



**PUBLIC WORKS DEPARTMENT**  
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**Addendum No. 1**

**April 26, 2024**

**City Project No.: 23-031, Package 1  
Roads Program Capital Improvement Project**

Plan holders:

This addendum includes revisions to Plans and Specifications and provides clarifications and answers to questions submitted to the City.

**Revisions to Plans and Specifications**

The following additions, deletions or modifications shall become part of the Contract Documents:

Strikethrough text (~~text~~) indicates deletions.

Bold Italicized text (***text***) indicates additions.

**Item No. 1:**

Revise Bid Schedule, Bid Item 15, Roadway Excavation:

<b>Item</b>	<b>Description</b>
15	Roadway Excavation ( <b><i>F</i></b> )

Definition of (F) is added after Bid Item Table as:

***(F) Denotes Final Pay Item Per Section 9-1.02C of The State Standard Specifications.***

**Item No. 2:**

Delete Pages 7 through 11 of the Specifications ("Bidding Form")

Add Pages 7 through 11 as attached to the Addendum. Changes reflect the Roadway Ex final pay item clarification from Item No. 1.

**Item No. 3:**

Delete Pages 19 through 51 of the Specifications ("Agreement")

Add Pages 19 through 51 as attached to the Addendum. Changes reflect the current City Agreement.

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**Item No. 4:**

Revise Special Provisions, Section 5 General, as follows:

Section 5.20, Progress Schedule:

Contractor shall furnish City with a Critical Path Method progress schedule at the preconstruction meeting. Progress Schedules will be required for this contract and shall conform to the provisions in Section 7-5.01, "Progress Schedule" of the State Standard Specifications. If Contractor falls more than 10 working days behind the schedule, the Contractor shall submit an accelerated schedule to show how the work will be completed by the project Completion Date identified in the Agreement. The progress schedule shall show the construction activities extending for the duration of the working days. Any deviation from the outline must be approved by Engineer. Contractor shall not be allowed to start construction activities until the progress schedule is accepted by Engineer. Payment for the progress schedule shall be included under the ~~Miscellaneous Facilities and Operations~~ **Jobsite Management** bid item.

Section 5.22, Order of Work (5<sup>th</sup> Paragraph):

- **Project No. 23-032, City of Turlock Roads Program Capital Improvements Project**

Section 5.24, Surveying (1<sup>st</sup> Paragraph):

Construction survey staking shall be provided by the Contractor **and shall comply with Chapter 12 of the Caltrans Surveys Manual**. Contractor shall provide staking sufficient for the installation and inspection of all improvements shown on the plans. Staking shall **remain in place for the inspection of all improvements and shall not be removed prior to obtaining permission from the Engineer**.

Section 5.25, Testing (2<sup>nd</sup> Paragraph):

Unless otherwise noted, the Contractor shall provide all ~~acceptance~~ **Quality Control Testing including compaction testing for the native soil. Acceptance testing will be performed by the City**. Coordination of said testing is the responsibility of Contractor. The Contractor shall provide at least 48 hours' notice to the Engineer in advance of all testing. **All costs associated with Quality Control Testing shall be included in the unit prices for the various contract items. No separate payment will be made therefore.**

Section 5.35, Utility Verification (3<sup>rd</sup> Paragraph):

Within the first 10 working days, the Contractor shall physically verify all locations of existing utilities, and certify, in writing, that there are no conflicts with planned improvements. If there are conflicts, the Contractor shall indicate in writing, the specific conflict and allow the Engineer 10 working days to provide a response. The Contractor shall include a schedule activity for potholing (the Contractor's responsibility), and notification to the Engineer in the baseline schedule. The 10 working days for Engineer review shall be identified as an City-owned activity in the Contractor's baseline schedule. If there are no conflicts identified, this activity will then be

shown as City-owned float. **The Contractor shall not proceed with any other construction activities until written acceptance of the Contractor's utility conflict certification letter is granted by the Engineer.**

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**Item No. 5:**

Revise Special Provisions, Section 8 Prosecution and Progress, as follows:

Section 8.01, Start of Jobsite Activities (5<sup>th</sup> Paragraph): The Contractor may enter the jobsite **prior to the first working day** only to:

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**Item No. 6:**

Revise Special Provisions, Section 9 Description of work, delete second paragraph:

~~Timely Performance of Full Depth Pavement Recycling with Cement:~~

~~The City seeks to limit public impact due to construction, including the loss of access to paved roadway surfaces. Contractor shall perform all required earthwork, pulverizing and mixing existing pavement, and compacting and grading to complete pavement recycling operation. Completing the work within the number of working days shall be considered timely performance of pavement recycling work.~~

~~Failure to perform the work in a timely manner as specified herein shall subject the Contractor to damages identified in Section 5(c) of the Agreement.~~

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**Item No. 7:**

Revise Special Provisions, Section 10 Technical Special Provisions, as follows:

Construction Area Signs (delete 2<sup>nd</sup> Paragraph and replace):

~~The cost for lead compliance plan and implementation shall be considered as included in the various other bid items and no additional compensation will be made therefore.~~

**Temporary advance notification signs on Type III barricades shall be placed at all work zone entry points a minimum of 7 days prior to the start of construction at each roadway section. The signs must be 48" x 60" and include the anticipated construction start and completion dates. Reference City Standard Specification Section 11-13.**

Traffic Control System (3<sup>rd</sup> Paragraph):

Notify adjacent residents and business in writing 14 calendars day before the scheduled street closure. Include the closure schedule and duration of closures in the notification. **Local access must be maintained at all times for traffic to all residences, businesses, and driveways within the construction zone. This includes, but is not limited to, waste management**

***(Turlock Scavenger), delivery (USPS, FedEx, etc.), and other City provided services. If the contractor's operations impact the providers' regularly scheduled services, alternative accommodations must be provided to the satisfaction of the Engineer at the Contractor's expense.***

Portable Changeable Message Sign (2<sup>nd</sup> Paragraph):

Portable changeable message signs will be measured by the unit from actual count ***provided for the entire duration of construction***. The contract unit price paid for portable changeable message sign shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in furnishing, placing, operating, maintaining, repairing, replacing, transporting from location to location and removing the portable changeable message signs, as shown on the plans, as specified in City Standard Specifications and these Special Provisions, and as directed by the Engineer.

Storm Water Pollution Prevention Plan (SWPPP) (7<sup>th</sup> Paragraph):

Measurement and payment for prepare SWPPP, as described herein, shall be made at the contract Lump Sum price stated in the proposal. Full compensation for all work involved in the preparation, completion, and revision, including submitting permit registration documents ***and paying all fees***, will be considered as included in the lump sum price paid for prepare SWPPP.

Earthwork (6<sup>th</sup> Paragraph):

Roadway excavation will be measured and paid by the cubic yard and the volume is determined from the average end areas and the distance between them. ***This item will be a final pay item. See section 9-1.02C of the State Standard Specifications.***

Full Depth Reclamation – Cement (4<sup>th</sup> Paragraph):

The cement content must be 5 percent by dry weight of FDR—cement with a dry unit weight of 4.4 lb/sf, except an increase or decrease in the cement content may be ordered based on your mix design. ***The mix designs shall be submitted to and authorized by the Engineer prior to cold planning the AC pavement.*** During progress of the work, if you encounter an isolated area that requires more cement than described in the mix design for that area, notify the Engineer before applying the cement.

Minor Concrete (8<sup>th</sup> Paragraph):

Prior to installation of all form work, you shall be required to notify the Engineer a minimum of 48 hours in advance of scheduled formwork activities. The Engineer shall review the survey results and determine if the preparation of the building pad area is in conformance with the project plans and specifications. You shall not proceed with installing formwork until after it is determined that the ~~building pad area~~ ***formwork*** is in conformance with the project plans and specifications. After formwork is in place and prior to pouring any concrete, you shall notify the Engineer a minimum of 48 hours in advance for a survey of form work. Upon completion of the survey, the Engineer may either approve or disapprove of the form work. You shall not proceed with pouring concrete until after the Engineer has certified that the area is in compliance with the project plans and specifications. You shall be required to correct this work in a manner acceptable to the Engineer if found to not be in conformance with the project plans and specifications at your expense.

Install Roadside Sign (1<sup>st</sup> and 2<sup>nd</sup> Paragraph):

Contractor shall install **sign panels**, sign posts and foundations in accordance with **City Standard ST-11 and ST-12** ~~Stanislaus County Standard Plate No. 3-12~~ and these Special Provisions.

Sign panels must comply with the latest version of the California Uniform Traffic Control Devices (CA MUTCD) and **City Stanislaus County Standard Plates**. All signs shall be high intensity prismatic.

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**Item No. 8:**

Delete Pages 12 (L-1) and 42 (TH-1) and replace with attached pages 12 (L-1) and 42 (TH-1) of this addendum.

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**Item No. 9:**

**Q1:** In the specs, it mentions pavement smoothness and diamond grinding. Will this be relevant in this project as it is in a neighborhood and low speed limits where pavement smoothness and bumps are not generally applicable within these speed limits?

**A1:** Contractor to comply with the contract documents.

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**End of Addendum No. 1**

**BIDDING FORM**

City of Turlock is hereinafter called the Owner.

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

The work to be done and referred to herein is in City of Turlock and in Stanislaus County, State of California. It is shown on a set of Plans, entitled: Roads Program Capital Improvement Project Plan Package 1 and is to be constructed in accordance with the Project Specifications and contract documents attached hereto by reference.

In submitting this Bid, Bidder represents, as set forth in the Agreement, that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents and the following Addenda, receipt of all which is hereby acknowledged.

**Addendum No.**

**Addendum Date**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

- B. Bidder has visited the Site and became familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

The undersigned, as Bidder, declares that the only persons, or parties interested in this proposal as principals are those named herein, that this proposal is made without collusion with any other person, firm or corporation; that he has carefully examined the location of the proposed work, the Plans and Specifications referred to, the referenced proposed contract, and the Bidder proposes and agrees that, if this proposal is accepted, he will contract with the Owner to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract in the manner and time therein prescribed, and according to the requirements as therein set forth, and that he will take in full payment therefor the following unit prices as set forth in the Bid Schedule below.

