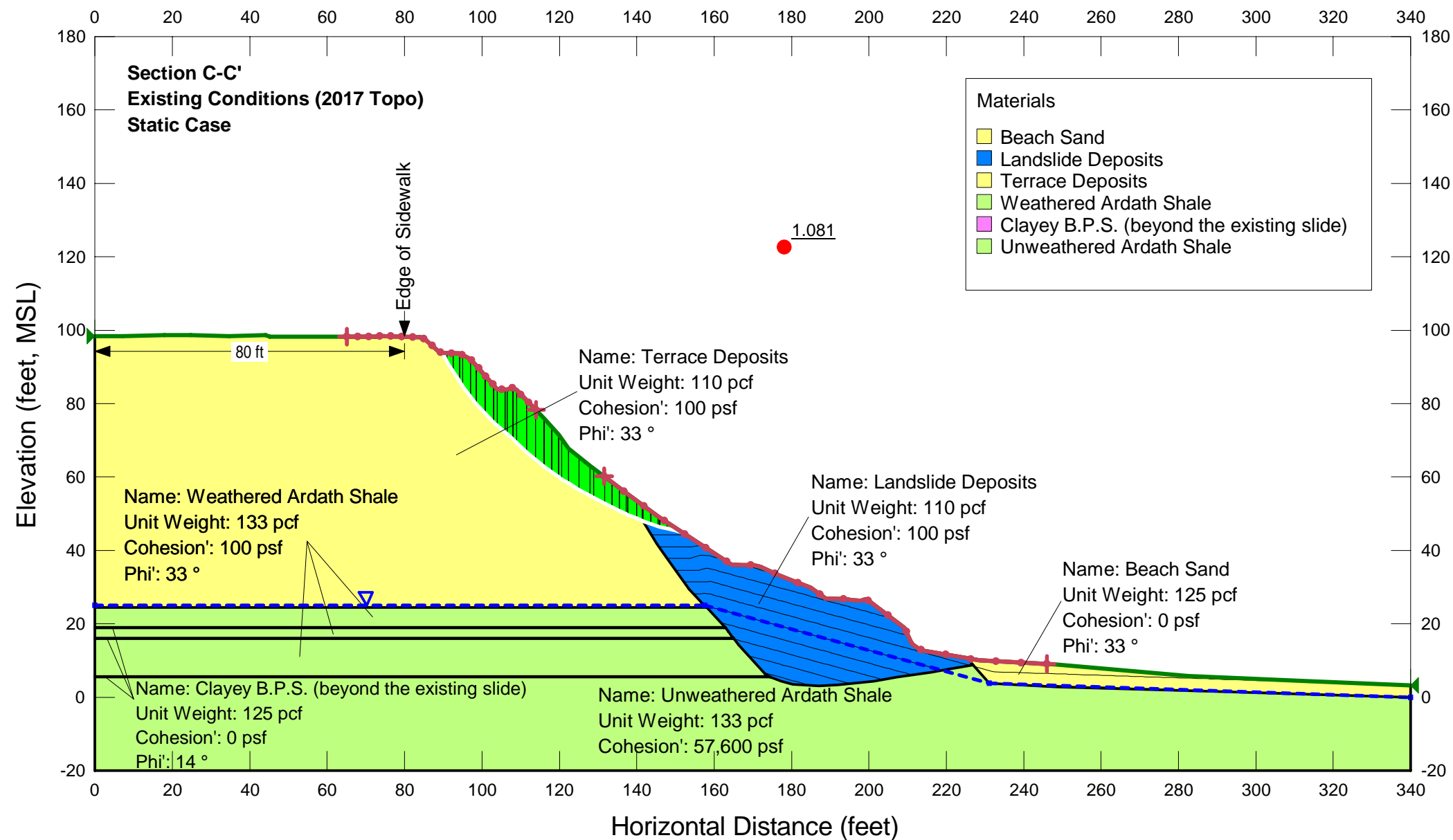


Figure A-8

APPENDIX A - Geotechnical Report

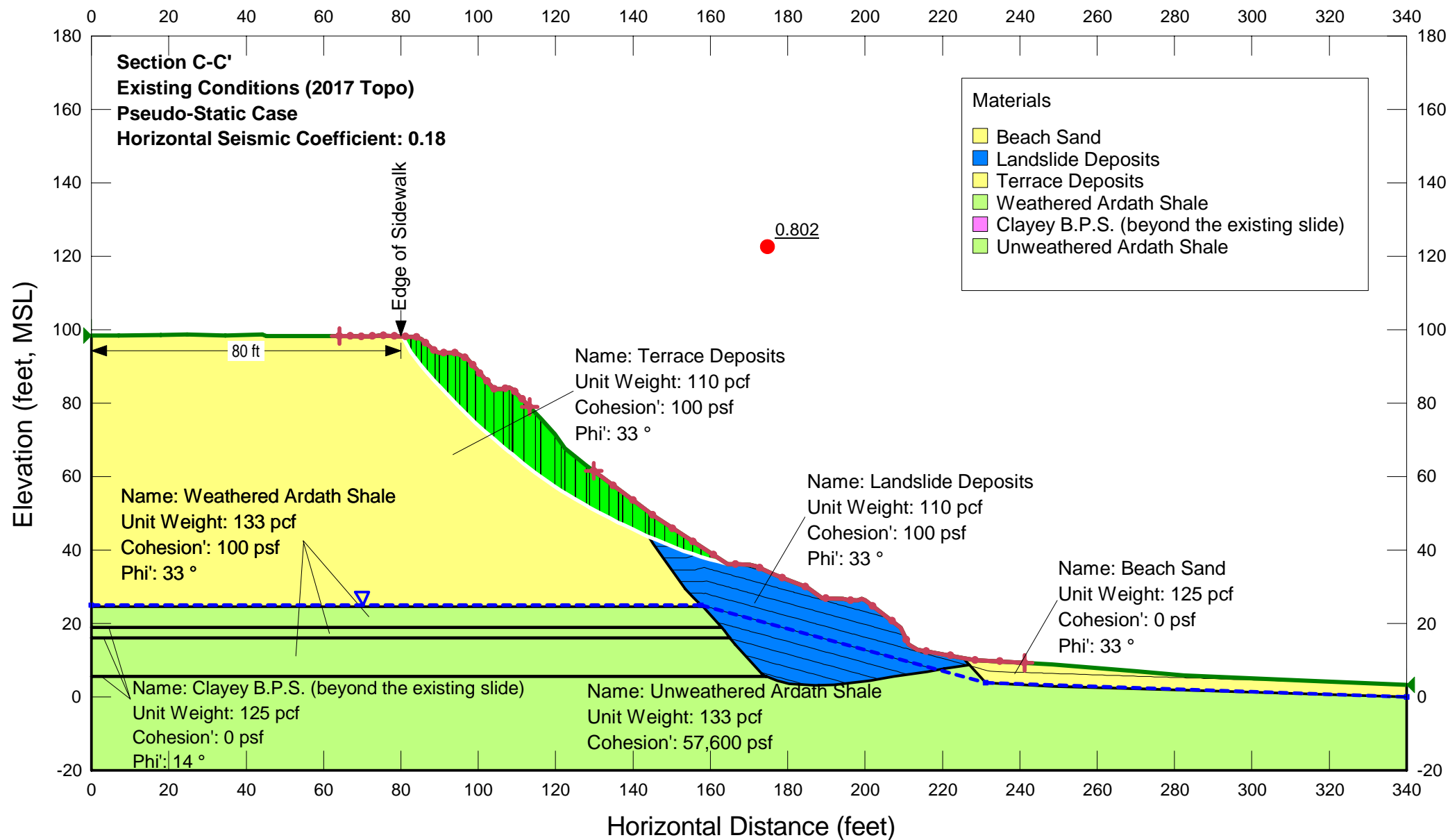


Figure A-9

