

# CITY OF GRAND TERRACE

COUNTY OF SAN BERNARDINO  
STATE OF CALIFORNIA



## CONTRACT DOCUMENTS SPECIFICATIONS AND STANDARD DRAWINGS

FOR

# BARTON RD. GUARDRAIL REMOVAL AND REPLACEMENT SERVICES

APRIL 2024

[Editor's Note: Timeline Dates below are Subject to Change]

- Issuance of Bid by City Friday, April 12, 2024
- Deadline Questions/Clarification Requests Friday, April 19, 2024, at 12:00 p.m.
- Deadline for Submitting Proposals Thursday, April 25, 2024, at 12:00 a.m.
- Presentation to City Council for Final Approval Estimated May 28, 2024, at 6:00 p.m.

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## NOTICE INVITING BIDS

The City of Grand Terrace is soliciting sealed bids, to be submitted through Public Purchase by 12:00pm on Friday, April 25, 2024, for Barton Rd. Guardrail Removal and Replacement Services within the City of Grand Terrace.

**Bid Submission:** All bids will be received and opened online via Public Purchase. Selected vendors will be notified through Public Purchase. A bid bond is not required for this project as it is considered an informal public works project.

**Bid Submission Address:**

<https://www1.publicpurchase.com/gems/grandterrace.ca/buyer/public/home>

**License Requirement:** Contractors must provide a copy of one of the following CSLB licenses: Class A, B, C-13, or C-32.

Additionally, contractors must have a current California business license.

**Engineer's Estimate:** \$40,000

**Important Information:**

- Pre-bid conference will not be held and late bids will not be considered.
- The contractor must comply with **Caltrans Chapter 4: Construction Details, Section 83: Railings and Barriers.**
- Payment will be subject to approval by the Senior Management Analyst.
- Faithful Performance Bond and Payment Bond required (100% of Contract price). Contractors must provide \$2 million in commercial liability insurance, as specified in the requirements. The insurance policy must name the City, its agents, staff, and officers as additional insured parties.

**Contract Award Criteria:** The contract will be awarded based on the lowest cost to the City from a responsible bidder meeting all requirements.

**Obtaining Contract Documents:** Contract documents and specifications are available for examination at: City of Grand Terrace Public Works Department 22795 Barton Road, Grand Terrace, CA 92313 email requests for documents should be directed to Shanita Tillman, Senior Management Analyst, at [stillman@grandterrace-ca.gov](mailto:stillman@grandterrace-ca.gov).

**Bid Inquiries:** All questions regarding bid documents should be submitted through Public Purchase for transparency. A bid bond is not required for this project because it is considered an informal public works project

**Prevailing Wage Requirement:** The successful bidder must pay not less than the prevailing wage scale as determined by the California Department of Industrial Relations.

**Registration Requirement:** Effective January 1, 2015, contractors and subcontractors must register with the Department of Industrial Relations (DIR) using the Public Works Contractor Registration (PWCR) system to bid or work on public works projects in California. This registration is mandatory and separate from CSLB licensing requirements.

## INSTRUCTIONS TO BIDDERS

CITY OF GRAND TERRACE  
PUBLIC WORKS DEPARTMENT  
22795 BARTON ROAD  
GRAND TERRACE, CA 92313

BID NO: \_\_\_\_\_  
DUE: April 25, 2024  
at 12:00 pm

### **BIDS DELIVERED AFTER THE HOUR INDICATED WILL BE REJECTED**

### **WE ARE PLEASED TO ISSUE THE ENCLOSED SPECIFICATIONS FOR YOUR CONSIDERATION**

**FORM OF PROPOSAL:** Bidders shall submit a complete proposal, including these specifications and any required documents. Bidders may bid on individual schedules or combinations thereof. All quotations must be signed by a responsible officer or employee.

Prices quoted shall be exclusive of Federal Excise Taxes pursuant to exemption for political subdivisions. Prices quoted should reflect total costs delivered to the City of Grand Terrace (Freight on Board).

**ADDENDA:** Acknowledge any issued addenda on the next page of the Bidding Schedule Section C, which will become part of the Contract.

**DELIVERY OF PROPOSAL:** Proposals must be delivered by the specified time and place. Late proposals will not be accepted.