# CITY OF TURLOCK

## Project No. 23-031 Roads Program Capital Improvement Project Plan Package 1

### *BID SCHEDULE*

Item	Description	Quantity	Unit	Unit Price	Total
<b>General</b>					
1.	Potholes Existing Utilities	1	LS	\$ _____	\$ _____
2.	Construction Funding Signs	4	EA	\$ _____	\$ _____
3.	Traffic Control System	1	LS	\$ _____	\$ _____
4.	Portable Changeable Message Sign	4	EA	\$ _____	\$ _____
5.	Job Site Management	1	LS	\$ _____	\$ _____
6.	Prepare Storm Water Pollution Prevention Plan	1	LS	\$ _____	\$ _____
7.	Erosion and Dust Control BMPs	1	LS	\$ _____	\$ _____
8.	Construction Staking	1	LS	\$ _____	\$ _____
9.	Remove Concrete (Flatwork)	580	SY	\$ _____	\$ _____
10.	Remove Concrete (Curb and Gutter)	1160	LF	\$ _____	\$ _____
11.	Clearing and Grubbing	1	LS	\$ _____	\$ _____
12.	Remove Tree	5	EA	\$ _____	\$ _____
13.	Roadway Excavation (F)	150	CY	\$ _____	\$ _____
14.	Full Depth Reclamation - Cement	13300	SY	\$ _____	\$ _____
15.	Cement (Full Depth Reclamation - Cement)	270	TON	\$ _____	\$ _____
16.	Mix Design (Full Depth Reclamation - Cement)	1	LS	\$ _____	\$ _____

Item	Description	Quantity	Unit	Unit Price	Total
17.	Hot Mix Asphalt (Type A)	3240	TON	\$ _____	\$ _____
18.	Cold Planing AC Pavement	13300	SY	\$ _____	\$ _____
19.	Minor Concrete (Curb and Gutter)	1140	LF	\$ _____	\$ _____
20.	Minor Concrete (Curb Ramp)	1770	SF	\$ _____	\$ _____
21.	Minor Concrete (Sidewalk)	2480	SF	\$ _____	\$ _____
22.	Minor Concrete (Alley)	820	SF	\$ _____	\$ _____
23.	Minor Concrete (Valley Gutter)	1090	SF	\$ _____	\$ _____
24.	Detectable Warning Surface (Truncated Domes)	280	SF	\$ _____	\$ _____
25.	Adjust Drainage Inlet to Grade	5	EA	\$ _____	\$ _____
26.	Adjust Manhole Frame and Cover (Utility)	6	EA	\$ _____	\$ _____
27.	Remove and Replace Monument	3	EA	\$ _____	\$ _____
28.	Adjust Frame and Cover to Grade	17	EA	\$ _____	\$ _____
29.	Remove Roadside Sign	1	EA	\$ _____	\$ _____
30.	Relocate Roadside Sign - One Post	6	EA	\$ _____	\$ _____
31.	Roadside Sign - One Post	2	EA	\$ _____	\$ _____
32.	Thermoplastic Traffic Stripe	1880	LF	\$ _____	\$ _____
33.	Thermoplastic Pavement Markings	2520	SF	\$ _____	\$ _____
34.	Relocate Street Lights	2	EA	\$ _____	\$ _____
35.	Mobilization	1	LS	\$ _____	\$ _____
<b>TOTAL BID</b>					\$ _____

(F) Denotes Final Pay Item Per Section 9-1.02C of The State Standard Specifications.

COMPANY'S NAME: \_\_\_\_\_

BY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

(Number)

(Street)

(City)

(State)

(ZIP)

CONTRACTOR'S PHONE #: \_\_\_\_\_

**NOTE: CONTRACTOR WILL BE REQUIRED TO LIST THEIR LICENSE NUMBER, EXPIRATION DATE, AND APPROPRIATE STATEMENT REGARDING PERJURY AND SIGNED BY INDIVIDUAL AUTHORIZED TO DO SO. FAILURE TO INCLUDE THE ABOVE ITEMS MAY CAUSE SAID CONTRACTOR'S BID TO BE REJECTED.**

A-General Engineering Contractor:

\_\_\_\_\_, Contractor's License # \_\_\_\_\_, Class\_\_\_\_  
(Company's Name)

Expires\_\_\_\_\_. DIR #: \_\_\_\_\_

This information is true, is provided as per Section 7028.15 of the Business and Professions Code, and is made herein under penalty of perjury.

X \_\_\_\_\_  
(Bidder's Signature) (Date)

If the proposal is accepted and the undersigned shall fail to contract as aforesaid and fail to file with the City insurance certificates as required by said contract, within fourteen (14) days after the bidder has received notice from the City Engineer or his representative of the City of Turlock that the contract has been awarded to bidder and is ready for signature, the City of Turlock may, at its option, determine that the bidder has abandoned his contract, and thereupon this proposal and the acceptance thereof shall be null and void.

*Also accompanying this proposal is an affidavit of non collusion and questionnaire to general contractors, a statement of proposed sub contractors, if any, the address of mill, shop or office of any sub contractor, and a statement of work to be performed by sub contractors.*

The names and addresses of persons interested in the foregoing proposal as principals are as follows:

**(IMPORTANT NOTICE:** If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a partnership,

state true name of firm, also names of all individual co partners composing firm; if bidder or other interested person is an individual, state first and last name in full.)

Licensed in accordance with an act providing for the registration of Contractors,  
License No. \_\_\_\_\_ Expiration Date \_\_\_\_\_.

DATED: \_\_\_\_\_, 20 \_\_\_\_\_

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

Phone: \_\_\_\_\_

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

NOTE: If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signature of the officers authorized to sign contracts on behalf of the corporation; if bidder is a co partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts in behalf of the co partnership; and, if bidder is an individual, his signature shall be placed above. If a signature is by an agent other than an officer of a corporation or a member of the partnership, a Power of Attorney must be on file with the City Clerk prior to opening or submitted with the bid; otherwise, the bid will be disregarded as irregular and unauthorized.



## AGREEMENT

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### FOR PUBLIC IMPROVEMENT

**Project No. 23-031  
Roads Program Capital Improvement Project  
Plan Package 1**

**THIS PUBLIC IMPROVEMENT AGREEMENT** (the “Agreement”) is entered into by and between the CITY OF TURLOCK, a California municipal corporation (“City”), and \_\_\_\_\_, a \_\_\_\_\_ (“Contractor”), on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the “Effective Date”). City and Contractor may be collectively referred to herein as the “Parties” or individually as “Party.” There are no other parties to this Agreement.

### RECITALS

- A. City seeks a duly qualified and licensed firm experienced in the construction of Roads Program Capital Improvement Project, Plan Package 1 (the “Project”).
- B. The Project involves the expenditure of funds in excess of \$5,000 and constitutes a “public project” pursuant to Public Contract Code section 20161.
- C. Contractor has made a proposal to City to provide construction services, a copy of which is attached and incorporated hereto as **Exhibit A** (the “Services”).
- D. City has determined it is necessary and desirable to employ the services of Contractor to perform construction work on the Project.
- E. City has taken appropriate proceedings to authorize construction of the Project and execution of this contract pursuant to Public Contract Code section 20160 et seq.; specifically, on \_\_\_\_\_, 20\_\_, at a duly noticed meeting of the City Council of the City of Turlock, this contract for the construction of the improvements hereinafter described was awarded to Contractor as the lowest responsive and responsible bidder for said improvements.

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

## AGREEMENT

### 1. Contract Documents:

This Agreement, together with the following documents, are collectively referred to herein as the “Contract Documents”:

- i. Notice to Bidders;
- ii. Contractor’s Bid or Proposal accepted by City;
- iii. General Conditions, Supplementary Conditions, and Special Provisions of the City of Turlock for **Roads Program Capital Improvements Project – Package 1**
- iv. Plans and detailed drawings prepared for this Project and approved by City (“Project Plans”);
- v. All bonds and insurance required by the Contract Documents;
- vi. Any and all supplemental agreements amending, decreasing, or extending the work contemplated or which may be required to complete the work in a substantial and acceptable manner; and
- vii. The current edition of the City of Turlock Standard Specifications and Drawings.

All of the Contract Documents are intended to incorporate the terms of the others so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract will hereinafter be referred to as the “Contract.” In case of any dispute regarding the terms of the Contract, the decision of the City Engineer shall be final.

### 2. Term.

The Contract shall be effective as of the Effective Date first stated above. Contractor shall not commence work on the Project until it has been given notice by City (“Notice to Proceed”). The Contract shall terminate one (1) year(s) after City accepts Contractor’s performance of the Services by recording a Notice of Completion with the County of Stanislaus Clerk Recorder (the “Term”), unless the Parties mutually agree in writing to terminate the Contract earlier or extend the Term in an agreed writing executed by both Parties.

### 3. Scope of Work.

(a) *Services.* Contractor shall perform the Services described in Exhibit A, subject to all terms and conditions in the Contract. Contractor shall not receive additional compensation for the performance of any Services not described therein.

(b) *Modification.* City, at any time, by written order, may make changes within the general scope of the work under this Agreement or issue additional instructions, require additional work or direct

deletion of work. Contractor shall not proceed with any change involving an increase or decrease in the Contract Price, as defined in Section 4 of this Agreement, without prior written authorization from City. Contractor shall not be entitled to compensation for the performance of any such unauthorized work. Contractor further waives any and all right or remedy by way of restitution or quantum meruit for any and all extra or changed work performed without express and prior written authorization of City. Notwithstanding the foregoing, Contractor shall promptly commence and diligently complete any change to the work subject to City's written authorization issued pursuant to this Section; Contractor shall not be relieved or excused from its prompt commencement of diligent completion of any change subject to City's written authorization by virtue of the absence or inability of Contractor and City to agree upon the extent of any adjustment to the completion schedule or Contract Price on account of such change. The issuance of a change order pursuant to this Section 3 in connection with any change authorized by City shall not be deemed a condition precedent to Contractor's obligation to promptly commence and diligently complete any such change authorized by City hereunder. City's right to make changes shall not invalidate the Contract nor relieve Contractor of any liability or other obligations under the Contract. Any requirement of notice of changes in the scope of work to Contractor's surety shall be the responsibility of Contractor.

(c) *Specific Materials & Performance of Work.* Contractor shall furnish all tools, equipment, facilities, labor, and materials necessary to perform and complete, in good workmanlike manner, the work of general construction as called for and in the manner designated in, and in strict conformity with, the plans and specifications for said work entitled, “**General Conditions and Special Provisions for Roads Program Capital Improvement Project Plan Package 1.**” The equipment, apparatus, facilities, labor, and material shall be furnished, and said work performed and completed as required by the Contract under the direction and supervision, and subject to the approval, of the City Engineer or City Engineer’s designated agent.

(d) *Exhibits.* All “Exhibits” referred to below or attached hereto are, by this reference, incorporated into the Contract.

	<u>Exhibit Designation</u>	<u>Exhibit Title</u>
1.	Exhibit A	Scope of Services
2.	Exhibit B	Payment by Force Account
3.	Exhibit C	Workers’ Compensation Insurance Certification
4.	Exhibit D	Performance Bond
5.	Exhibit E	Payment Bond

**4. Contract Price.**

City shall pay, and Contractor shall accept in full payment for the work set forth above in Section 3, Scope of Work, an amount not to exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ .00) (the “Contract Price”). Said amount shall be paid pursuant to Section 8 of this Agreement. The Contract Price may only be changed by a contract change order. The value of any work covered by a contract change order for an adjustment in the Contract Price will be determined in the sole discretion of City as follows:

(a) If the work performed is on the basis of unit prices contained in the Contract Documents, the change order will be determined in accordance with the provisions in Section 4-1.05, “Changes and Extra Work”, of the Caltrans Standard Specifications, as applicable; or

(b) If the work performed is not included on the engineer’s estimate associated with a unit price, the change order will be by a mutually agreed lump sum; or

(c) If the change order is not determined as described above in either subdivision (a) or (b), the change order will be determined on the basis of force account in accordance with the provisions set forth in **Exhibit B**, “Payment by Force Account,” attached hereto and incorporated herein by reference.