APPENDIX A - Geotechnical Report

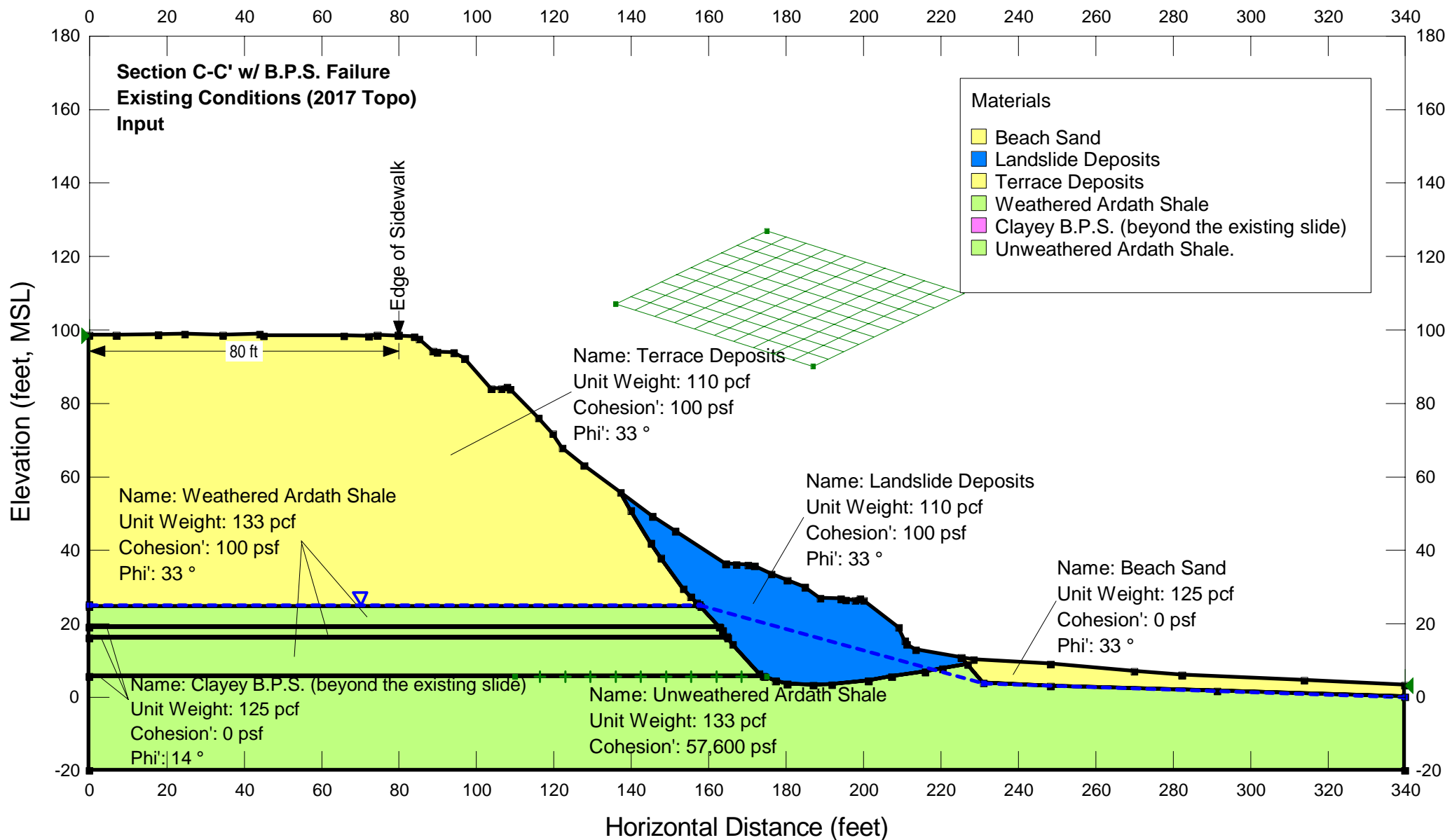


Figure A-10

APPENDIX A - Geotechnical Report

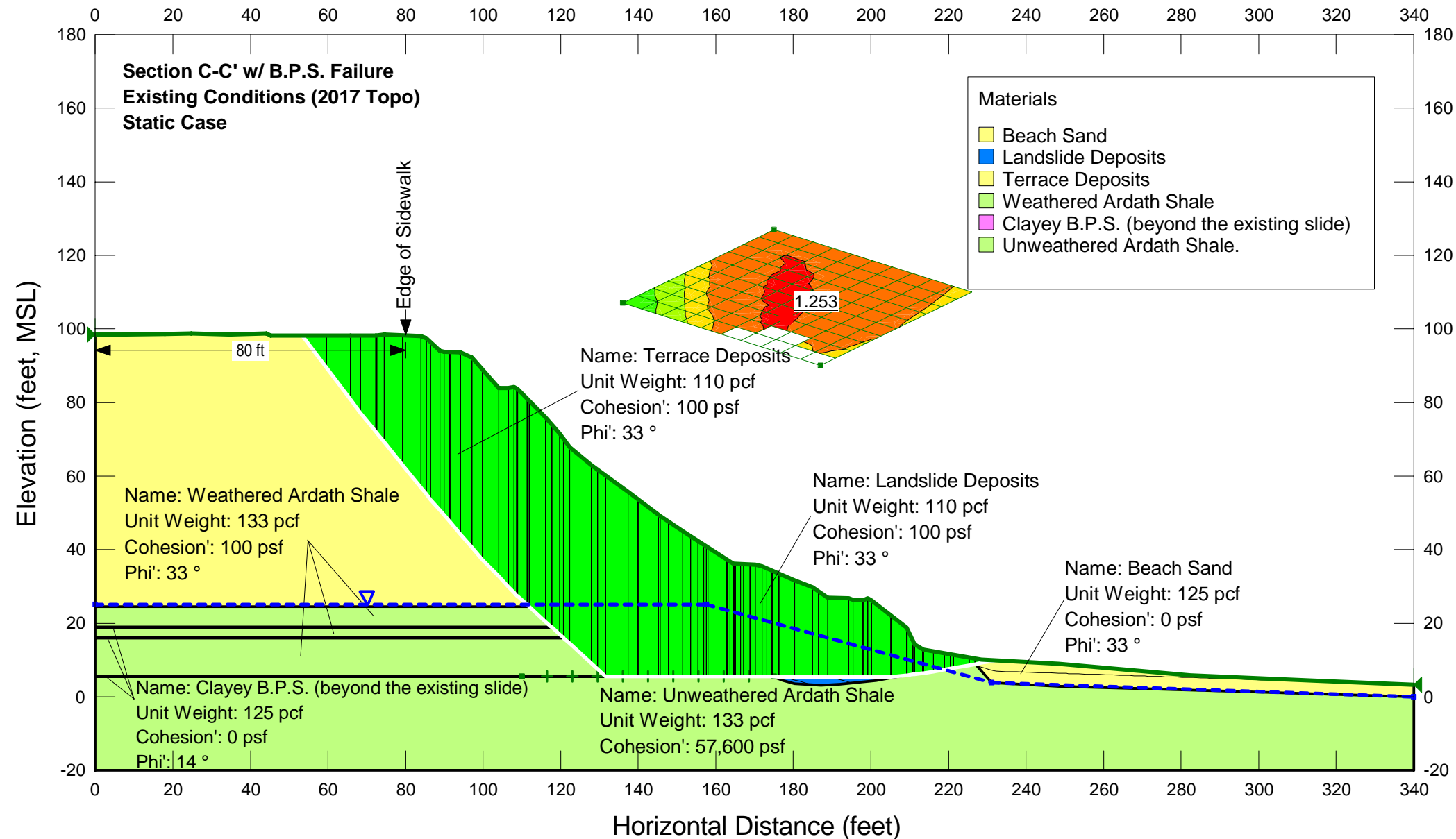


Figure A-11