**WITHDRAWAL OF PROPOSAL:** If not bidding on the project, mark NO BID and state reasons for withdrawal. This request must be signed by the bidder or authorized representative and delivered before the scheduled closing time.

**MODIFICATIONS AND ALTERNATIVE PROPOSAL:** Unauthorized conditions, limitations, or provisions render a proposal informal and may cause its rejection. Completed proposal forms should be without interlineations, alterations, or erasures. Alternative proposals will not be considered unless specified.

**DISCREPANCIES IN PROPOSALS:** Bidders must furnish prices for all bid items in the schedule. Unit prices govern over incorrect "amount" calculations.

**BIDDER'S EXAMINATION OF SITE:** Bidders are responsible for examining documents, visiting the work site, and understanding project requirements before submitting a proposal.

**COMPETENCY OF BIDDERS:** Consideration will be given to financial standing and competency for the work covered. Bidders must have completed at least 3 similar projects recently.

**CONTRACTOR'S LICENSING LAWS:** Bidders must be properly licensed in accordance with applicable state law.

**DIR REQUIREMENTS:** Prime contractors and subcontractors must be registered with the

Department of Industrial Relations (DIR) to work on public projects.

**DISQUALIFICATION OF BIDDERS:** More than one proposal from the same entity or collusion among bidders will result in disqualification.

**AWARD OF CONTRACT:** Award will be based on lowest overall cost to the City from a responsible bidder meeting all requirements.

**BUY AMERICA REQUIREMENTS:** Materials for the project must comply with Buy America requirements.

**EXECUTION OF CONTRACT:** The successful bidder must execute the Contract within 10 calendar days.

**TIME OF COMPLETION:** The Contractor shall complete the work within the specified time to the City's satisfaction.

Pursuant to Section 22300 of the Public Contract Code, the Contract will contain provisions permitting the successful bidder to substitute securities for any monies withheld by the City of Grand Terrace to ensure performance under the Contract.

**PROPOSAL**

FOR

**BARTON RD. GUARDRAIL REMOVAL AND REPLACEMENT SERVICES**

Bids due no later than 12:00 p.m on Monday, April 25, 2024, on the Public Purchase website

TO: CITY OF GRAND TERRACE, acting by and through its Governing Body, herein called the "CITY".

Pursuant to and in compliance with your Notice to Contractors calling for Bids and other documents relating thereto, the undersigned bidder, having familiarized himself with the terms of the Contract, the local conditions affecting the performance of the Contract, and the cost of the work at the place where the work is to be done, and with the drawings and specifications and other Contract Documents, hereby proposed and agrees to perform within the time stipulated, the Contract, including all of its component parts, and everything required to be performed, and to provide and furnish any and all applicable taxes, utility and transportation services necessary to perform the Contract and complete in a workmanlike manner all of the work required in connection with the project known as: **“BARTON RD. GUARDRAIL REMOVAL AND REPLACEMENT SERVICES”**.

All in strict conformity with the specifications and other Contract Documents, including Addenda No. \_\_\_\_\_, and \_\_\_\_\_, on file at the OFFICE OF THE CITY CLERK, 22795 BARTON ROAD, GRAND TERRACE, CALIFORNIA, 92313, for the sum of:

(SEE BID SCHEDULE FOR COST BREAKDOWN OF ITEMS)

COMPANY NAME

\_\_\_\_\_ TITLE

\_\_\_\_\_ CITY ZIP CODE

TELEPHONE ( \_\_\_\_\_ ) \_\_\_\_\_

DATE \_\_\_\_\_

BIDDER'S NAME, ADDRESS & PHONE

CONTRACTOR'S LICENSE NO.  
CITY BUSINESS LICENSE NO.  
(if available)  
CORPORATE SEAL

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

Corporation incorporated under  
the State of \_\_\_\_\_

TELEPHONE: \_\_\_\_\_  
(Area Code)

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

\_\_\_\_\_  
Print or type name

TITLE: \_\_\_\_\_  
\_\_\_\_\_

Names and addresses of all members of co-partnership or names and titles of all officers  
of the corporation:

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

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

**BID SCHEDULE**  
FOR  
**BARTON RD. GUARDRAIL REMOVAL AND REPLACEMENT SERVICES**

BIDDER: \_\_\_\_\_  
(Company Name)

The estimated quantities for unit price items are for purposes of comparing bids only and the City makes no representation that the actual quantities of work performed will not vary from the estimates. For existing guardrail determine if erosion of the soil beneath or behind the guardrail will require backfill before placing forms to assure a maximum 3½-inch depth of minor concrete.