**5. Time for Performance.**

The time fixed for the commencement of work under the Contract is within ten (10) working days after the Notice to Proceed has been issued. The work on this project, including all punch list items, shall be completed on or before the expiration of **Seventy Five (75) working days** (the “Completion Date”) beginning on the first day of work or no later than the tenth day after the Notice to Proceed has been issued.

(a) *Right of City to Increase Working Days:* If Contractor fails to complete the Services by the Completion Date, the City Engineer shall have the right to increase the number of working days in the amount the City Engineer may determine will best serve the interests of City, and if the City Engineer desires to increase said number of working days, the City Engineer shall have the further right to charge Contractor and deduct from the final payment for the work the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to Contractor, and which accrue during the period of such extension, except that the cost of the final service and preparation of the final estimates shall not be included in such charges. No extension of time for completion of Services under the Contract shall be considered unless requested by Contractor at least twenty (20) calendar days prior to the Completion Date, in writing, to the City Engineer.

The Completion Date may only be changed by a contract change order. The value of any work covered by a contract change order for an adjustment in the Completion Date will be determined as follows:

- i. Additional working days will be awarded where the amount of time is mutually agreed upon by Contractor and the City Engineer; or
- ii. Additional working days will be awarded where Contractor is prevented from completing any part of the work identified on the critical path and:
  - 1. where the delay is caused by acts of public enemy, fire, floods, tsunamis, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargos, provided that Contractor shall notify Engineer in writing of the causes of delay within fifteen (15) days from the beginning of that delay; or
  - 2. where the delay is caused by actions beyond the control of Contractor; or

3. where the delay is caused by actions or failure to act by the City Engineer.

Contractor shall not be entitled to an adjustment in the Completion Date for delays within the control of Contractor. Delays resulting from and within the control of a subcontractor or supplier of Contractor shall be deemed to be delays within the control of Contractor.

(b) *Excusable Delays.* Contractor shall not be in breach of the Contract in the event that performance of Services is temporarily interrupted or discontinued due to a “Force Majeure” event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, or explosions; natural disasters, such as floods, earthquakes, landslides, and fires; strikes, lockouts, and other labor disturbances; or other catastrophic events, which are beyond the reasonable control of Contractor. Force Majeure does not include Contractor’s financial inability to perform, Contractor’s failure to obtain any necessary permits or licenses from other governmental agencies, or Contractor’s failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Contractor. If Contractor’s performance of the Services is delayed by an excusable delay, the Completion Date shall be extended for such reasonable time as determined by the City Engineer. Extensions in time must be requested by Contractor within fifteen (15) calendar days of the excusable delay in order to receive consideration.

(c) *Emergency - Additional Time for Performance - Procurement of Materials.* If, because of war or other declared national emergency, the federal or state government restricts, regulates, or controls the procurement and allocation of labor or materials, or both, and if solely because of said restrictions, regulations or controls, Contractor is, through no fault of Contractor, unable to perform the Services, or the work is thereby suspended or delayed, any of the following steps may be taken:

- i. City may, pursuant to resolution of the City Council, grant Contractor additional time for the performance of the Contract, sufficient to compensate in time, for delay or suspension.

To qualify for such extension in time, Contractor within ten (10) days of Contractor's discovering such inability to perform, shall notify the City Engineer in writing thereof, and give specific reasons therefore; the City Engineer shall thereupon have sixty (60) days within which to procure such needed materials or labor as is specified in this agreement, or permit substitution, or provide for changes in the work in accordance with subdivision (b) of this Section.

Substituted materials, or changes in the work, or both, shall be ordered in writing by the City Engineer, and the concurrence of the City Council shall not be necessary. All reasonable expenses of such procurement incurred by the City Engineer shall be defrayed by the Contractor; or

- ii. If such materials or labor cannot be procured through legitimate channels within sixty (60) days after the filing of the aforesaid notice, either Party may, upon thirty (30) days' written notice to the other, terminate this agreement. In such event, Contractor shall be compensated for all work executed upon a unit basis in proportion to the amount of the work completed, or upon a cost-plus-ten-percent (10%) basis, whichever is the lesser. Materials on the ground, in process of fabrication or in route upon the date of notice of

termination specially ordered for the Project and which cannot be utilized by Contractor, shall be compensated for by City at cost, including freight, provided Contractor shall take all steps possible to minimize this obligation; or

- iii. The City Council, by resolution, may suspend the Contract until the cause of inability to perform is removed for a period of not to exceed sixty (60) days.

If the Contract is not canceled, and the inability of Contractor to perform continues without fault on Contractor's part, beyond the time during which the Contract may have been suspended, as herein above provided, the City Council may further suspend the Contract, or either Party hereto may, without incurring any liability, elect to declare the Contract terminated upon the ground of impossibility of performance. In the event City declares this agreement terminated, such declaration shall be authorized by the City Council by resolution, and Contractor shall be notified in writing thereof within five (5) days after the adoption of such resolution. Upon such termination, Contractor shall be entitled to proportionate compensation at the Contract Price for such portion of the Contract as may have been performed; or

- iv. City may terminate the Contract, in which case Contractor shall be entitled to proportionate compensation at the agreed rate for such portion of the Contract as may have been performed. Such termination shall be authorized by resolution of the City Council. Notice thereof shall be forthwith given in writing to Contractor, and the Contract shall be terminated upon receipt by Contractor of such notice.

In the event of the termination provided in this sub-paragraph (iv), none of the covenants, conditions or provisions hereof shall apply to the Services not performed, and City shall be liable to Contractor for the proportionate compensation last herein mentioned.

(d) *Delay Damages.* In the event Contractor, for any reason, fails to perform the Services to the satisfaction of the City Engineer by the Completion Date, City may, in accordance with Section 7203 of the Public Contract Code, in lieu of any other of its rights authorized by Section 6 of this agreement, deduct from payments or credits due Contractor after such breach a sum equal to **four thousand two hundred and no/100ths Dollars (\$4,200)** for each calendar day beyond the Completion Date. This deduction shall not be considered a penalty but shall be considered as delay damages. The aforementioned rate of deduction is an amount agreed to by the Parties as reasonably representing additional construction engineering costs incurred by City if Contractor fails to complete the Services by the Completion Date. However, any deduction assessed as delay damages shall not relieve Contractor from liability for any damages or costs resulting from delays to other contractors on the project or other projects caused by a failure of the assessed Contractor to complete the Services by the Completion Date. Due account shall be taken of any time extensions granted to Contractor by City. Permitting Contractor to continue work beyond the Completion Date shall not operate as a waiver on the part of City of any of its rights under the Contract nor shall it relieve Contractor from liability for any damages or costs resulting from delays to other contractors on the project or other projects caused by a failure of the assessed Contractor to complete the Services by the Completion Date.

## 6. Termination.

### (a) *Option of City to Terminate Contract for Failure to Complete Services.*

If a Party should fail to perform any of its obligations hereunder within the time and in the manner herein provided, or otherwise violates any of the terms of the Contract (the “Defaulting Party”), the other Party shall give notice to the Defaulting Party and allow the Defaulting Party ten (10) days to correct such deficiency. If the Defaulting Party does not correct such deficiency, the other Party may immediately terminate the Contract by giving written notice of such termination, stating the reason for such termination. In such event, Contractor shall be entitled to receive payment for all Services satisfactorily rendered until such termination, provided, however, there shall be deducted from such amount the amount of damage, if any, sustained by virtue of any breach of the Contract by Contractor, including Delay Damages. If payment under the Contract is based upon a lump sum in total or by individual task, payment for Services satisfactorily rendered shall be an amount which bears the same ratio to the total fees specified in this Agreement as the Services satisfactorily rendered hereunder by Contractor to the total services otherwise required to be performed for such total fee, provided, however, that there shall be deducted from such amount the amount of damage, if any sustained by City by virtue of any breach of the Contract by Contractor. Upon termination, Contractor shall deliver copies of all Work Product, as defined in Section 19 of this Agreement, to City. If District terminates the Contract before Contractor commences any Services hereunder, City shall not be obligated to make any payment to Contractor.

(b) If Contractor should be adjudged bankrupt or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it or any of its subcontractors should violate any of the provisions of the Contract, City may serve written notice upon it and its surety of its intention to terminate the Contract. Such notice shall contain the reasons for City’s intention to terminate the Contract, and unless such violations shall cease within five (5) calendar days after serving of such notice, the Contract shall cease and terminate upon the expiration of said five (5) calendar days. In the event of any such termination, City shall immediately serve written notice thereof upon the surety and Contractor, and the surety shall have the right to take over and perform the Contract; provided however, that, if the surety does not give City written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty (30) calendar days from the date of the service of such notice, City may take over the work and prosecute the same to completion by contract or any other method it may deem advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be jointly liable to City for any excess cost occasioned City thereby, and in such event City may, without liability for so doing, take possession of and utilize in completing the work, such materials, appliances, and other property belonging to Contractor as may be on the Project site and necessary thereof.

## 7. Liability for Breach:

Neither Party waives the right to recover direct damages against the other for breach of the Contract, including any amount necessary to compensate City for all detriment proximately caused by Contractor's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. City reserves the right to offset such damages against any payments owed to Contractor.

City shall not, in any manner, be liable for special or consequential damages, including but not limited to Contractor's actual or projected lost profits had Contractor completed the Services required by the Contract. In the event of termination by either Party, copies of all finished or unfinished Work Product, as defined in Section 19 of this Agreement, shall become the property of City. Notwithstanding the foregoing, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with the Contract or the Services performed in connection with the Contract.

**8. Compensation:**

City shall make payments to Contractor in accordance with the provisions of Section 9 of the City Standards in legally executed and regularly issued warrants of City, drawn on the appropriate fund or funds as required by law and order of the City Council thereof. Contractor shall be administered a progress payment approximately every thirty (30) calendar days from the time work begins according to the payment schedule furnished by the City Engineer at the time work begins. Contractor shall provide access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Contractor's charges to City under this Contract.

Monthly progress payments in the amount of 95 percent (95%) of the value of the work will be made to Contractor based on the Contractor's estimate and the schedule of prices contained in the accepted bid. The remaining 5 percent (5%) will be retained by City as partial security for the fulfillment of the Contract except that at any time after 50 percent (50%) of the work has been completed, if the City Engineer finds that satisfactory progress is being made and the Project's critical path of work are on schedule, City may discontinue any further retention. Such discontinuance will only be made upon the written request of Contractor. City may, at any time the City Engineer finds that satisfactory progress is not being made, again institute retention of 5 percent (5%) as specified above. Payment will be made as soon as possible after the preparation of the Contractor's estimate. City shall pay the remaining 5 percent (5%) of the value of the Services completed under this Contract, if unencumbered by retentions for claims, not sooner than the expiration of thirty-five (35) calendar days from the date of recordation of the Notice of Completion, pursuant to Section 2 of this agreement, and not later than sixty (60) days from the "completion" of the Services as said term is defined in Public Contract Code section 7107(c).