APPENDIX A - Geotechnical Report

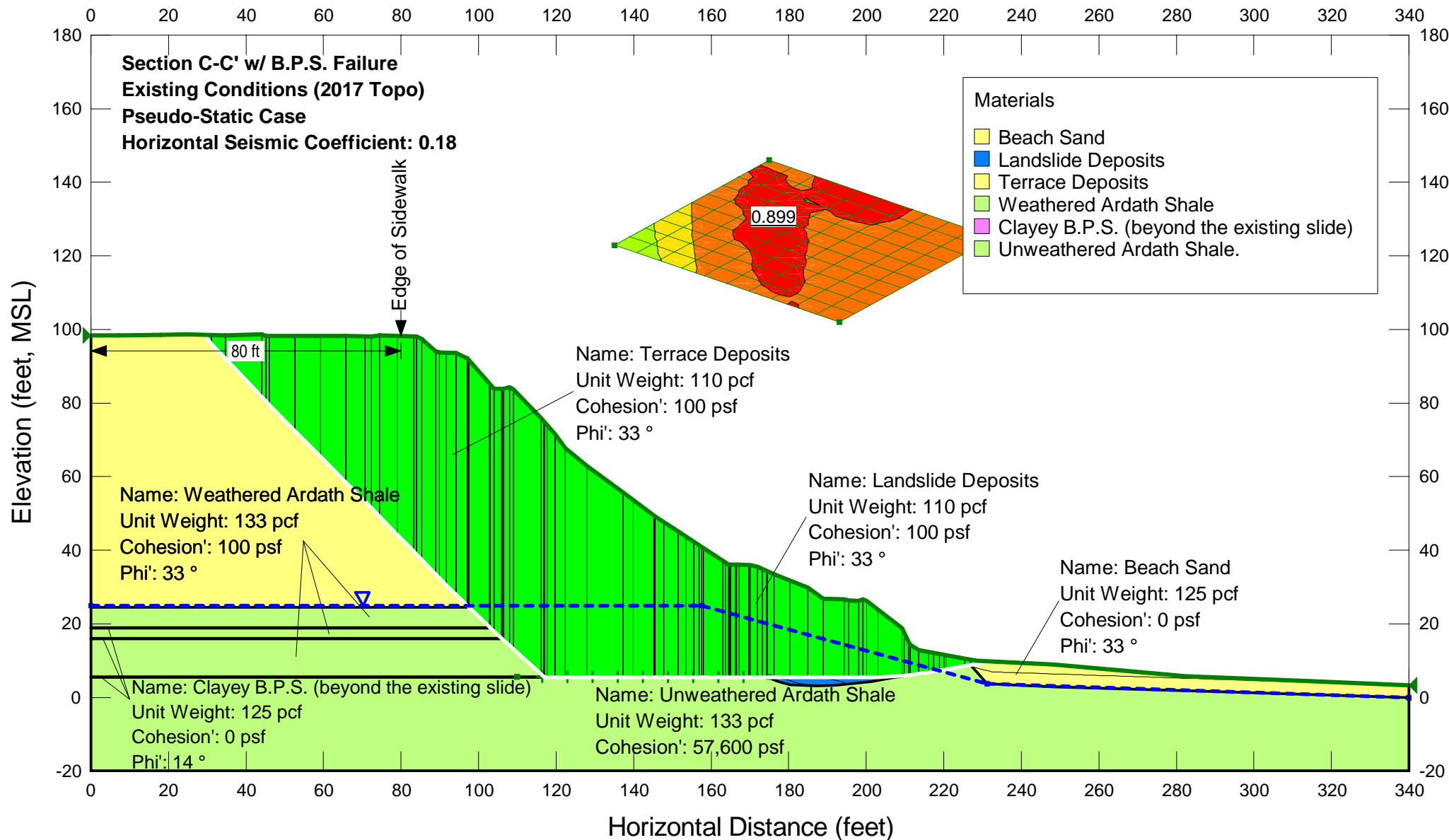
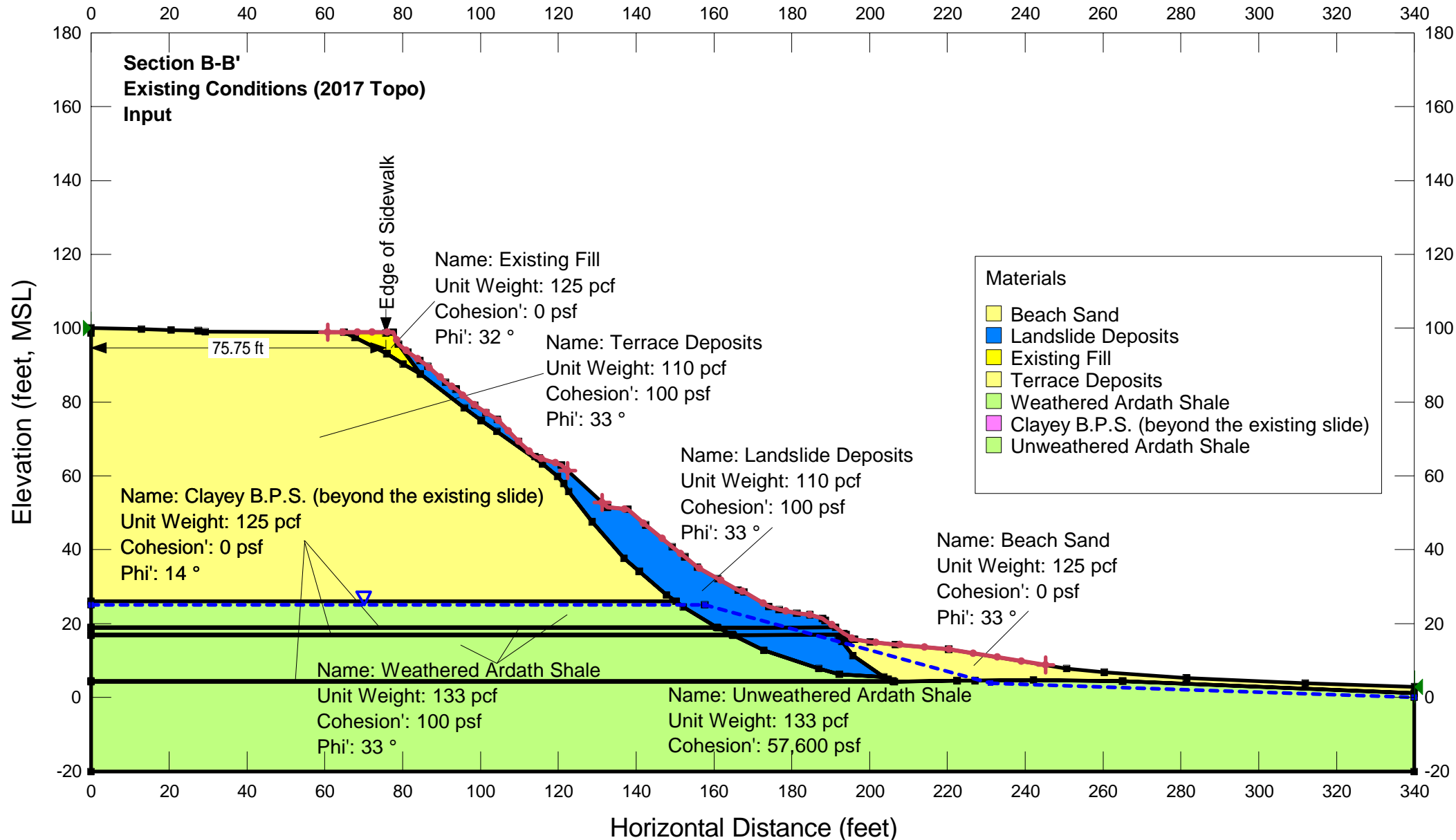
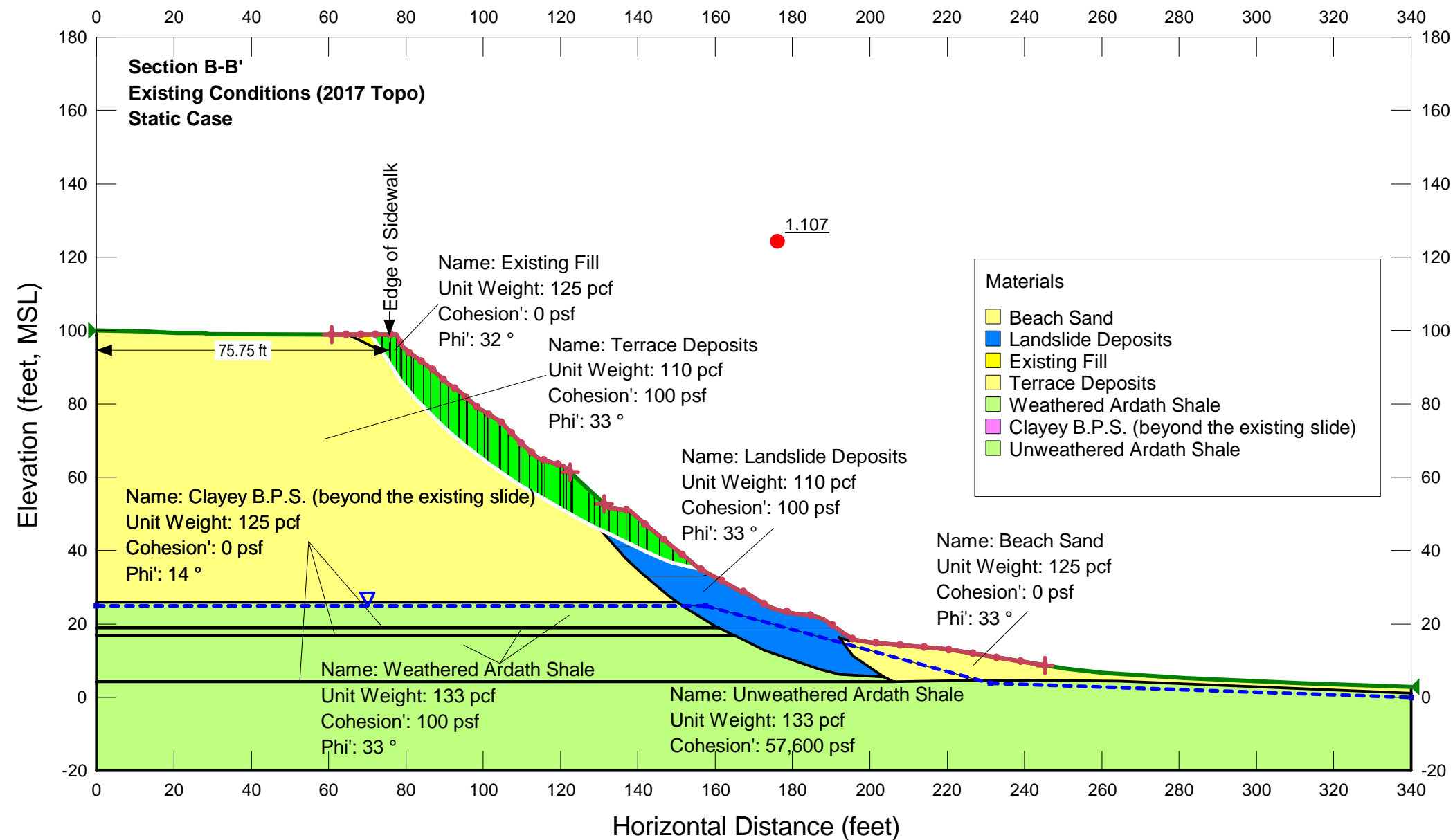