**Additional costs may be provided as an attachment for reference purposes but will not be directly factored into the comparison of bid costs.**

**BASE BID**

NO.	ITEM DESCRIPTION	UNIT	EST. QUANTITY	UNIT PRICE	LINE ITEM COST
1	Traffic Control System	LS	1		
2	Remove Guardrail	LF	150		
3	Treated Wood Waste Removal	LS	1		
4	Guard railing Delineator (Class I, Type E)	EA	10		
5	Midwest Guardrail System (Wood Post)	LF	150		
6	Mobilization	LS	1		
7	End Anchor Assembly (type SFT-M)	EA	1		
8	Vegetation Control (Minor Concrete) (optional)	SQYD	170		

**TOTAL BASE BID (ITEMS 1-18):**

\_\_\_\_\_ (in figures)

\$ \_\_\_\_\_ (in words)



**ALTERNATIVE BID:**

NO.	ITEM DESCRIPTION	UNIT	EST. QUANTITY	UNIT PRICE	LINE ITEM COST
1	Traffic Control System	LS	1		
2	Remove Guardrail	LF	225		
3	Treated Wood Waste Removal	LS	1		
4	Guard railing Delineator (Class I, Type E)	EA	10		
5	Midwest Guardrail System (Wood Post)	LF	225		
6	Mobilization	LS	1		
7	End Anchor Assembly (type SFT-M)	EA	1		
8	Vegetation Control (Minor Concrete) (optional)	SQYD	245		

**TOTAL BASE BID (ITEMS 1-8):**

(in figures)

\_\_\_\_\_

\$ \_\_\_\_\_ (in words)

In the event of a discrepancy between the unit price and the line item cost specified for a unit price item, the line item cost, calculated by multiplying the unit price by the estimated quantity, shall take precedence. This cost will be used to determine the lowest responsive and responsible bidder. However, if the unit price amount is ambiguous, unclear, or missing, or matches the entry in the 'Line Item Cost' column, then the amount in the 'Line Item Cost' column will prevail. In such cases, the 'Line Item Cost' will be divided by the estimated quantity to derive the unit price. If any of these discrepancies occur, the City reserves the right to recalculate the bid price based on the unit price, and the bidder agrees to accept this recalculation. Final payment for unit price items will be based on measured quantities of work completed, as determined by the City.

## ADDENDA ACKNOWLEDGMENT

The undersigned acknowledges receipt of the following ADDENDA and the cost if any, or such revisions have been included in the TOTAL BID of the Bidding Schedule (s).

ADDENDUM NO. \_\_\_\_\_, DATED \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_, DATED \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_, DATED \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_, DATED \_\_\_\_\_

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

Address \_\_\_\_\_

State License No. \_\_\_\_\_ Telephone No. \_\_\_\_\_

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

\_\_\_\_\_  
Title

Date the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

## BIDDER'S INFORMATION

BIDDER certifies that the following information is true and correct:

Bidder's Name \_\_\_\_\_

Business Address \_\_\_\_\_

Telephone \_\_\_\_\_

State Contractor's License No. \_\_\_\_\_

Original Date Issued \_\_\_\_\_ Expiration Date \_\_\_\_\_

DIR Registration No. \_\_\_\_\_

California Secretary of State Entity No. \_\_\_\_\_

The following are the names, titles, addresses, and telephone numbers of all individuals, firm members, partners, joint ventures, and/or corporate officers having a principal interest in this proposal:

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The dates of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this proposal, or any firm, corporation, partnership or joint venture of which any principal having an interest in this proposal was an owner, corporate officer, partner, or joint venture are as follows:

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All current and prior DBA's, alias, and/or fictitious business names for any principal having an interest in this proposal are as follows:

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IN WITNESS WHEREOF, BIDDER executes and submits this proposal with the names, title, hands, and seals of all aforementioned principals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BIDDER