No estimate or payment shall be made if, in the judgment of the City Engineer, the work is not proceeding in accordance with the provisions of the Contract, or when, in his judgment, the total value of the work done since the last estimate amounts to less than \$1,000. No progress payments will be made if the time allotted for the job is thirty (30) working days or less. Payment of any progress payment, or the acceptance thereof by Contractor, shall not constitute acceptance of the work performed under this Contractor, or any portion thereof, and shall in no way reduce the liability of Contractor to replace unsatisfactory work or materials, though the unsatisfactory character of such work or materials may not have been apparent or detected at the time such payment was made.

Additionally, as a precondition to City's progress payments hereunder, Contractor shall provide to City, prior to payment, unconditional waivers and releases of stop notices pursuant to Civil Code section 8128 et seq. from each subcontractor and materials supplier. The form of said waivers and releases shall be as set forth in Civil Code section 3262(d)(2).

Pursuant to Public Contract Code section 22300 et seq., Contractor may request the right to substitute securities for any moneys withheld by City to ensure the performance required of Contractor under the

Contract, or that City make payment of retentions earned directly into an escrow account established at the expense of Contractor.

**9. Disputes Pertaining to Payment for Work:**

Should any dispute arise respecting the true value of any work performed, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of the Contract, such dispute shall be decided by the City Engineer, and the decision of the latter shall be final and conclusive. The Parties agree to comply with the claims resolution procedures set forth in Public Contract Code section 9204 when applicable.

(a) *Claims Processing.* Any submission of a claim by Contractor must comply with the requirements of Public Contract Code section 9204. Upon receipt of a claim pursuant to this section, City shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the Parties may, by mutual agreement, extend the time period provided in this subdivision. Contractor shall furnish reasonable documentation to support the claim. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after City issues its written statement. If Contractor disputes City’s written response, or if City fails to respond to a claim issued pursuant to this section within the time prescribed, Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute.

(b) *Meet-and-Confer Conference.* Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, City shall schedule a meet-and-confer conference within thirty (30) days for settlement of the dispute. Within ten (10) business days following the conclusion of the meet-and-confer conference, if the claim or any portion of the claim remains in dispute, City shall provide the claimant 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 sixty (60) days after the City issues its written statement.

(c) *Nonbinding Mediation.* Any disputed portion of the claim, as identified by Contractor in writing, shall be submitted to nonbinding mediation, with the Parties sharing the associated costs equally. The Parties shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the Parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject judicial review pursuant to Section 23 of this Agreement.

Notwithstanding any claim, dispute, or other disagreement between the Parties regarding performance under the Contract, the scope of work hereunder, or any other matter arising out of or related to, in any manner, the Contract, Contractor shall proceed diligently with performance of the Services in accordance with City's written direction, pending any final determination or decision regarding any such claim, dispute, or disagreement.

**10. Permits and Care of Work:**

Contractor shall, at Contractor's expense, obtain all necessary permits and licenses for the construction of each improvement, give all necessary notices and pay all fees and taxes required by law, except those City fees set forth in Section 1 of the Special Provisions. Contractor has examined the Project site and is familiar with its topography and condition, location of property lines, easements, building lines, and other physical factors and limitations affecting the performance of the Contract. Contractor, at Contractor's expense, shall obtain any permission necessary for any operations conducted off the property owned or controlled by City. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.

**11. Public Works and Payment of Prevailing Wage:**

(a) *Monitoring and Enforcement.* In accordance with the provisions of Sections 1725.5, 1771.1, 1771.3, and 1771.4 of the Labor Code, all work performed under the Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations (“DIR”). All work performed by Contractor or its subcontractors under the Contract is subject to the requirements of Labor Code section 1720 et seq. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 of the Labor Code at the time the contract is awarded. Contractor and its subcontractors shall furnish the records specified in Section 1776 of the Labor Code directly to the Labor Commissioner, at least monthly, in the format prescribed by the Labor Commissioner.

In accordance with the provisions of Section 1773.3 of the Labor Code, City shall provide notice to DIR of the award of this Contract within thirty (30) working days of the award. The notice shall be transmitted electronically in a format specified by DIR and shall include the name of Contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, Project location, and any additional information DIR specifies that aids in the administration and enforcement of Section 1720 et seq. of the Labor Code.

(b) *Wages & Hours of Employment:* In the performance of the Services under the Contract, eight (8) hours shall be the maximum hours of labor on any calendar day, and the minimum wages of compensation of persons performing labor in the execution of this agreement shall be the current prevailing scale of wages determined by DIR for the community. Contractor shall forfeit as penalty Twenty-five and no/100ths Dollars (\$25.00) to be paid to City for each workman employed in the execution of the Contract by Contractor or its subcontractor(s), for each calendar day during which any workman is required or permitted to labor more than eight (8) hours, in violation of provisions of Labor Code section 1810 et seq. Contractor shall post prevailing wage rates at the Project no later than the first day Contractor commences performance of the Services under the Contract.

**12. Superintendence by Contractor:**

Contractor shall give personal superintendence to the work on the Project or have a competent foreman or superintendent satisfactory to the City Engineer on the Project at all times during construction and performance of work under the Contract, with authority to act for Contractor.

**13. Inspection and Testing by City:**

Contractor shall at all times maintain proper facilities and provide safe access for inspection by City to all parts of the work performed on the Project and to the shops wherein the work is in preparation. Contractor shall notify City with sufficient time in advance of the manufacture of production materials to be supplied by Contractor under the Contract in order for City to arrange for mill or factory inspection and testing of same. Any materials shipped by Contractor from factory prior to having satisfactorily passed such testing and inspection by City's representative or prior to the receipt of notice from such representative that such testing and inspection will not be required shall not be incorporated on the Project. Contractor shall also furnish to City, in triplicate, certified copies of all factory and mill test reports upon request.

**14. Conformity with Law and Safety:**

Contractor shall observe and comply with all applicable laws, ordinances, codes, and regulations of governmental agencies, including federal, state, municipal, and local governing bodies having jurisdiction over any or all of the scope of Services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the American with Disabilities Act, any copyright, patent, or trademark law, and all other applicable federal, state, municipal, and local safety regulations, appropriate trade association safety standards, and appropriate equipment manufacturer instructions. All Services performed by Contractor or its subcontractors must be in accordance with these laws, ordinances, codes, and regulations. Contractor's failure to comply with any laws, ordinances, codes, or regulations applicable to the performance of the Services hereunder shall constitute a breach of contract. In cases where standards conflict, the standard providing the highest degree of protection shall prevail.

If a death, serious personal injury or substantial property damage occurs in connection with the performance of the Contract, Contractor shall immediately notify City's risk manager by telephone. If any accident occurs in connection with the Contract, Contractor shall promptly submit a written report to City, in such form as City may require. This report shall include the following information: (a) name and address of the injured or deceased person(s); (b) name and address of Contractor's subcontractor, if any; (c) name and address of Contractor's liability insurance carrier; and (d) a detailed description of the accident, including whether any of City's equipment, tools, or materials were involved.

If a release of a hazardous material, substance, or waste occurs in connection with the performance of the Contract, Contractor shall immediately notify City. Contractor shall not store hazardous materials or hazardous waste within City limits without a proper permit from City.

**15. Other Contracts:**

City may award other contracts for additional work on the Project, and Contractor shall fully cooperate with such other contractors and carefully fit Contractor's own work to that provided under other contracts as may be directed by the City Engineer. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

**16. Bonds:**

Concurrently with the execution hereof, Contractor shall furnish, on the forms provided herein as **Exhibits D and E**, respectively, corporate surety bonds to the benefit of City, issued by a surety company acceptable to City and authorized and admitted to do business in the state of California, as follows:

(a) *Faithful Performance Bond.* In an amount equal to at least one hundred percent (100%) of the Contract Price as security for the faithful performance of the Contract. The bond shall contain a provision that the surety thereon waives the provisions of Sections 2819 and 2845 of the Civil Code.

(b) *Payment Bond.* In an amount equal to at least one hundred percent (100%) of the Contract Price as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. The bond shall be in accordance with the provisions of Sections 3225, 3226, and 3247 through 3252, inclusive, of the Civil Code and Section 13020 of the Unemployment Insurance Code of California. Said bond shall also contain a provision that the surety thereon waives the provisions of Sections 2819 and 2845 of the Civil Code.

The surety companies shall familiarize themselves with all provisions and conditions of the Contract. It is understood and agreed that the surety or sureties waive the right of special notification of any modification or alterations, omissions or reductions, extra or additional work, extensions of time, or any other act or acts by City or its authorized agents under the terms of this Contract and failure to so notify the surety or sureties of such changes shall in no way relieve the surety or sureties of their obligations under the Contract.

**17. Indemnification:**

(a) *Indemnity for Professional Liability.* When the law establishes a professional standard of care for Contractor’s Services, to the fullest extent permitted by law, Contractor shall indemnify, protect, defend, and hold harmless City and any and all of its elective and appointive boards, officers, officials, agents, employees or volunteers (“City’s Agents”) from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel’s fees and costs but only to the extent Contractor or its subcontractors are responsible for such damages, liabilities and costs on a comparative basis of fault between Contractor or its subcontractors and City in the performance of professional services under the Contract. Contractor shall not be obligated to defend or indemnify City for City’s own negligence or for the negligence of others.

(b) *Indemnity for other than Professional Liability.* Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and any and City’s Agents from and against any liability, including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel’s fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of the Contract by Contractor or by any individual or agency for which Contractor is legally liable, including, but not limited to, officers, agents, employees, or subcontractors of Contractor.

**18. Contractor's Insurance:**

Concurrently with the execution hereof, Contractor shall furnish City with satisfactory proof of carriage of the insurance required under this section, and that Contractor shall give City at least sixty (60) days prior notice of the cancellation of any policy during the Term of this contract. Contractor shall not commence work under this Agreement until Contractor has obtained City's approval regarding all insurance requirements, forms, endorsements, amounts, and carrier ratings, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor shall have been so obtained and approved. Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by Contractor, its agents, representatives, employees or subcontractors. Failure to maintain or renew coverage or to provide evidence of renewal may constitute a material breach of the Contract. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to City.

(a) *General Liability Insurance.* Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence, Four Million Dollars (\$4,000,000.00) general aggregate, for bodily injury, personal injury, and property damage, including, without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property damage hazards. Contractor's general liability policies shall be primary and not seek contribution from City's coverages and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction contracts, an endorsement providing completed operations to the additional insured, ISO form CG 20 37, is also required. The policy shall contain, or be endorsed to contain, the following provisions:

- (1) City, its elective and appointive boards, officers, agents, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work or operations, which coverage shall be maintained in effect for at least three (3) years following the completion of the work specified in the Contract. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as CG 20 10 for ongoing operations and CG 20 37 for products/completed operations), or as a separate Owners and Contractors Protective Liability policy providing both ongoing operations and completed operations coverage.
- (2) For any claims related to the Project, Contractor's insurance coverage shall be primary insurance as respects City and any insurance or self-insurance maintained by City shall be excess of Contractor's insurance and shall not contribute with it.
- (3) In the event of cancellation, non-renewal, or material change that reduces or restricts the insurance coverage afforded to City under the Contract, the insurer, broker/producer, or Contractor shall provide City with thirty (30) days' prior written notice of such cancellation, non-renewal, or material change.