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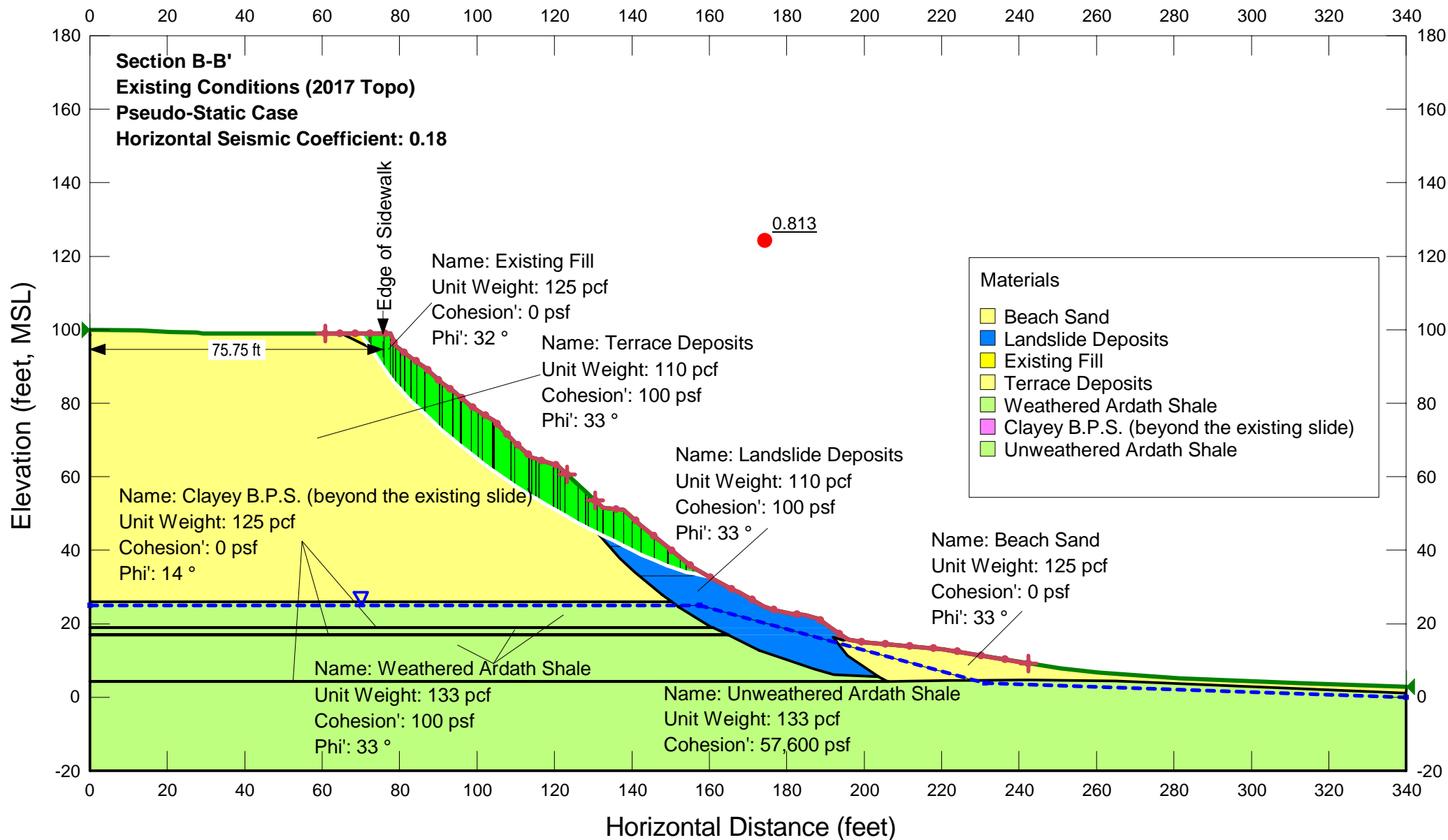
APPENDIX A - Geotechnical Report