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Subscribed and sworn to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

NOTARY PUBLIC \_\_\_\_\_

**DESIGNATION OF SUBCONTRACTORS**

<b>Name &amp; DIR #</b>	<b>Business Address</b>	<b>Description of Portion of Work to be Performed</b>

BIDDER intends to subcontract specific portions of the work and obtain materials and equipment from suppliers and vendors as outlined below:

**Before the contract is awarded, the Contractor will provide a written list of supplies, suppliers, and vendors to the City Engineer.**

## REFERENCES

The Contractor shall list in the spaces provided below, not less than three comparable contracts which have been completed within the past two years.

<b>Contract Year(s)</b>	<b>Type of Work Performed</b>	<b>Annual Contract Amount</b>	<b>Client/Agency Name</b>	<b>Contact Name/Title Phone Number</b>



# CONTRACT AGREEMENT

## AGREEMENT FOR CONTRACT SERVICES BY AND BETWEEN THE CITY OF GRAND TERRACE AND

\_\_\_\_\_

This “AGREEMENT FOR CONTRACT SERVICES BY AND BETWEEN THE CITY OF GRAND TERRACE AND \_\_\_\_\_” (herein “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between the City of Grand Terrace, a California municipal corporation (“City”) and \_\_\_\_\_ (“Consultant”). City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

### **RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Grand Terrace Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

### **OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

#### **1. SERVICES OF CONSULTANT**

##### **a. Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this



Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

b. Consultant’s Proposal.

The Scope of Service shall include the Consultant’s scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

c. Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

d. Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

e. Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of

such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer.

f. Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

g. Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

h. Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other consultants. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

i. Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## 2. COMPENSATION AND METHOD OF PAYMENT.

### a. Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

### b. Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

### c. Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

### d. Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will

use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

e. Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

### **3. PERFORMANCE SCHEDULE**

a. Time of Essence.

Time is of the essence in the performance of this Agreement.

b. Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

c. Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

d. Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

**4. COORDINATION OF WORK**

a. Representatives and Personnel of Consultant.

The following principals of Consultant ("Principals") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

b. Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's

employees. Consultant expressly waives any claim Consultant may have to any such rights.

c. Contract Officer.

The Contract Officer shall be [\_\_\_\_\_ or] such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

d. Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

e. Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

## 5. INSURANCE AND INDEMNIFICATION

### a. Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

- i. General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.
- ii. Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.
- iii. Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.
- iv. Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.
- v. Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and

certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

- vi. Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

b. General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

\_\_\_\_\_  
Consultant Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability



arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or any automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

c. Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

- i. Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorney's fees incurred in connection therewith;

- ii. Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;
- iii. In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorney's fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

d. Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

## **6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **a. Records.**

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

### **b. Reports.**

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **c. Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials"), including any electronic documents and materials, prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City in a format of the City's choice upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse,

or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

d. Confidentiality and Release of Information.

- i. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.
- ii. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.
- iii. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.
- iv. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to

review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **a. California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Bernardino, State of California.

### **b. Disputes; Default.**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **c. Retention of Funds.**

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

d. Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

e. Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

f. Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et. seq. and 910 et. seq., in order to pursue a legal action under this Agreement.

g. Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon written notice to Consultant. In addition, the Consultant may terminate this Contract for cause, upon sixty (60) days' advance written notice to City. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the

terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

h. Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

i. Attorney's Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

a. Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

b. Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

c. Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

d. Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorney's fees, incurred by City.

**9. MISCELLANEOUS PROVISIONS**

a. Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Grand Terrace, 22795 Barton Rd, Grand Terrace, CA 92313, and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

b. Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

c. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.



d. Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

e. Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

f. Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5.

Nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation, including but not limited to the Political Reform Act (Government Code Sections 81000, *et seq.*)

Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party

including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials \_\_\_\_\_

g. Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**  
City of Grand Terrace, a municipal corporation

\_\_\_\_\_  
Darcy McNaboe, Mayor

**ATTEST:**

\_\_\_\_\_  
Debra Thomas, City Clerk

**APPROVED AS TO FORM:**  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Adrian R. Guerra, City Attorney

**CONSULTANT:**

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

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

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

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

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

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

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**Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.**





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**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- I. Consultant will perform the following Services:**
  - A.**
  - B.**
  - C.**
  
- II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**
  - A.**
  - B.**
  - C.**
  
- III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:**
  - A.**
  - B.**
  - C.**
  
- IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**
  
- V. Consultant will utilize the following personnel to accomplish the Services:**
  - A.**
  - B.**
  - C.**



**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

**EXHIBIT "C"**  
**SCHEDULE OF COMPENSATION**

**I. Consultant shall perform the following tasks at the following rates:**

	<b>RATE</b>	<b>TIME</b>	<b>SUB-BUDGET</b>
<b>A.</b>	_____	_____	_____
<b>B.</b>	_____	_____	_____
<b>C.</b>	_____	_____	_____
<b>D.</b>	_____	_____	_____

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.**

**IV. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A.** Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B.** Line items for all materials and equipment properly charged to the Services.
- C.** Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D.** Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

**V. The total compensation for the Services shall not exceed \$\_\_\_\_\_ as provided in Section 2.1 of this Agreement.**

**VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.**

**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

- I. **Consultant shall perform all Services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer and the City Attorney's office.**
  
- II. **Consultant shall deliver the following tangible work products to the City by the following dates.**
  - A.
  
  - B.
  
  - C.
  
- III. **The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

## FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_

\_\_\_\_\_ a \_\_\_\_\_

hereinafter called "Principal" and \_\_\_\_\_

of \_\_\_\_\_, State of California, hereinafter called the "Surety", are held and

firmly bound unto \_\_\_\_\_

\_\_\_\_\_ of

\_\_\_\_\_ hereinafter called "City" in the penal sum of

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in lawful money of these

ourselves, our heirs, executors, administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain Contract with the City, dated the \_\_\_\_\_ day of \_\_\_\_\_

2024 a copy of which is hereunto attached and made a part hereof for the construction of:

**BARTON RD. GUARDRAIL REMOVAL AND REPLACEMENT SERVICES**

\_\_\_\_\_  
  
NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said by Contract during the original term thereof, and any extensions thereof which may be granted by the City, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the City from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the City all outlay and expense which the City may incur in making good any default, then this obligation shall be void; otherwise, to remain in full force and effect.

PROVIDED FURTHER that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in anyway affect its

obligation 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.

PROVIDED FURTHER, that no final settlement between the City and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_  
Counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_ 2016.

ATTEST:

PRINCIPAL SEC. \_\_\_\_\_ PRINCIPAL \_\_\_\_\_

SEAL BY \_\_\_\_\_

ADDRESS \_\_\_\_\_

AS TO PRINCIPAL \_\_\_\_\_

ADDRESS \_\_\_\_\_

SURETY \_\_\_\_\_

ATTORNEY IN FACT \_\_\_\_\_

ATTEST:

SURETY SEC. \_\_\_\_\_ ADDRESS \_\_\_\_\_

SEAL

WITNESS AS TO SURETY \_\_\_\_\_

ADDRESS \_\_\_\_\_

NOTE: Date of Bond must not be prior to date of Contract

## LABOR AND MATERIAL BOND

KNOWN ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
\_\_\_\_\_ hereinafter called "Principal" and \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_, State of California,  
hereinafter called "Surety", are held and firmly bound unto \_\_\_\_\_  
of \_\_\_\_\_ hereinafter called "Owner", in the penal sum of  
\_\_\_\_\_ dollars (\$ \_\_\_\_\_) in lawful money of  
these United States, for the payment of which sum well and truly to be made, we bind ourselves,  
our heirs, executors, administrators and successors, jointly and severally, firmly by these  
presents. THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS, The Principal  
certain contract with the Owner, dated \_\_\_\_\_ day of \_\_\_\_\_ 2016, a  
copy of which is hereto attached and made a part hereof for the construction of:

NOW THEREFORE, if the Principal shall promptly make payment to all persons, firms,  
subcontractors, and corporations furnishing materials for or performing labor in the prosecution  
of the work provided for in such contract, and any authorized extension of modification thereof,  
including all amounts due for materials, lubricants, oil, gasoline, repairs on machines, equipment  
and tools, consumed or used in connection with the construction of such work, and all insurance  
premiums of said work, and for all labor, performed in such work whether by subcontractor or  
otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that if the original contractor or his subcontractor fails to pay any of the  
persons named in Section 3181, or amounts due under the Unemployment Insurance Code with  
respect to work or labor performed under the contract, or for any amounts required to be deducted,

withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor that the surety or sureties will pay for the same, in an amount not exceeding the sum specified in attorney's fee, to be fixed by the court. The original contractor may require of his subcontractors a bond to indemnify the original contractor for any loss sustained by the original contractor because of any default by his subcontractors under this section.