- (4) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(b) *Workers' Compensation Insurance.* Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least One Million Dollars (\$1,000,000.00). Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

(c) *Auto Insurance.* Contractor shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than Two Million Dollars (\$2,000,000.00) per accident. If Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.

(d) *Builder's Risk Insurance.* Intentionally Omitted

(e) *Contractors Pollution Insurance.* Pollution Coverage shall be provided on a Contractors Pollution Liability form, or other form acceptable to City, providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than Two Million Dollars (\$2,000,000.00) per claim. All activities contemplated in the Contract shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

(f) *Professional Liability Insurance.* Intentionally Omitted

(g) *Umbrella or Excess Policy.* Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability and automobile Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

(h) *Deductibles and Self-Insured Retentions.* Upon request of City, any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City and City's Agents; or (2) Contractor shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(i) *Acceptability of Insurers.* Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII or with an insurer to which City has provided prior approval.

(j) *Verification of Coverage.* Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Section 18. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right, at any time, to require complete, certified copies of all required insurance policies and endorsements.

(k) *Waiver of Subrogation.* With the exception of professional liability, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. The commercial general liability policy and workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of City for all work performed by Contractor, its agents, employees, independent contractors and subcontractors. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

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

**19. Ownership of Work Product:**

Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes, professional or technical information or data, photographs, notes, letters, emails, or any original works of authorship created by contractor or its subcontractors or subcontractors in connection with Services performed under the Contract ("Work Product") shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of City. In the event that it is ever determined that any Work Product created by Contractor or its subcontractors or subcontractors under the Contract are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such Work Product to City. With the prior written approval of the City Engineer, Contractor may retain and use copies of such Work Product for reference and as documentation of its experience and capabilities.

All Work Product shall become the property of City irrespective of where located or stored and Contractor agrees to deliver all such documents and information to City, without charge and in whatever form it exists, upon the Completion Date, as may be extended. Contractor shall have no ownership interest in such Work Product.

All Work Product of Contractor under the Contract, including written information which City will cause to be distributed for either internal or public circulation, including both preliminary and final drafts, shall be delivered to City in both printed and electronic form, or as may be specific in Exhibit A.

When the Contract is terminated, Contractor agrees to return to City all documents, drawings, photographs, and other written or graphic material, however produced, that it received from City or City's Agents, in connection with the performance of its Services under the Contract. All materials shall be returned in the same condition as received.

**20. Taxes:**

Payment of any taxes, including California sales and use taxes, levied upon the Contract, the transaction, or the Services or goods delivered pursuant hereto, shall be the obligation of Contractor. Contractor shall cooperate with City to the full extent possible to maximize the local allocation of California sales and use tax to City. Such cooperation shall include, but not be limited to:

(a) *Use Tax Direct Payment Permits.* Contractor shall apply for, obtain, and utilize, to the maximum extent reasonable, a California Use Tax Direct Payment Permit.

(b) *Purchases of \$500,000 or More.* Contractor shall require vendors and suppliers located outside California from whom Contractor makes purchases of \$500,000 or more to allocate the use tax to City.

**21. Independent Contractor:**

At all times during the Term of the Contract, Contractor shall be deemed to be an independent contractor and shall be wholly responsible for the manner in which Contractor performs the Services required under the Contract. Contractor shall be liable for its acts and omissions, and those of its employees, contractors, subcontractors, representatives, volunteers, and its agents. Nothing contained herein shall be construed as creating an employment, agency, or partnership relationship between City and Contractor. City shall have the right to control Contractor only insofar as the result of Contractor's Services rendered pursuant to the Contract; however, City shall not have the right to control the means by which Contractor accomplishes Services rendered pursuant to the Contract.

**22. Contractor Not Agent:**

Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to the Contract to bind City to any obligation whatsoever.

**23. Arbitration of Disputes:**

All claims, disputes, and other matters in question between City and Contractor arising out of, or relating to, this Contract or the breach thereof, including claims of Contractor for extra compensation of Services related to the project, shall be decided by arbitration before a single arbitrator in accordance with the provisions of Sections 1281 through 1284.2 of the Code of Civil Procedure (the "Arbitration Laws") unless the Parties mutually agree otherwise. The provisions of Section 1283.05 of the Arbitration Laws apply to any arbitration proceeding except as otherwise provided in the Contract. The arbitrator shall have authority to decide all issues between the Parties including, but not limited to, claims for extras, delay, and liquidated damages, if any, provided for the Contract, matters involving defects in the Services performed by Contractor or its subcontractors, rights to payment, and whether the necessary procedures for arbitration have been followed. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having competent jurisdiction thereof.

Notice of the demand for arbitration shall be filed in writing with the other Party. The demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings

based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

The parties shall jointly appoint an arbitrator within fifteen (15) calendar days of the date of giving the notice of the demand for arbitration. If the Parties are unable to jointly agree upon the appointment of an arbitrator within said fifteen (15) calendar day period, and do not agree in writing to extend said period for a fixed period, then either Party may seek to have the arbitrator appointed by the Superior Court of Stanislaus County in accordance with the Arbitration Laws.

If any proceeding is brought to contest the right to arbitrate and it is determined that such right exists, the losing Party shall pay all costs and attorney's fees incurred by the prevailing Party.

In addition to the other rules of law which may be applicable to any arbitration hereunder, the following shall apply:

(a) Promptly upon the filing of the arbitration, each Party shall be required to set forth in writing and to serve upon each other Party a detailed statement of its contentions of fact and law.

(b) All Parties to the arbitration shall be entitled to the discovery procedures provided under Section 1283.05 of the California Code of Civil Procedure.

(c) The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein.

(d) These additional rules shall be implemented and applied by the arbitrator.

The costs of arbitration shall be borne by the Parties as determined by the arbitrator, but each Party shall bear its own attorney's fees associated with the dispute with the other Party and to the arbitration.

All administrative remedies required under Section 9 of this Agreement or pursuant to Public Contract Code section 9204, or required by any other law, shall be exhausted prior to commencement of any arbitration under this Section 23.

#### **24. Provisions Cumulative:**

The provisions of the Contract are cumulative, and in addition to and not in limitation of, any other rights or remedies available to City.

**25. Notices:**

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below.

If to City: **City of Turlock**  
**Attn: City Engineer**  
**156 S. Broadway, Suite 150**  
**Turlock, CA 95380-5461**

With courtesy copies to: **Petrulakis Law & Advocacy, APC**  
**Attn: George A. Petrulakis, City Attorney**  
**P.O. Box 92**  
**Modesto, CA 95353**

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Contractor's Sureties: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**26. City Contract Administrator:**

The City's contract administrator and contact person for this Agreement is:

\_\_\_\_\_  
City of Turlock Engineering Division  
156 S. Broadway, Suite 150  
Turlock, California 95380-5461  
Telephone: (209) 668-\_\_\_\_\_  
E-mail: \_\_\_\_\_@turlock.ca.us

**27. Interpretation:**

As used herein, any gender includes each other gender, the singular includes the plural and vice versa.

**28. Antitrust Claims:**

Contractor or its subcontractors offer and agree to assign to City all rights, title, and interest to any causes of action under Section Four of the Clayton Act and the Cartwright Act concerning antitrust claims.

**29. Use of City Project Number:**

Contractor or its subcontractors agree to use the aforementioned City project number on all maps, drawings, submittals, billing, and written correspondence that involve City staff or contracted consultants. Nothing in this section shall preclude Contractor or its subcontractors from using their own project numbers for their own internal use.

**30. No Conflict of Interest:**

Contractor represents that no conflict of interest will be created under state or federal law by entering into or in carrying out the Contract.

**31. Confidentiality:**

Contractor understands and agrees that, in the performance of Services under the Contract, or in the contemplation thereof, Contractor may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City ("Confidential Information"). Contractor shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of City. If City gives Contractor written authorization to make any such disclosure, Contractor shall do so only within the limits and to the extent of that authorization. Contractor may be directed or advised by the City Attorney on various matters relating to the performance of Services on the Project or on other matters pertaining to the Project, and in such event, Contractor agrees that it will treat all communications between itself, its employees, and its subcontracts as being communications which are within the attorney-client privilege.

**32. Modification:**

No alteration, amendment, modification, or termination of the Contract shall be valid unless made in writing and executed by all Parties to the Contract.

**33. Waiver:**

No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

**34. Assignment:**

No Party to the Contract shall assign, transfer, or otherwise dispose of this Agreement in whole or in part to any individual, firm, or corporation without the prior written consent of the other Party. Subject to the foregoing provisions, the Contract shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties hereto.

**35. Authority:**

All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, person, states, or firms and that all

former requirements necessary or required by state or federal law in order to enter into the Contract have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

**36. Governing Law:**

The Contract shall be governed and construed in accordance with the laws of the state of California.

**37. Severability:**

If the Contract in its entirety is determined by an arbitrator or a court of competent jurisdiction to be invalid or unenforceable, the Contract shall automatically terminate as of the date of final entry of judgment. If any provision of the Contract shall be determined to be invalid and unenforceable, or if any provision of the Contract is rendered invalid or unenforceable according the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

**38. Counterparts:**

This Agreement may be executed simultaneously and, in several counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument.

**39. Mandatory and Permissive:**

“Shall” and “will” and “agrees” are mandatory. “May” and “can” are permissive.

**40. Headings:**

Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

**41. Attorney’s Fees and Costs:**

Except as expressly provided for in Section 23 of this Agreement, if any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret the provisions of the Contract, the prevailing Party shall be entitled to reasonable attorney’s fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

**42. Necessary Acts and Further Assurances:**

The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of the Contract.

**43. Recitals:**

The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Section 1 through 43 of this Agreement, Sections 1 through 43 shall prevail.

*[Signatures on Following Page]*

**IN WITNESS WHEREOF**, two identical counterparts of this agreement, consisting of a total of \_\_\_ pages, each of which counterparts shall for all purposes be deemed an original of said agreement, have been duly executed by the parties hereinabove named, on the day and year first herein above written.

**CONTRACTOR**

**CITY OF TURLOCK, a municipal corporation**

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

By: \_\_\_\_\_  
Reagan M. Wilson, City Manager

\_\_\_\_\_  
Print Name

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

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

APPROVED AS TO SUFFICIENCY:

Phone: \_\_\_\_\_

By: \_\_\_\_\_  
William D. Morris, RCE, PLS, City Engineer

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

By: \_\_\_\_\_  
Erik Schulze, Public Works Director

Federal Tax ID or Social Security No:

APPROVED AS TO FORM:

\_\_\_\_\_

By: \_\_\_\_\_  
George A. Petrulakis, City Attorney

DIR Registration Number:

ATTEST:

\_\_\_\_\_  
Affix Contractor's Seal Here

By: \_\_\_\_\_  
Julie Christel, City Clerk

**EXHIBIT A**  
**CONTRACTOR'S PROPOSAL FOR SERVICES**

**EXHIBIT B**  
**PAYMENT BY FORCE ACCOUNT**

For work paid by force account, the City Engineer compares City's records to Contractor's daily force account work report. When the City Engineer and Contractor agree on the contents of the daily force account work reports, the City Engineer accepts the report and City pays for the work. If the records differ, City pays for the work based only on the information shown on City's records. If a subcontractor performs work at force account, work paid at force account will be accepted at an additional 2 percent (2%) markup to the total cost of that work, including markups, as reimbursement for additional administrative costs. The markups specified in labor, materials, and equipment includes compensation for all delay costs, overhead costs, and profit. If an item's unit price is adjusted for work-character changes, City excludes Contractor's cost of determining the adjustment. Payment for owner-operated labor and equipment is made at the market-priced invoice submitted.