APPENDIX A - Geotechnical Report



APPENDIX A - Geotechnical Report



APPENDIX A - Geotechnical Report

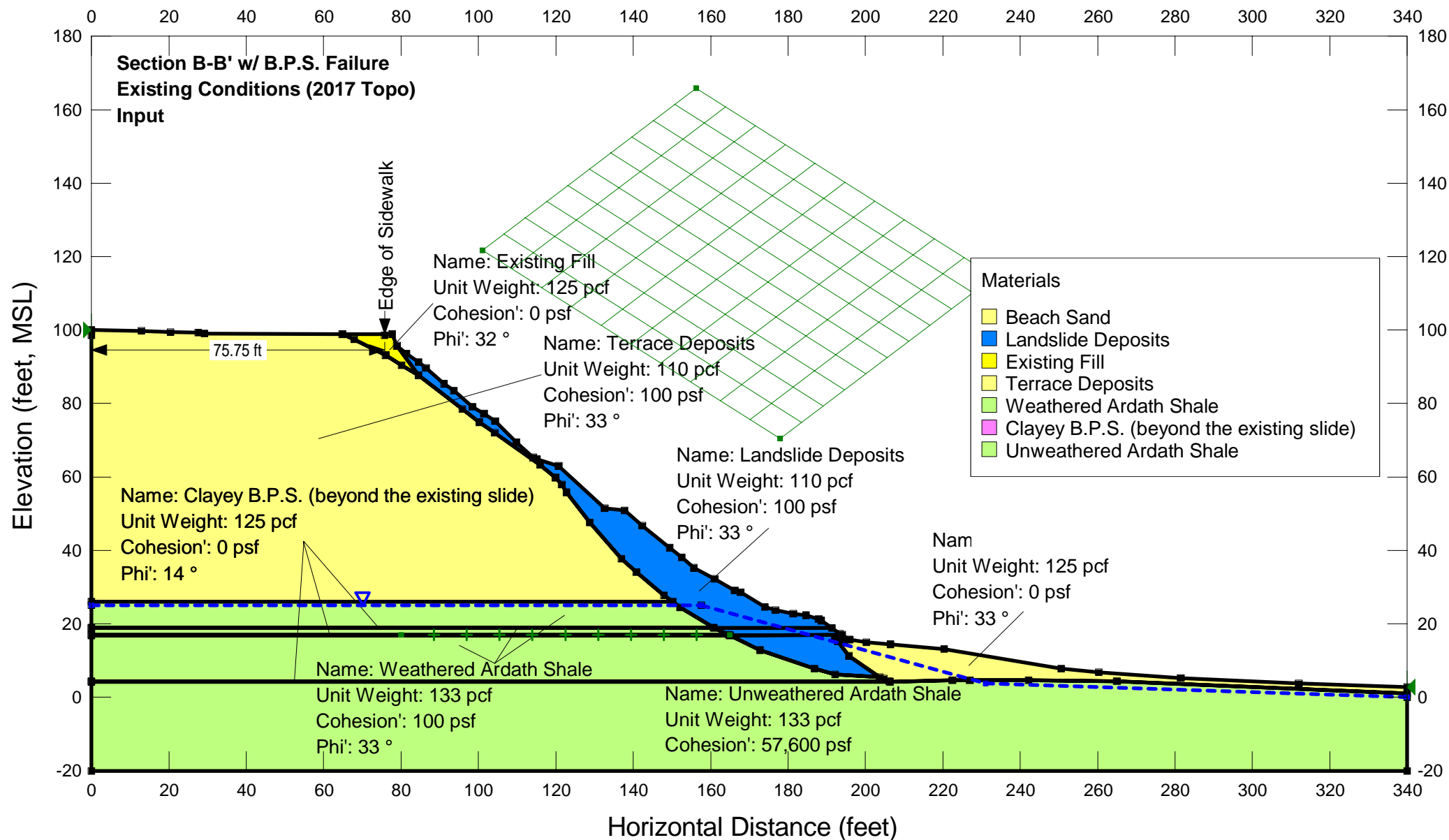


Figure 13

APPENDIX A - Geotechnical Report

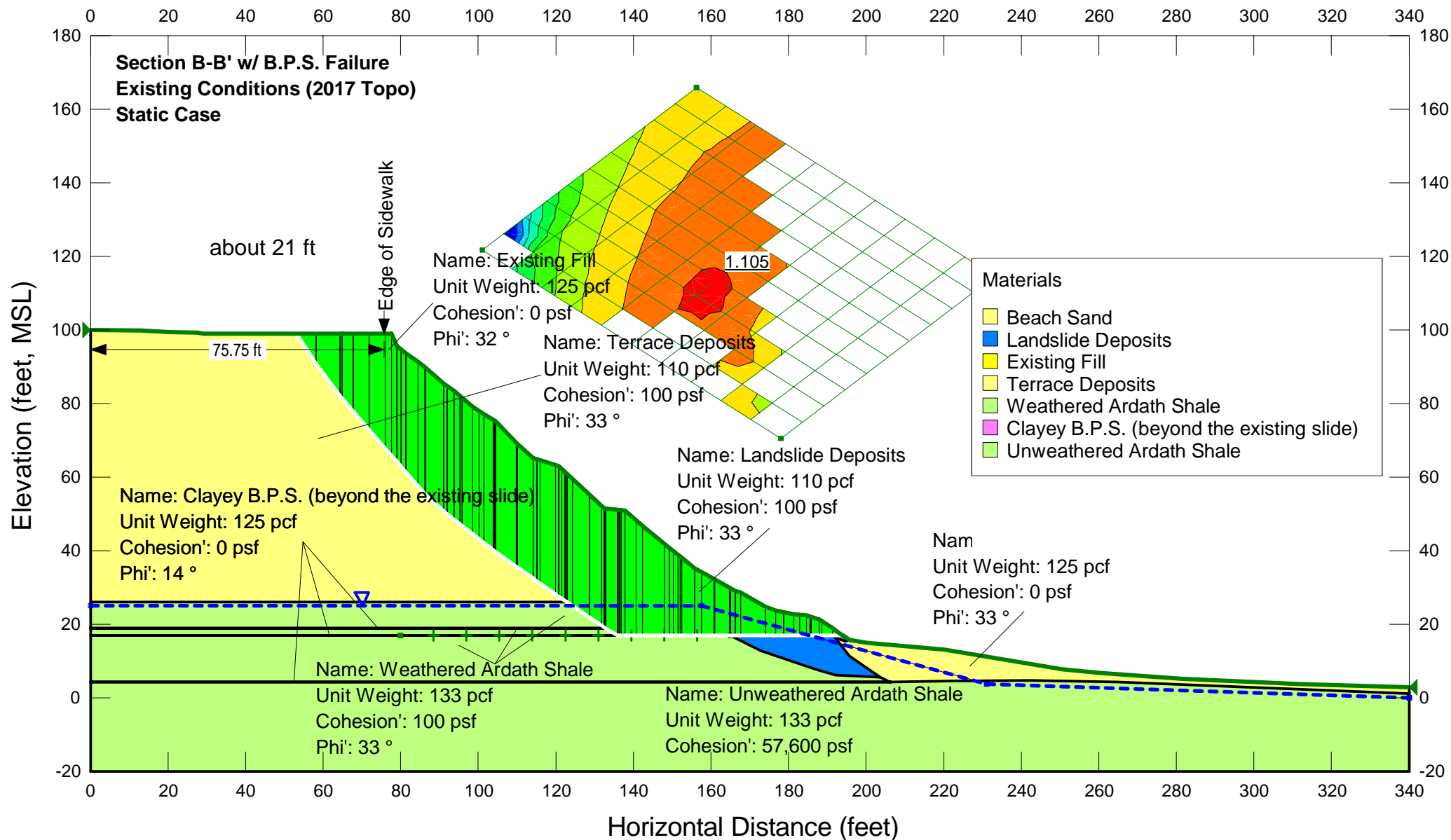


Figure 14

APPENDIX A - Geotechnical Report

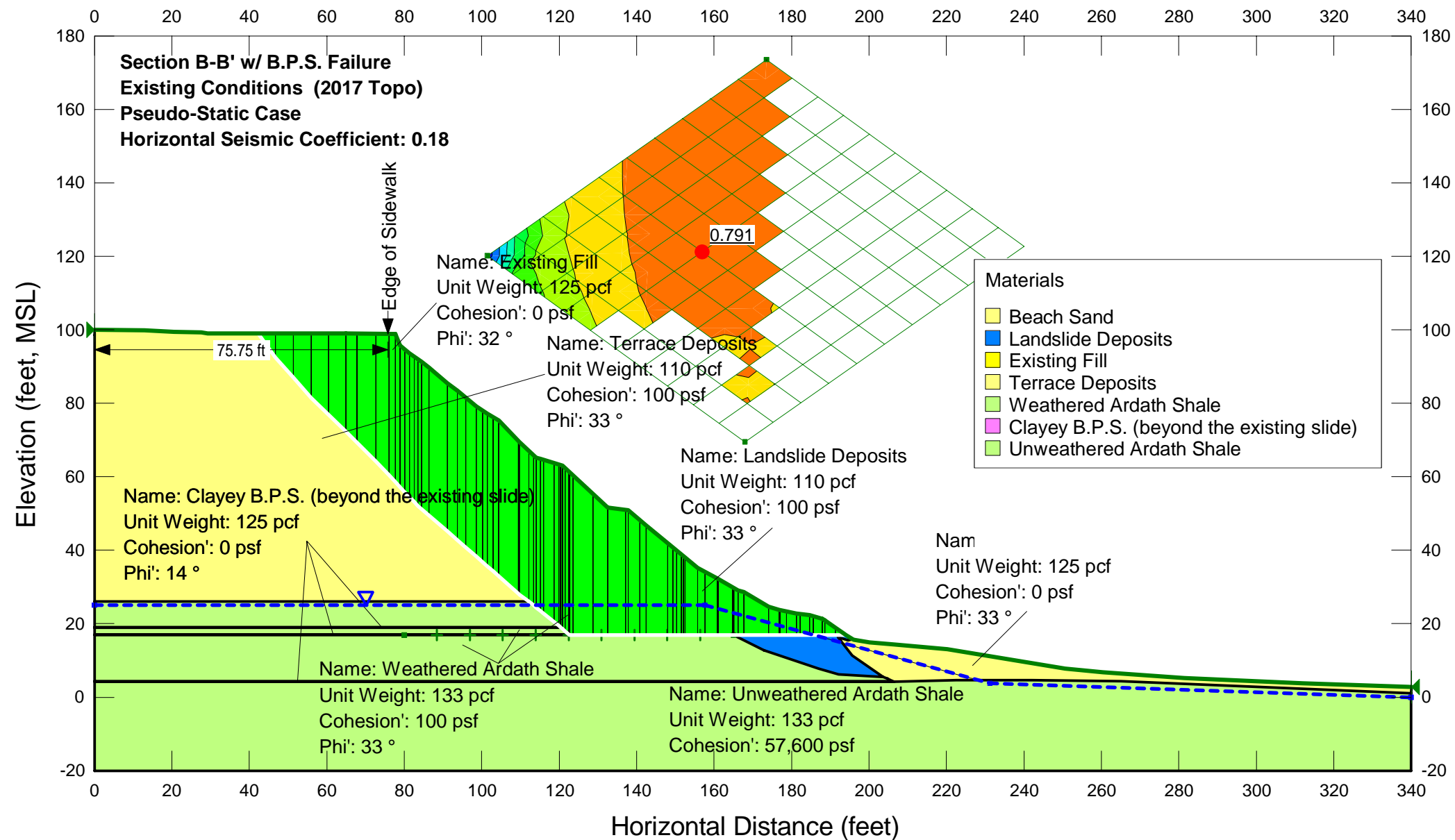


Figure 15

APPENDIX B - CDP & USE Permit

RESOLUTION NO. PC 2023-06

A RESOLUTION OF THE CITY OF ENCINITAS PLANNING COMMISSION APPROVING A MAJOR USE PERMIT AND COASTAL DEVELOPMENT PERMIT TO ALLOW THE REMOVAL AND REPLACEMENT OF THE EXISTING PARKING LOT PAVEMENT IN ORDER TO CONSTRUCT A NEW PARKING LOT AREA BEYOND THE EXISTING FAILURE PLANE ON THE BLUFF AT BEACON'S BEACH AND TEMPORARY CONSTRUCTION STAGING AREA IN THE PARKING LOT FOR THE PROPERTY LOCATED AT 948 NEPTUNE AVENUE

(Case Nos. MULTI-005456-2022; USE-005458-2022; CDP-005457-2022; APN: 254-040-31)

WHEREAS, a request filed by the City of Encinitas for consideration of a Major Use Permit (USE) and Coastal Development Permit (CDP) to authorize the removal and replacement of the existing parking lot pavement in order to construct a new parking lot area beyond the existing failure plane on the bluff at Beacon's Beach and temporary construction staging area in the parking lot for the property located at 948 Neptune Avenue (APN: 254-040-31) also known as Beacon's Beach Access Point, and

WHEREAS, the Planning Commission conducted duly noticed public hearings on April 20, 2023, and May 4, 2023, and

NOW, THEREFORE, BE IT RESOLVED that the Encinitas Planning Commission hereby APPROVES Case Nos. MULTI-005456-2022; USE-005458-2022; CDP-005457-2022 based on the following Environmental Determination and Findings:

Section 1. California Environmental Quality Act Determination

The project has been determined to be exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15311 and Section 15304(e). Section 15311 exempts the construction or replacement of minor structures including small parking lots. The request to authorize the removal and replacement of the existing parking lot pavement to construct a new parking lot area beyond the existing failure plane on the bluff at Beacon's Beach meets this exemption. Section 15304(e) exempts the temporary construction staging area for the duration of the project. None of the exceptions in CEQA Guidelines Section 15300.2 exists and no historic resources would be impacted by the proposed project.

Section 2. Discretionary Action(s) Findings

FINDINGS

Based on the findings for a Major Use Permit as per Encinitas Municipal Code Section 30.74.070 and the aforementioned analysis, the Planning Commission has made the following findings to support the approval, with conditions:

Findings for Major Use Permit	Explanation of Finding
1. The location, size, design or operating characteristics of the proposed project will be incompatible with or will adversely affect or will be materially detrimental to adjacent uses, residences, buildings,	The proposed request to authorize the removal of the existing 26-stall parking lot, including the pavement and pedestrian pathway on the westerly edge and replace it with a new 15-stall parking lot and pedestrian pathway on the westerly edge that is behind

APPENDIX B - CDP & USE Permit

<p>structures or natural resources, with consideration given to, but not limited to:</p> <ul style="list-style-type: none"> a. The inadequacy of public facilities, services and utilities to serve the proposed project. b. The unsuitability of the site for the type and intensity of use or development which is proposed. c. The harmful effect, if any, upon environmental quality and natural resources of the city; or 	<p>the existing bluff failure plane, will not be incompatible with and will not adversely affect or be materially detrimental to adjacent uses, residences, buildings, structures, or natural resources.</p> <p>This proposed location is approximately seven feet back from the current bluff edge. The parking lot stalls will be brought up to current code, meeting the current Encinitas Parking Design Manual Standards, including aisleway width, double-haired pinned stripping with wheel stops, parking stall width and Americans with Disabilities Act (ADA) standards. The project will meet the required five-foot top-of-bluff setback from the edge of the existing bluff, with the proposed walkway, parking lot and safety fence reconfiguration. Benches and bike racks will be placed in a configuration that meets current ADA standards along the walking pathway near the bluff edge.