PROVIDED FURTHER, that the said surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way effect its obligation 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.

PROVIDED FURTHER, that no final settlement between the Owner and Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST:

(Principal) \_\_\_\_\_

(Principal Sec.) \_\_\_\_\_

(SEAL)

(By) \_\_\_\_\_

(Address) \_\_\_\_\_

(Witness as to Principal) \_\_\_\_\_

(Address)

(Surety) \_\_\_\_\_

ATTEST:

(Surety Sec.) \_\_\_\_\_

(SEAL)

(By) \_\_\_\_\_

(Address) \_\_\_\_\_

(Address) \_\_\_\_\_



**WORKER'S COMPENSATION INSURANCE CERTIFICATE**

The Contractor shall execute the following form as required by the California Labor Code, Section 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability 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.

DATE: \_\_\_\_\_

(Contractor) \_\_\_\_\_

(By) \_\_\_\_\_

# **GENERAL PROVISIONS**

## **SECTION 1 - DEFINITIONS AND ABBREVIATIONS**

### **1.1 CITY**

The word "City" shall mean the City of Grand Terrace named in the Contract Documents.

### **1.2 ENGINEER**

The word "Engineer" shall mean the Director of Public Works or individual authorized by the City to oversee the execution of this Contract, acting either directly or through properly authorized agents, each agent acting only within the scope of authority delegated to him by the Engineer.

### **1.3 CONTRACTOR**

The word "Contractor" shall mean the party entering into Contract with the City for performance of the work called for in these specifications and shown on the drawings, including the Contractor's authorized agents.

### **1.4 SUBCONTRACTOR**

The word "Subcontractor" shall mean any person, firm, or corporation entering into agreement with the Contractor for performance at the site of the work, of any part of the Contractor's obligation under the Contract.

The Contractor, shall in his bid offer, set forth:

- (a) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime Contractor in or about the construction of the work or improvements, or a subcontractor licensed by the State of California who, under subcontract to the prime Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime Contractor's total bid.
- (b) The portion of the work which will be done by each such subcontractor under this contract shall be listed individually. The prime Contractor shall list only one subcontractor for each such portion as is defined by the prime Contractor in his bid.

## 1.5 CONTRACT

The word "Contract" shall mean the Contract Documents and shall include the written Agreement entered into by the City and the Contractor for the performance of work described in the specifications and shown on the Drawings, together with the Notice Inviting Bids, the Instruction to Bidders, the Proposal, the Information Required of Bidder, the Specifications, the Drawings, all addenda issued by the City with respect to the foregoing prior to the opening of bids, and all change orders issued by the City and signed by the Contractor pertaining to the Contract after the Contract is awarded.

## 1.6 SPECIFICATIONS

The word "Specifications" shall mean the General Conditions of the Contract and the Special Provisions of the Contract, together with all addenda and change orders issued with respect thereto.

STANDARD SPECIFICATIONS. The work embraced herein shall be done in accordance with the provisions of the Standard Specifications for Public Works Construction, 2009 Edition, commonly known as the "Greenbook", produced by Public Works Standards, Inc. and published by BNI Publications Inc., insofar as the same may apply, which specifications are hereinafter referred to as the Standard Specifications, and as modified herein.

## 1.7 DRAWINGS

The words "Drawings" or "Contract Drawings" shall mean those drawings accompanying the Specifications which show the location, nature, extent and form of the work together with applicable details.

## 1.8 COUNCIL

The City Council of the City of Grand Terrace.

## 1.9 ENGINEERS ESTIMATE

The lists of estimated quantities of work to be performed as contained in the Contract Documents.