**A. Labor.** Labor payment is full compensation for the cost of labor used in the direct performance of the work plus a fifteen percent (15%) markup, as set forth below, and consistent with California Labor Code section 1770 et seq. Force account labor payment consists of:

1. Employer payment to the worker for:
  - 1.1 Basic hourly wage
  - 1.2 Health and welfare
  - 1.3 Pension
  - 1.4 Vacation
  - 1.5 Training
  - 1.6 Other State and federal recognized fringe benefit payments
2. Labor surcharge percentage in *Labor Surcharge and Equipment Rental Rates* current during the work paid at force account for:
  - 2.1 Workers' compensation insurance
  - 2.2 Social security
  - 2.3 Medicare
  - 2.4 Federal unemployment insurance
  - 2.5 State unemployment insurance
  - 2.6 State training taxes
3. Subsistence and travel allowances paid to the workers
4. Employer payment to supervisors, if authorized

The fifteen percent (15%) markup consists of payment for all overhead costs related to labor but not designated as costs of labor used in the direct performance of the work including:

- (a) Home office overhead

- (b) Field office overhead
- (c) Bond costs
- (d) Profit
- (e) Labor liability insurance
- (f) Other fixed or administrative costs that are not costs of labor used in the direct performance of the work

**B. Materials.** Material payment is full compensation for materials the Contractor furnishes and uses in the work. The City Engineer determines the cost based on the material purchase price, including delivery charges, except:

- 1. A fifteen percent (15%) markup is added;
- 2. Supplier discounts are subtracted whether the Contractor takes them or not;
- 3. If the City Engineer believes the material purchase prices are excessive, City pays the lowest current wholesale price for a similar material quantity;
- 4. If Contractor procured the materials from a source Contractor wholly or partially own, the determined cost is based on the lower of the:
  - 4.1 Price paid by the purchaser for similar materials from that source on Contract items; and
  - 4.2 Current wholesale price for those materials;
- 5. If Contractor does not submit a material cost record within thirty (30) days of billing, the determined cost is based on the lowest wholesale price:
  - 5.1 During that period
  - 5.2 In the quantities used

**C. Equipment Rental.** Equipment rental payment is full compensation for:

- 1. Rental equipment costs, including moving rental equipment to and from the change order work site using its own power.
- 2. Transport equipment costs for rental equipment that cannot be transported economically using its own power. No payment is made during transport for the transported equipment.
- 3. Fifteen percent (15%) percent markup.

If Contractor wants to return the equipment to a location other than its original location, the payment to move the equipment must not exceed the cost of returning the equipment to its original location. If Contractor uses the equipment for work other than work paid by force account, the transportation cost is included in the other work.

Before moving or loading the equipment, Contractor must obtain authorization for the equipment rental's original location.

The City Engineer determines rental costs:

1. Using rates in *Labor Surcharge and Equipment Rental Rates*:
  - 1.1. By classifying equipment using manufacturer's ratings and manufacturer-approved changes.
  - 1.2. Current during the work paid by force account.
  - 1.3. Regardless of equipment ownership but City uses the rental document rates or minimum rental cost terms if:
    - 1.3.1. Rented from equipment business Contractor does not own.
    - 1.3.2. The Labor Surcharge and Equipment Rental Rates hourly rate is \$10.00 per hour or less.
2. Using rates established by the City Engineer for equipment not listed in *Labor Surcharge and Equipment Rental Rates*. Contractor may submit cost information that helps the City Engineer establish the rental rate but City uses the rental document rates or minimum rental cost terms if:
  - 2.1. Rented from equipment business Contractor does not own.
  - 2.2. The City Engineer establishes a rate of \$10.00 per hour or less.
3. Using rates for transport equipment not exceeding the hourly rates charged by established haulers.

Equipment rental rates include the cost of:

- |   |                            |
|---|----------------------------|
| 1. Fuel                                     | 7. Repairs and maintenance |
| 2. Oil                                      | 8. Depreciation            |
| 3. Lubrication                              | 9. Storage                 |
| 4. Supplies                                 | 10. Insurance              |
| 5. Small tools that are not consumed by use | 11. Incidentals            |
| 6. Necessary attachments                    |                            |

City pays for small tools consumed by use. The City Engineer determines payment for small tools consumed by use based on Contractor-submitted invoices.

The City Engineer may authorize rates in excess of those in the *Labor Surcharge and Equipment Rental Rates* if:

1. Contractor submits a request to use rented equipment
2. Equipment is not available from Contractor's normal sources or from one of Contractor's subcontractors
3. Rented equipment is from an independent rental company
4. Proposed equipment rental rate is reasonable

5. The City Engineer authorizes the equipment source and the rental rate before Contractor uses the equipment

**D. Equipment on the Job Site.** For equipment on the job site at the time required to perform work paid by force account, the time paid is the time:

1. To move the equipment to the location of work paid by force account plus an equal amount of time to move the equipment to another location on the job site when the work paid by force account is completed
2. To load and unload equipment
3. Equipment is operated to perform work paid by force account and:
  - 3.1. Hourly rates are paid in 1/2-hour increments
  - 3.2. Daily rates are paid in 1/2-day increments

**E. Equipment Not on the Job Site Required for Original-Contract Work.** For equipment not on the job site at the time required to perform work paid by force account and required for original-Contract work, the time paid is the time the equipment is operated to perform work paid by force account and the time to move the equipment to a location on the job site when the work paid by force account is completed.

The minimum total time paid is:

1. 1 day if daily rates are paid
2. 8 hours if hourly rates are paid

If daily rates are recorded, equipment:

1. Idled is paid as 1/2 day
2. Operated four (4) hours or less is paid as 1/2 day
3. Operated four (4) hours or more is paid as one (1) day

If the minimum total time exceeds eight (8) hours and if hourly rates are listed, City rounds up hours operated to the nearest 1/2-hour increment and pays based on the hours shown in the following table. The table does not apply when equipment is not operated due to breakdowns, in which case rental hours are the hours the equipment was operated.

**Equipment Rental Hours**

Hours operated	Hours paid
0.0	4.00
0.5	4.25
1.0	4.50
1.5	4.75
2.0	5.00
2.5	5.25
3.0	5.50

3.5	5.75
4.0	6.00
4.5	6.25
5.0	6.50
5.5	6.75
6.0	7.00
6.5	7.25
7.0	7.5
7.5	7.75
≥8.0	hours used

**F. Equipment Not on the Job Site Not Required for Original-Contract Work.** For equipment not on the job site at the time required to perform work paid by force account and not required for original-Contract work, the time paid is the time:

1. To move the equipment to the location of work paid by force account plus an equal amount of time to return the equipment to its source when the work paid by force account is completed
2. To load and unload equipment
3. Equipment is operated to perform work paid by force account

**G. Non-Owner-Operated Dump Truck Rental.** Contractor shall submit the rental rate for non-owner-operated dump truck rental to City. The City Engineer shall determine the payment rate. Payment for non-owner-operated dump truck rental is for the cost of renting a dump truck, including its driver. For the purpose of markup payment only, the non-owner-operated dump truck is rental equipment and the owner is a subcontractor.

The above markups shall constitute full compensation for all home office overhead, field office overhead, bond costs, profit, labor liability insurance, and other fixed or administrative costs that are not costs specifically designated as cost or equipment rental as stated above. The total payment made as provided above shall be deemed to be the actual cost of the work and shall constitute full compensation therefor.

When extra work to be paid for on a force account basis is performed by a subcontractor, an additional markup of 2 percent (2%) will be added to the total cost of that extra work including all markups specified in this Section. The additional 2 percent (2%) markup shall reimburse Contractor for additional administrative costs, and no other additional payment will be made by reason of performance of the extra work by a subcontractor.

**EXHIBIT C**  
**WORKERS' COMPENSATION INSURANCE CERTIFICATION**

Pursuant to Section 18(b) of the Agreement, Contractor certifies as follows:

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

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

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

\_\_\_\_\_  
(Typed or Printed Name)

Business Address (Street Address, City, State & Zip Code):

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

Business Phone: (     ) \_\_\_\_\_

**EXHIBIT D**  
**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the **City of Turlock**, State of California, has awarded to \_\_\_\_\_, hereinafter designated as the “Principal,” a contract for **Project No. 23-031 “Roads Program Capital Improvement Project Plan Package 1”**; and,

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract.

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

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, or Principal’s 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 said contract and any alteration thereof made as therein provided, on the Principal’s part, to be kept and performed at the time and in the manner therein specified and in all respects according to their true intent and meaning; and shall defend, indemnify and save harmless the City of Turlock, its officers and agents as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

And the Surety, for value received hereby stipulates and agrees that, in accordance with the Plans, Standard Specifications, Special Provisions, and other contract documents, no change, extension of time, alteration, or addition to the terms of the contract, or to the work to be performed hereunder, or to the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration of additions to the terms of the Contract to the work, or to the specifications.

The City of Turlock reserves the right to refuse use of any Contractor assigned by any surety to complete the work.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal) **Principal** \_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_

(Attach Notarial Acknowledgment)

(Corporate Seal) **Surety** \_\_\_\_\_  
Address \_\_\_\_\_  
Phone No.: ( ) \_\_\_\_\_ Fax No.: ( ) \_\_\_\_\_  
By \_\_\_\_\_  
Attorneys-in-Fact  
Title \_\_\_\_\_

(Attach Notarial Acknowledgment)

**NOTE TO SURETY COMPANY: There must be submitted a certified copy of unrevoked resolution of authority for the attorneys-in-fact.**

(Seal) **Witness** \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Risk Manager

**EXHIBIT E**  
**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the **City of Turlock**, a municipal corporation, has awarded to \_\_\_\_\_, hereinafter designated as the “Principal”, a contract for **Project No. 23-031 “Roads Program Capital Improvement Project Plan Package 1”**; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract, to secure payment of claims of laborers, mechanics, or materialmen employed on work under said contract, as provided by law.

NOW, THEREFORE, we the undersigned Principal and Surety are held and firmly bound unto the City of Turlock in the sum of \_\_\_\_\_ (\$\_\_\_\_\_), said sum being equal to the estimated amount payable by said City of Turlock under the terms of the contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if said Principal, or Principal’s heirs, executors, administrators, successors, or assigns, or subcontractors shall fail to pay for any material, provisions, provender, or other supplies, implements, or machinery 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 for amounts due under the Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from these wages of employees of the Contractor and Contractor’s subcontractors pursuant to the Revenue and Taxation Code, with respect to such work and labor, the Surety or Sureties hereon will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, said Surety will pay a reasonable attorney’s fee to be fixed by the court.

This bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Section 3138 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

Said Surety, for value received, hereby stipulates and agrees that, in accordance with the Plans, Standard Specifications, Special Provisions, and other Contract Documents, no change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed there under, or to the specifications accompanying the same, shall in anywise 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, or to the work, or to the specifications.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal) **Principal** \_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_

(Attach Notarial Acknowledgment)

(Corporate Seal) **Surety** \_\_\_\_\_  
Address \_\_\_\_\_  
Phone No.: ( ) \_\_\_\_\_ Fax No.: ( ) \_\_\_\_\_  
By \_\_\_\_\_  
Attorneys-in-Fact  
Title \_\_\_\_\_

(Attach Notarial Acknowledgment)

**NOTE TO SURETY COMPANY: There must be submitted a certified copy of unrevoked resolution of authority for the attorneys-in-fact.**

(Seal) **Witness** \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Risk Manager

**NOTE:**

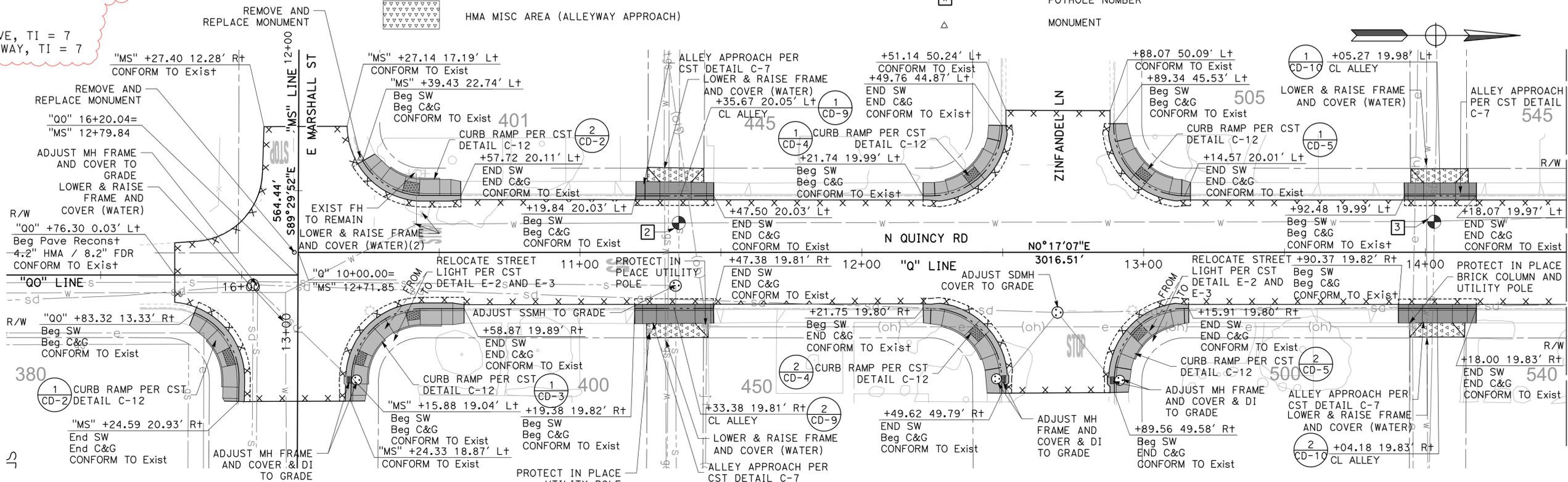
1. ALL CALLOUTS ON THIS SHEET REFERENCE THE "Q" LINE UNLESS OTHERWISE NOTED.
2. EXTREME CAUTION SHALL BE EXERCISED WHEN WORKING NEAR THE FRAGILE ASBESTOS-CONCRETE WATER LINES. THE CONTRACTOR'S ATTENTION IS DIRECTED TO SECTION 7-8 "PRESERVATION OF PROPERTY" OF THE CITY STANDARD SPECIFICATIONS AND THE REQUIREMENTS WITHIN."
3. N QUINCY RD, TI = 8
4. MISSION ST / TOKAY AVE, TI = 7  
MARLEE DR / BARBARA WAY, TI = 7



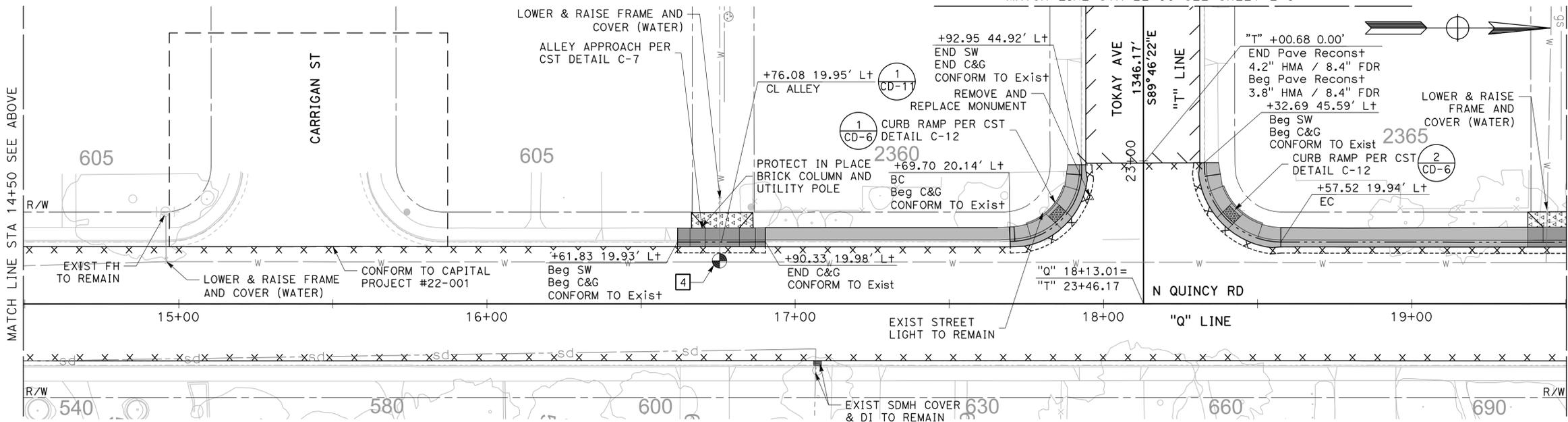
**LEGEND:**

- DETECTABLE WARNING SURFACE
- MINOR CONCRETE (CURB, GUTTER, SIDEWALK & CURB RAMP)
- MINOR CONCRETE (ALLEYWAY APPROACH)
- HMA MISC AREA (ALLEYWAY APPROACH)

- RECONSTRUCT WITH 3.6" HMA/8.4" FDR
- RECONSTRUCT WITH 4.2" HMA/8.4" FDR
- RECONSTRUCT WITH 7.2" FULL DEPTH HMA
- SAWCUT
- POTHOLE LOCATION
- POTHOLE NUMBER
- MONUMENT

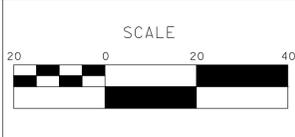


POTHOLE INFORMATION				
TH NO	UTILITY TYPE	UTILITY MATERIAL	UTILITY WIDTH (FIELD)	DEPTH RM TO TOP OF UTILITY
TH-02	GM	MET	2.00"	2.10"
TH-02.1	WM	ASC	8.00"	2.80"
TH-03	GM	MET	2.00"	2.20"
TH-03.1	WM	ASC	8.00"	3.36"



DESIGNED BY: ANGEL P.  
DRAWN BY: ANGEL P.  
CHECKED BY: JON H.  
SCALE: 1" = 20'  
DATE: 3/26/2024  
JOB NO.: 23-00109

**NOTE:**  
ALL REFERENCES AND WRITTEN DIMENSIONS SHALL SUPERCEDE ALL SCALED DISTANCES AND SHALL BE VERIFIED IN THE FIELD. ANY DISCREPANCY SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER PRIOR TO THE COMMENCEMENT OF WORK.



**MARK THOMAS**  
701 UNIVERSITY AVENUE, SUITE 200  
SACRAMENTO, CALIFORNIA 95825  
(916) 381-9100 FAX: (916) 381-9180  
markthomas.com

CITY OF TURLOCK  
PUBLIC WORKS DEPARTMENT  
ENGINEERING DIVISION  
156 S. BROADWAY SUIT 150  
(209) 668-5520



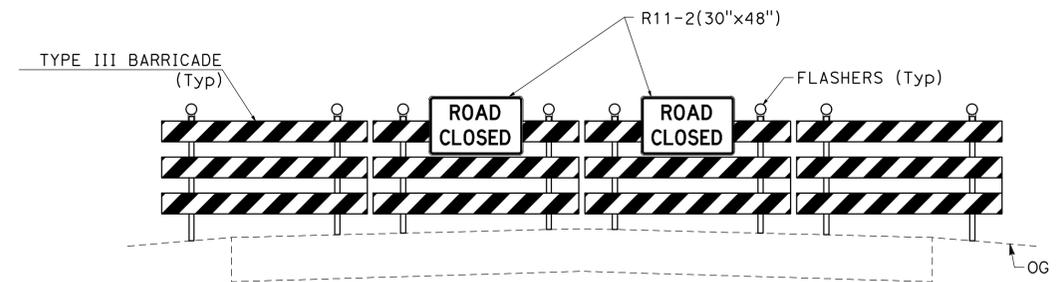
**CITY OF TURLOCK**  
**ROADS PROGRAM - CIP**  
**LAYOUT**  
**N QUINCY ROAD**