</p> <p>The project has been determined to be exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15311 and Section 15304(e). Section 15311 exempts the construction or replacement of minor structures including small parking lots. The request to authorize the removal and replacement of the existing parking lot pavement to construct a new parking lot area beyond the existing failure plane on the bluff at Beacon's Beach meets this exemption. Section 15304(e) exempts the temporary construction staging area for the duration of the project. None of the exceptions in CEQA Guidelines Section 15300.2 exists and no historic resources would be impacted by the proposed project.</p>
<p>2. The impacts of the proposed project will adversely affect the policies of the Encinitas General Plan or the provisions of the Municipal Code; or</p>	<p>With the approval of the discretionary permits requested, the proposed improvements will comply with applicable policies of the General Plan and provisions of the Municipal Code. No evidence has been submitted or identified to demonstrate that the project will have any adverse impact to the policies of the General Plan or provisions of the Municipal Code.</p>

APPENDIX B - CDP & USE Permit

3. The project fails to comply with any other regulations, conditions, or policies imposed by the Municipal Code.	No evidence has been submitted or identified to demonstrate that the project failed to comply with any other regulations, conditions, or policies imposed by the Municipal Code.
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Based on the findings for a Coastal Development Permit per Encinitas Municipal Code Section 30.80.090 (Coastal Development Permit) and the aforementioned analysis, the Planning Commission has made the following findings to support the approval, with conditions:

Finding for Coastal Development Permit	Explanation of Finding
1. The proposed project is consistent with the certified Local Coastal Program of the City of Encinitas.	The proposed project is consistent with the certified Local Coastal Program of the City of Encinitas. Based upon the information contained in the project materials and scope of work, the City has demonstrated that the proposed parking lot project at Beacon's Beach access point would not create an unnecessary surcharge load on the bluff. The City's third-party geotechnical consultant (Geopacifica) concluded that the project review addressed all site conditions and provided all the necessary information to satisfy the requirements of the Encinitas Municipal Code.
2. The proposed development conforms with Public Resources Code Section 21000 et al. (CEQA) and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment.	The project conforms to Public Resources Code Section 21000 (CEQA). The project has been determined to be exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15311 and Section 15304(e). Section 15311 exempts the construction or replacement of minor structures including small parking lots. Section 15304(e) exempts the temporary construction staging area for the duration of the project. None of the exceptions in CEQA Guidelines Section 15300.2 exists and no historic resources would be impacted by the proposed project.
3. For projects involving development between the sea or other body of water and the nearest public road, approval shall include a specific finding that such development is in conformity with the public access and public recreation policies of Section 30200 et seq. of the Coastal Act.	Public access and parking will be maintained and available at Beacon's Beach access point. In accordance with Section 30212 of the Coastal Act, public beach and shore access and recreational opportunities already exist and both are available and will remain available during project construction and the long-term maintenance of the project scope.