## 1.10 INSPECTOR

The representative of the Engineer or Director of Public Works who is assigned to inspect conformance of the work in accordance with plans and specifications.

## 1.11 OVERLAY

A supplemental surface course placed on an existing pavement to improve its surface conformation or increase its strength.

1.12 ROADBED

That portion of the street included between the outside lines of curbs or paving.

1.13 STANDARD PLANS

Standard Detail Drawings of the County of Riverside/San Bernardino and the State Department of Transportation.

1.14 SURFACE COURSE

The top layer of pavement (exclusive of open graded A.C.), designed to provide structural values and a surface resistant to traffic abrasion.

1.15 TRAVELED WAY

That portion of the roadway reserved for the movement of vehicles for the general public, exclusive of shoulders and auxiliary lanes. Where traffic has been diverted or restricted to certain lanes, with the approval of the City Engineer, these diversions or restricted lanes become the traveled way.

1.16 RIGHT-OF-WAY

Includes City of Grand Terrace Public Right-of-Way and City of Grand Terrace Public Easements.

## **SECTION 2 - SPECIFICATIONS, DRAWINGS AND RELATED DATA**

### **2.1 INTENT OF SPECIFICATIONS AND DRAWINGS**

The intent of the Specifications and Drawings is that the Contractor furnish all plans, labor, materials, equipment and services, except as may be specifically noted otherwise, which are required or necessary to fully complete the work.

### **2.2 SPECIFICATIONS AND DRAWINGS COMPLEMENTARY**

The Specifications and Drawings are complementary to each other.

### **2.3 DISCREPANCIES IN SPECIFICATIONS AND DRAWINGS**

Any discrepancies, errors, or omissions found in the Specifications or Drawings shall be promptly reported to the Engineer who will issue a correction in writing. The Contractor shall not take advantage of any such discrepancies, errors, or omissions, but shall comply with any corrective measures regarding the same prescribed by the Engineer.

### **2.4 CONFLICTS BETWEEN SPECIFICATIONS AND DRAWINGS**

In case of conflict between the Specifications and the Drawings, the Specifications shall govern over the Drawings. In cases of conflict between the General Conditions and Special Provisions of the Specifications, the Special Provisions shall govern over the General Conditions.

### **2.5 SHOP DRAWINGS**

- (a) Wherever called for in these Specifications or on the Drawings, or where required by the Engineer, the Contractor shall furnish to the Engineer for review, 7 prints of each shop drawing. The term "Shop Drawing" as used herein shall be understood to include detail design, calculations, fabrication and installation drawings, lists, graphs, operating instructions, etc. Unless otherwise required, said drawings shall be submitted at a time sufficiently early to allow review of same by the Engineer, and to accommodate the rate of construction progress required under the Contract.
- (b) All shop drawing submittals shall be accompanied by a letter of transmittal identifying Contractor, fabricator and subcontractor. The Contractor may authorize a material or equipment supplier to deal directly with the Engineer with regard to shop drawings, however, ultimate responsibility for the accuracy and completeness of the information contained in the submittal shall remain with the Contractor.
- (c) Normally, a separate transmittal shall be used for each specific item or class of material or equipment for which a submittal is required. Transmittal of shop drawings on various items using a single transmittal, will be permitted only when the item taken together constitute a manufacturer's "package" or are so

functionally related that expediency indicates review of the group or package as a whole.