Sheet **12**  
of **54** Sheets  
**L-1**

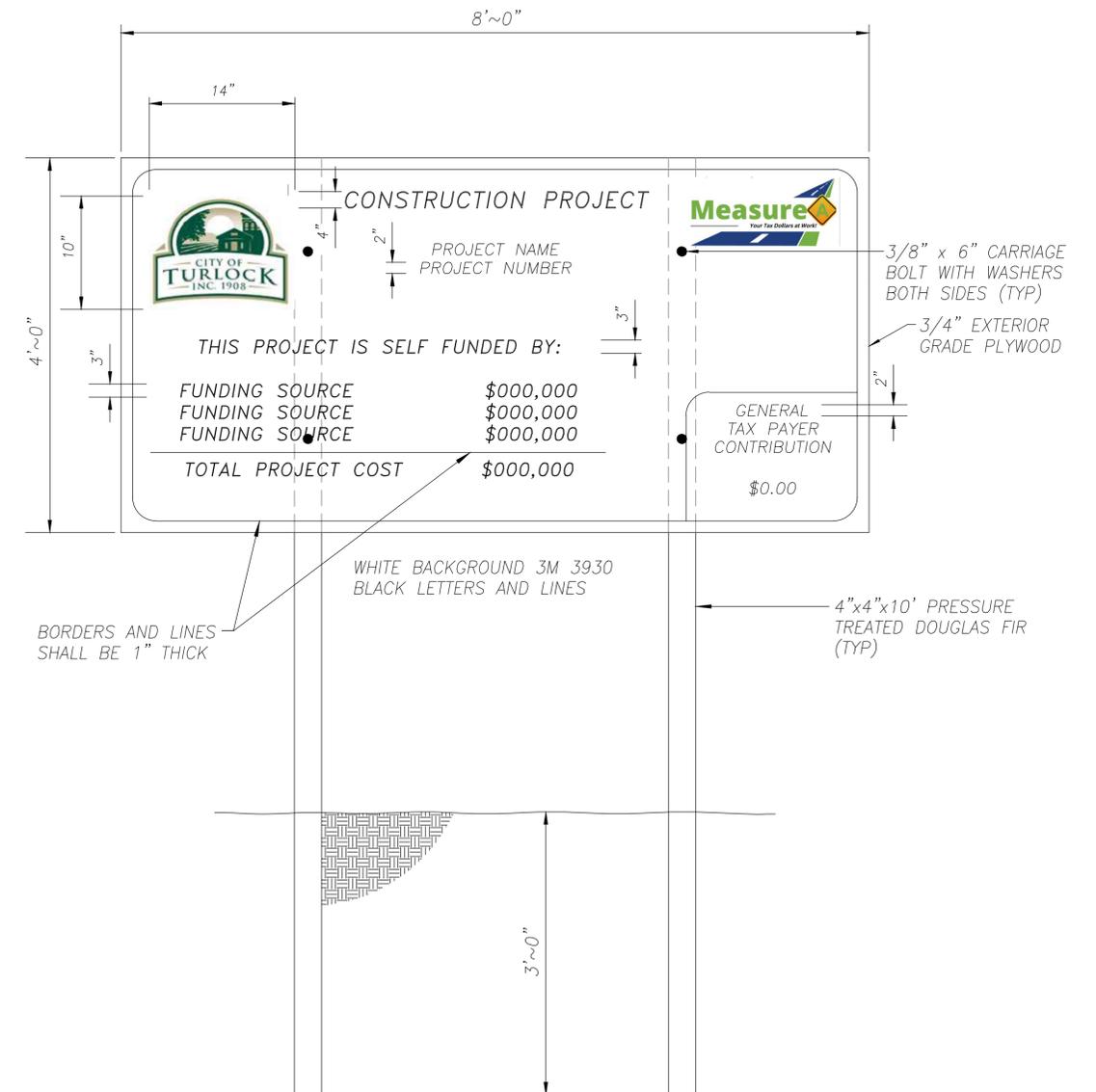
**TRAFFIC CONTROL GENERAL NOTES:**

1. VALIDATION: THE TRAFFIC CONTROL PLAN IS NOT VALID UNTIL WORK DATES ARE APPROVED. THE CONTRACTOR SHALL, PER SECTION 601-2 OF THE CITY SUPPLEMENT TO THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, CONTACT THE PUBLIC WORKS TRAFFIC CONTROL SECTION AT (209) 668-5590 TO OBTAIN A PERMIT. THE CONTRACTOR MUST SUBMIT A COMPLETED TRAFFIC CONTROL PERMIT FORM A MINIMUM OF TWO (2) WORKING DAYS PRIOR TO STARTING WORK, OR FIVE (5) WORKING DAYS WHEN WORK WILL AFFECT A TRAFFIC SIGNAL.
2. STANDARDS: THIS TRAFFIC CONTROL PLAN SHALL CONFORM TO EACH OF THE FOLLOWING MANUALS:  

EDITION	DESCRIPTION
2014	CALIFORNIA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (CA MUTCD)
2016	CITY OF TURLOCK STANDARD SPECIFICATIONS AND DRAWINGS
2023	CALTRANS STANDARD PLANS
3. NOTIFICATIONS: THE CONTRACTOR SHALL NOTIFY RELEVANT AGENCIES A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO ANY EXCAVATION, CONSTRUCTION, OR TRAFFIC CONTROL.
4. THE CONTRACTOR SHALL NOTIFY PROPERTY OWNERS AND TENANTS A MINIMUM OF SEVEN (7) WORKING DAYS PRIOR TO CLOSURE OF DRIVEWAYS. THE CONTRACTOR SHALL POST SIGNS NOTIFYING THE PUBLIC A MINIMUM OF SEVEN (7) WORKING DAYS PRIOR TO CLOSURE OF STREETS.
5. POSTING PARKING RESTRICTIONS: THE CONTRACTOR SHALL POST "TOW-AWAY/NO PARKING SIGNS SEVENTY TWO (72) HOURS IN ADVANCE OF PARKING REMOVAL. SIGNS SHALL INDICATE SPECIFIC DAYS, DATES, AND TIMES OF RESTRICTIONS.
6. EXCAVATIONS: EXCEPT AS OTHERWISE SHOWN ON THE PLANS, TRENCHES SHALL BE BACKFILLED OR TRENCH-PLATED AT THE END OF EACH WORK DAY. AN ASPHALT RAMP SHALL BE PLACED AROUND EACH TRENCH PLATE TO PREVENT THE PLATE FROM BEING DISLODGED. CONTRACTOR SHALL MONITOR TRENCH PLATES DURING NON-WORKING HOURS TO ENSURE THAT THEY DO NOT BECOME DISLODGED, UPON COMPLETION OF EXCAVATION BACKFILL, THE CONTRACTOR SHALL PROVIDE A SATISFACTORY SURFACE FOR TRAFFIC, WHEN CONSTRUCTION OPERATIONS ARE NOT ACTIVELY IN PROGRESS, THE CONTRACTOR SHALL MAINTAIN ALL TRAVEL LANES, BIKE LANES, AND PEDESTRIAN WALKWAYS OPEN TO THE APPROPRIATE TRAFFIC EXCEPT AS OTHERWISE SHOWN ON THE PLANS.
7. RESTORATION OF TRAFFIC CONTROL DEVICES: THE CONTRACTOR SHALL REPAIR OR REPLACE TRAFFIC CONTROL DEVICES (INCLUDING TRAFFIC SIGNS, STRIPING, PAVEMENT MARKERS, PAVEMENT MARKINGS, LEGENDS, CURB MARKINGS, LOOP DETECTORS, TRAFFIC SIGNAL EQUIPMENT, ETC.) DAMAGED OR REMOVED AS A RESULT OF OPERATIONS AND NOT DESIGNATED FOR REMOVAL. REPAIRS AND REPLACEMENTS SHALL BE AT LEAST EQUAL TO EXISTING IMPROVEMENT.
8. TEMPORARY TRAFFIC SIGNAL DETECTION: THE CONTRACTOR SHALL INSTALL CITY APPROVED TEMPORARY VIDEO OR RADAR DETECTION WHEN EXISTING TRAFFIC SIGNAL DETECTION SYSTEMS ARE DAMAGED, DISABLED, OR BECOME INEFFECTIVE DUE TO CONSTRUCTION FOR A PERIOD OF FIVE (5) OR MORE DAYS. THE CONTRACTOR SHALL COMPLETELY REMOVE ALL TEMPORARY TRAFFIC SIGNAL DETECTION EQUIPMENT AND RESTORE/INSTALL A CITY APPROVED PERMANENT VEHICLE DETECTION SYSTEM UPON COMPLETION OF CONSTRUCTION. ALL INSTALLATION AND REMOVALS ARE SUBJECT TO APPROVAL BY THE CITY ENGINEER.
9. CHANGE IN WORK: THE CITY ENGINEER WILL OBSERVE THESE TRAFFIC CONTROL PLANS IN OPERATION AND RESERVE THE RIGHT TO MAKE ANY CHANGES AS FIELD CONDITIONS WARRANT, ANY CHANGES SHALL BE DOCUMENTED AND SUPERCEDE THESE PLANS.
10. OPEN TRENCH: THE CONTRACTOR SHALL PLACE "OPEN TRENCH" SIGNS (C27(CA)) ON TYPE BARRICADES WITHIN THE WORK ZONE, AHEAD OF ANY WORK AREA WHICH INCLUDES OPEN TRENCHES IN EXCESS OF THREE (3) INCHES IN DEPTH, PER CA MUTCD SECTION 6F.103 (CA) GUIDELINES.
11. FOR WORK NOT COVERED BY THESE TRAFFIC CONTROL PLANS: THE CONTRACTOR SHALL PREPARE TRAFFIC CONTROL WORKING DRAWINGS AND SUBMIT THEM TO THE CITY RESIDENT ENGINEER. THE CONTRACTOR SHALL ALLOW A MINIMUM OF TWENTY (20) WORKING DAYS FOR REVIEW OF THE WORKING DRAWINGS. UPON APPROVAL OF THE TRAFFIC CONTROL PLAN, THE PUBLIC WORKS TRAFFIC CONTROL SECTION WILL ISSUE A TRAFFIC CONTROL PLAN (TCP) PERMIT FOR THIS WORK.
12. CONTRACTOR SHALL INSTALL UNEVEN PAVEMENT SIGNS C46 (CA) ALONG THE EDGE OF AREAS WHERE A STEP OF GREATER THAN 2" EXISTS WHETHER PARALLEL OR PERPENDICULAR TO THE DIRECTION OF TRAVEL.
13. CONTRACTOR HAS THE OPTION TO WORK AT MULTIPLE LOCATIONS CONCURRENTLY. ADJACENT BLOCKS SHALL NOT BE CLOSED AT THE SAME TIME.
14. SEE TABLE 6H-3 IN THE CALIFORNIA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (CA MUTCD) FOR MEANING OF LETTER CODES ON TYPICAL APPLICATION DIAGRAMS.
15. CONTRACTOR SHALL DEPLOY FOUR (4) PORTABLE CHANGEABLE MESSAGE SYSTEMS (PCMS) THROUGHOUT CONSTRUCTION, WITH FINAL PLACEMENT TO BE DETERMINED BY ENGINEER.



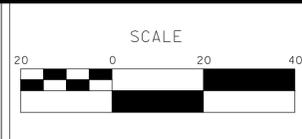
**1**  
TH-1  
**TEMPORARY BARRICADE  
ROAD CLOSURE DETAIL**



**2**  
TH-1  
**CONSTRUCTION FUNDING SIGN**

DESIGNED BY: ANGEL P.  
 DRAWN BY: ANGEL P.  
 CHECKED BY: JON H.  
 SCALE: AS SHOWN  
 DATE: 3/26/2024  
 JOB NO.: 23-00109

**NOTE:**  
 ALL REFERENCES AND WRITTEN DIMENSIONS SHALL SUPERCEDE ALL SCALED DISTANCES AND SHALL BE VERIFIED IN THE FIELD. ANY DISCREPANCY SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER PRIOR TO THE COMMENCEMENT OF WORK.



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CITY OF TURLOCK  
 PUBLIC WORKS DEPARTMENT  
 ENGINEERING DIVISION  
 156 S. BROADWAY SUIT 150  
 (209) 668-5520



**CITY OF TURLOCK  
 ROADS PROGRAM - CIP  
 TRAFFIC HANDLING PLANS**

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 of  
**54** Sheets  
**TH-1**