APPENDIX B - CDP & USE Permit

The above environmental determination and findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED that based on the Environmental Determination and Findings hereinbefore adopted by the Planning Commission, Case Nos. MULTI-005456-2022; USE-005458-2022; CDP-005457-2022 is hereby approved subject to the conditions in Exhibit A.

PASSED AND ADOPTED this 4th day of May, 2023, by the following vote, to wit:

AYES: Dalton, Doyle, Prendergast, Sherod

NOES: None

ABSTAIN: None

ABSENT: Ryan

DocuSigned by:



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Kevin Doyle, Chair

ATTEST:

DocuSigned by:



E137385BA26B4C3...

Anna Colamussi

Secretary

NOTE: This action is subject to Chapter 1.04 of the Municipal Code, which specifies time limits for legal challenges.

APPENDIX B - CDP & USE Permit

EXHIBIT "A"
RESOLUTION NO. PC 2023-06
Case Nos. MULTI-005456-2022; USE-005458-2022; CDP-005457-2022

CONDITIONS OF APPROVAL

Applicant: The City of Encinitas
Location: 948 Neptune Avenue (APN: 254-040-31)

SPECIFIC CONDITIONS:

SCA The following conditions shall be completed and/or fulfilled to the satisfaction of the Development Services Department:

1. Prior to final approval, a final inspection shall be completed and approved by the Development Services Department.
2. All watering and planting methods for bluff hydroseeding or landscaping shall be consistent with the Beacon's Beach Landscape and Restoration Plan (Case No. MULTI-003977-2020; PC-Resolution No. 2021-04).
3. A grading permit and building permit shall be required with the Development Services Department prior to installation of the proposed plan.
4. Both the Bike Share docking station racks and the standard bike racks shall be placed back in the parking lot, maintaining ADA path of travel and accessibility.

Specific Condition added by the Planning Commission at the May 4, 2023 meeting:

The bike racks installed within the project shall have enough room to accommodate bicycles with surfboard racks.

STANDARD CONDITIONS:

CONTACT THE DEVELOPMENT SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

- A 01 **Approval - General:** At any time after two years from the date of this approval, on **May 4, 2025** at 5 p.m., or the expiration date of any extension granted in accordance with the Municipal Code, the application shall be deemed expired as of the above date.
- A 02 **Approval - General:** This approval may be appealed to the City Council within 15 calendar days from the date of this approval in accordance with Chapter 1.12 of the Municipal Code.
- A 03 **Approval - General:** This project is located within the California Coastal Commission's Appeal Jurisdiction of the Coastal Zone and may be appealed to the California Coastal Commission pursuant to Coastal Act Section 30603 and Chapter 30.04 of the City of Encinitas Municipal Code. An appeal of the City's decision must be filed with the Coastal Commission within 10 working days following the Coastal Commission's receipt of the Notice of Final Action. Applicants will be notified by the Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing to the Coastal Commission, San Diego Coast District office.

APPENDIX B - CDP & USE Permit

- A04 **Approval - General:** This project is conditionally approved as set forth on the application and project plans received by the City on February 10, 2023, consisting of nine sheets, including Title Sheet (Sheet 1), Notes (Sheet 2), Existing Site Plan (Sheet 3), Proposed Site Plan (Sheet 4), Proposed Grading Plan (Sheet 5), Sections (Sheet 6), Details (Sheets 7 and 8), and Erosion Control (Sheet 9) dated February 10, 2023, AECOM Geotechnical Reports dated June 1, 2022 and AECOM Hydrology Reports dated June 1, 2022, all designated as approved by the Planning Commission on May 4, 2023, and shall not be altered without express authorization by the Development Services Department.
- A 08 **Approval - General:** Approval of this request shall not waive compliance with any sections of the Municipal Code and all other applicable City regulations in effect at the time of Building Permit issuance unless specifically waived herein.
- A09 **Approval - General:** Prior to any use or issuance of final occupancy of the project site pursuant to this permit, all conditions of approval contained herein shall be completed or secured to the satisfaction of the Development Services Department.
- CT/SO 01 **Approval - General:** Any and all temporary construction trailers or construction related fencing or equipment, used during the course of development, shall be removed prior to the issuance of Certificate of Occupancy to the satisfaction of the Development Services Department.
- P02 **Parking:** Parking lot layout and improvements shall meet the standards of the Municipal Code and the Off-Street Parking Design Manual.
- SIGN 01 **Signs:** Any signs proposed for this development shall be designed and approved in conformance with Encinitas Municipal Code Chapter 30.60.
- USE 01 **Use Permit:** At all times during the effective period of this permit, the responsible party shall obtain and maintain in valid force and effect, each and every license and permit required by a governmental agency for the operation of the authorized activity.
- USE 03 **Use Permit:** Upon a showing of compelling public necessity demonstrated at a noticed hearing, the City of Encinitas, acting through the authorized agency, may add, amend, or delete conditions and regulations contained in this permit.
- USE 04 **Use Permit:** Nothing in this permit shall relieve the applicant from complying with conditions and regulations generally imposed upon activities similar in nature to the activity authorized by this permit.
- USE 05 **Use Permit:** Nothing in this permit shall authorize the applicant to intensify the authorized activity beyond that which is specifically described in this permit.
- USE 07 **Use Permit:** Any future modifications to the approved project will be reviewed relative to the findings for substantial conformance with a use permit contained in Section 30.74.105 of the Municipal Code. Modifications beyond the scope described therein will require submittal of an amendment to the use permit and approval by the authorized agency.
- USE 08 **Use Permit:** All project grading shall conform with that shown on the approved project plans. If no grading is proposed on the approved plans, or subsequent

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grading plans are inconsistent with the grading shown on the approved plans, a Use Permit Modification for such grading shall be obtained from the authorized agency of the City prior to issuance of Grading or Building Permits.

BUILDING CONDITION(S):**CONTACT THE DEVELOPMENT SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):**

- BLDG 01** The applicant shall submit a complete set of construction plans to the Development Services Department for building permit plancheck processing. The submittal shall include a Soils/Geotechnical Report, structural calculations, and State Energy compliance documentation (Title 24). Construction plans shall include a site plan, a foundation plan, floor and roof framing plans, floor plan(s), section details, exterior elevations, and materials specifications. Submitted plans must show compliance with the latest adopted editions of the California Building Code (The Uniform Building Code with California Amendments, the California Mechanical, Electrical and Plumbing Codes). These comments are preliminary only. A comprehensive plancheck will be completed prior to permit issuance and additional technical code requirements may be identified and changes to the originally submitted plans may be required.

FIRE CONDITION(S):**CONTACT THE FIRE PREVENTION DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):**

- FIRE 20** **Road Access -Road Minimum Dimensions:** Fire apparatus access roads identified as Circulation Element Roads and areas within the Very High Fire Hazard Severity Zone shall have an unobstructed improved width of not less than 24 feet and all other roads shall be not less than 20 feet; curb line to curb line. Exceptions: Single-Family residential driveways; serving no more than TWO single-family dwellings, shall have minimum of 16 feet, curb line to curb line, of unobstructed improved width. Access roads shall be designed and maintained to support the imposed loads of not less than 75,000 pounds and shall be provided with an approved paved surface to provide all-weather driving capabilities and provide a vertical clearance of not less than 13 feet six inches.
- FIRE 22** **Fire Access Roadway Exception:** Gated entrances with card readers, guard stations or center medians, which have separated lanes of one-way traffic, shall be not less than 14 feet wide per lane.
- FIRE 24** **Obstruction of Roadways During Construction**
All roadways shall be a minimum of 24 feet in width during construction and maintained free and clear, including the parking of vehicles, in accordance with the California Fire Code and the Encinitas Fire Department.
- FIRE 25** **Posting or Striping Roadway "No Parking Fire Lane"**
Fire Department access roadways, when required, shall be properly identified as per Encinitas Fire Department standards. The means by which fire lanes are designated shall be maintained in a clean and legible condition at all times, and be replaced or repaired when necessary to provide adequate visibility.

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SAN DIEGUITO WATER DISTRICT (SDWD):**CONTACT SAN DIEGUITO WATER DISTRICT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):****SDWD BF 03 Backflow – Landscape:**

A backflow preventer shall be installed on the dedicated landscape water meter meeting SDWD standards. The location of the proposed backflow preventer shall be shown on the plans for SDWD approval.

SDWD EWS 03 Existing Water Service – SFR/Miscellanies Improvements:

The subject property is currently being served by a one-inch water meter. If the existing water meter needs to be upsized, the cost of upgrading the meter and/or service shall be the responsibility of the developer.

SDWD WS 02 Water System – Fees/Charges:

The developer shall comply with SDWD's fees, charges, rules, and regulations.

SDWD WS 04 Water System – Grading/Improvement Plans:

The developer shall show all existing and proposed water facilities on improvement and/or grading plans for SDWD Approval.

SDWD WS 07 Water System – Water Agencies' Standards:

The developer shall install the water system according to Water Agencies' (WAS) standards.

ENGINEERING CONDITIONS:**CONTACT THE DEVELOPMENT SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):****Grading**

- GRD 01 Grading – Regulations:** All City Codes, regulations, and policies in effect at the time of building/grading permit issuance shall apply.
- GRD 02 Grading – Datum:** All drawings submitted for Engineering permits are required to be based on the NAVD 88 datum; the NGVD 29 datum will not be accepted.
- GRD 03 Grading – Plan:** The applicant shall submit a Grading Plan for review and obtain a Grading Permit prior to the commencement of any clearing or grading of the site. The Grading Plan shall include, but not be limited to, the design for site grading, drainage improvements, erosion control, stormwater pollution control, and on-site pavement.
- GRD 04 Grading – Responsible Charge:** The grading for this project is defined in Chapter 23.24 of the Encinitas Municipal Code. Grading shall be performed under the observation of a civil and geotechnical engineer whose responsibility it shall be to coordinate site inspection and testing to ensure compliance of the work with the

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approved grading plan, submit required reports to the Development Services Department and verify compliance with Chapter 23.24 of the Encinitas Municipal Code.

- GRD 05 Grading – Offsite Authorization:** No grading shall occur outside the limits of the project boundary and easements unless a letter of permission is obtained from the owners of the affected properties and provided to the Development Services Department.
- GRD 06 Grading – Borrow/Disposal Sites:** Separate grading plans shall be submitted and approved, and separate grading permits issued for borrow or disposal sites if located within the city limits. Import material shall be free of organic material, trash, debris, and environmental contaminants.
- GRD 09 Grading – Reports:** Geotechnical, Drainage/Hydrology, Stormwater Quality, and Traffic studies/report (as applicable) shall be prepared by a qualified engineer licensed by the State of California to perform such work. The reports shall be submitted with the first grading plan submittal and shall be approved prior to issuance of any grading or improvement permit for the project.
- GRD 10 Grading – Haul Route:** Prior to hauling dirt or construction materials to any proposed construction site within this project the developer shall submit to and receive approval from the Development Services Department for the proposed haul route. The applicant shall comply with Municipal Code section 23.24.410 as well as all conditions and requirements the Development Services Department may impose with regards to the hauling operation.
- GRD 11 Grading – Drainage Plan:** The project's building plan(s) shall include an engineered drainage and stormwater quality treatment BMP site plan prior to approval of building permit. The plan shall provide at a minimum the design for precise grading, drainage improvements, erosion control, stormwater pollution control, and impervious surfaces.

Drainage Conditions

- DRAIN 01 Drainage – Erosion Control:** An erosion control system shall be designed and installed onsite during all construction activity. The system shall prevent discharge of sediment and all other pollutants onto adjacent streets and into the storm drain system. The City of Encinitas Stormwater Standards Manual shall be employed to determine appropriate stormwater pollution control practices during construction.
- DRAIN 02 Drainage – Drainage System:** A drainage system capable of handling and disposing of all surface water originating within the project site, and all surface waters that may flow onto the project site from adjacent lands, shall be required. Said drainage system shall include any easements and structures required by the Development Services Department to properly handle the drainage.
- DRAIN 03 Drainage – Flood Control Fee:** Pursuant to Municipal Code Chapter 23.96, the applicant shall pay the current adopted Flood Control Fee for the creation of new impervious surfaces prior to issuance of the building or grading permit for this project to the satisfaction of the Development Services Department.

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DRAIN 05 Drainage – Concentrated Flows: Concentrated flows across driveways and/or sidewalks shall not be permitted.

DRAIN 06 Drainage – Flow Rate: The drainage system shall be designed to ensure that runoff resulting from a 100-year frequency storm underdeveloped conditions is equal to or less than the runoff from a storm of the same frequency and duration under existing conditions. Both 6 hour and 24-hour storm durations shall be analyzed to determine the mitigation necessary to accomplish the desired results.

Street Conditions

ST 01 Street – Right-of-Way Permit: Prior to any work being performed in the public right-of-way or City easement, a right-of-way construction permit shall be obtained from the Development Services Department and appropriate fees paid, in addition to any other permits required.

ST 21 Street – ADA General: All paths of travel, sidewalks, curb ramps, pedestrian ramps, driveway aprons, etc. shall be designed and constructed in compliance with ADA standards. Prior to completion of the project, each and every facility shall be inspected against the City's Public Right-of-Way Curb Ramp Inspection form.

ST 23 Street – Improvement Plans: All required public improvements shall be designed on a Public Improvement Plan approved by the City and permitted with a Public Improvement Permit. Adequate financial surety shall be posted prior to issuance of a Public Improvement Permit.

ST 25 Street – Public Improvement Repairs: Any portion of the existing sidewalk or any other public improvements damaged during construction shall be repaired and/or replaced to the next joint to the satisfaction of the Development Services Department.

ST 26 Street – Public Facility Protection: All street signs, lights, lamps, utilities, etc. located within the public right-of-way shall be protected in-place during construction or replaced to the satisfaction of the Development Services Department.

ST 27 Street – Street Trees: The removal of any and all City trees shall be consistent with Encinitas Municipal Code Chapter 15.02 and the City's Urban Forest Management Program. Trees located within City Street right-of-way, on City property, or within City easements are referred to as City trees and shall be protected in place during construction unless specifically approved otherwise. No grading, excavation, or disturbance of city tree root systems shall occur within the City tree drip line area (the area from the trunk of a tree to the outermost edge of the tree canopy projection on the ground). If a City tree is not clearly labeled to be removed, it must be protected in place. Even if approved improvements conflict with a city tree, it must not be disturbed unless the plan is revised to address the tree removal.

ST 30 Streets – Traffic Control Plan: Prior to commencement of any work in the public right-of-way or other work that may cause a traffic disturbance, the applicant shall obtain approval of a Traffic Control Plan from the City's Traffic Engineering division, as necessary.

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ST 31 Streets – Striping Plan: A street striping plan shall be prepared and included with the public improvement plans.

Stormwater Pollution Control Conditions

STORM 02 Stormwater – LID BMP's: Best Management Practices shall be utilized for stormwater pollution and flow control per the City of Encinitas BMP Design Manual to the satisfaction of the Development Services Department. The Grading Plan/Permit Site Plan shall identify all landscape areas designed for stormwater pollution control and incorporate Low Impact Development (LID) BMP's. A note shall be placed on the plans indicating that the BMP's are to be privately maintained and the facilities not modified or removed without a permit from the City.

STORM 06 Stormwater – Green Streets: The project proposes utilizing the "Green Streets" exemption for Priority Development Projects permitted by the BMP Design Manual. A Green Streets PDP Exempt SWQMP shall be prepared and on file with the Development Services Department prior to permit issuance.

Coastal Bluff Conditions

CB 02 Bluff – Automatic Irrigation: If an automatic irrigation system is proposed for this project, it shall be designed to avoid any excess watering. The system shall also be designed to automatically shut off in case of a pipe break. Automatic shut-off system, moisture shut-off sensors, and other advanced controls will be required for the installation of an automatic irrigation system.

CB 04 Bluff – Landscaping: If landscaping is required for erosion control, projects shall incorporate native, drought-tolerant and/or naturalizing plant material appropriate for the exposed coastal bluff area. All plant material shall have the ability to naturalize without supplemental irrigation after an establishment period of three years or less, unless a qualified and certified landscape and irrigation professional demonstrates that continued water would not be a factor in bluff erosion.