- (d) Within 15 calendar days after receipt of said prints, the Engineer will return prints of each drawing to the Contractor with his comments noted thereon. It is considered reasonable that the Contractor shall make a complete and acceptable submittal to the Engineer by the second submission of drawings. The Owner reserves the right to withhold monies due the Contractor to cover additional costs of the Engineer's review beyond the second transmission.
- (e) If 3 prints of the drawing are returned to the Contractor marked "NO EXCEPTIONS TAKEN", formal revision of said drawing will not be required.
- (f) If 3 prints of the drawing are returned to the Contractor marked "MAKE CORRECTIONS NOTED", formal revision of said drawing will not be required.
- (g) If one print of the drawing is returned to the Contractor marked "AMEND - RESUBMIT", the Contractor shall revise said drawing and shall resubmit 7 copies of said revised drawing to the Engineer.
- (h) If one print of the drawing is returned to the Contractor marked "REJECTED - RESUBMIT", the Contractor shall revise said drawing and shall resubmit 7 copies of said revised drawing to the Engineer.
- (i) Fabrication of an item shall not be commenced before the Engineer has reviewed the pertinent shop drawings and returned copies to the Contractor marked either "NO EXCEPTIONS TAKEN", "MAKE CORRECTIONS NOTED" or "AMEND - RESUBMIT". Revisions indicated on shop drawings shall be considered as changes necessary to meet the requirements of the Contract Drawings and Specifications and shall not be taken as the basis of claims for extra work. The Contractor shall have no claim for damages or extension of time due to any delay resulting from the Contractor's having to make the required revisions to shop drawings (unless review by the Owner or said drawings is delayed beyond a reasonable period of time and unless the Contractor can establish that the Owner's delay in review actually resulted in a delay in the Contractor's construction schedule). The review of said drawings by the Owner will be limited to checking for general agreement with the Specifications and Drawings, and shall in no way relieve the Contractor of responsibility for errors or omissions contained therein nor shall such review operate to waive or modify any provision contained in the Specifications or Contractor drawings. Fabricating dimensions, quantities of material, applicable code requirements, and other Contract requirements shall be the Contractor's responsibility.

## 2.6 REFERENCE TO STANDARDS OR PUBLICATIONS

Any reference made in the Specifications or Drawings to any specifications, standard, or

publication of any organization shall, in the absence of a specific designation to the contrary, be understood to refer to the latest edition of the specification, standard, or publication in effect as of date of advertising the work.

## 2.7 REFERENCE TO PROPRIETARY PRODUCTS

Where references to proprietary products appear in the Specifications or Drawings, it is for the purpose of establishing an acceptable standard of equality or design. Unless a substitute is expressly prohibited, the Contractor may request approval of a substitute for any such proprietary product. Such request must be in writing and must include descriptive literature, specifications, test reports, or samples, as appropriate, to enable the Engineer to determine the acceptability of the product proposed for substitution. No substitute product shall be used on the work until written approval has been received from the Engineer.

## 2.8 SPECIFICATION AND DRAWINGS FURNISHED TO THE CONTRACTOR

The Owner shall furnish the Contractor 5 sets of Specifications, together with reduced drawings (if any) and 5 sets of full-scale Drawings. Additional quantities of Specifications and Drawings will be furnished at reproduction cost.

## **SECTION 3 - ENGINEER-CONTRACTOR RELATIONS**

### **3.1 ENGINEER'S AUTHORITY**

(a) The Engineer will decide all questions which may arise as to the quality and acceptability of materials and equipment furnished, work performed, rate of progress of the work, interpretation of the Specifications and Drawings, and all questions as to the acceptable fulfillment of the Contract by the Contractor.

(b) Any difference which may arise between the Contractor and any other contractors also under the surveillance of the Engineer will be arbitrated by the Engineer; however, the Engineer will not arbitrate disputes between the Contractor and his subcontractors.

### **3.2 ARBITRATION**

Any controversy or claim arising out of or relating to this Contract which cannot be resolved by mutual agreement shall be settled by arbitration in accordance with the rules of the American Arbitration Association.

### **3.3 RIGHT-OF-WAY**

(a) Lands or right-of-ways for the work to be constructed under the Contract will be provided by the Owner as shown on the Drawings. Nothing contained in the Specifications or Drawings shall be interpreted as giving the Contractor exclusive occupancy of the lands or right-of-ways provided. Any additional lands or right-of-ways required for construction operations shall be provided by the Contractor at his own expense.

(b) Except as may otherwise be provided, the Contractor shall secure, from the agencies having jurisdiction, the necessary permits to create obstructions, to make excavations if required under the Contract, and to otherwise encroach upon right-of-ways, and present evidence to the owner that such permission has been granted, before work is commenced. Regulations and requirements of all agencies concerned shall be strictly adhered to in the performance of this Contract, including the furnishing of insurance and bonds if required by such agencies. The enforcement of such requirements under this Contract shall not be made the basis for claims for additional compensation.

(c) The Contractor shall not do any work that would affect any oil, gas, sewer, or water pipeline, any telephone, telegraph, or electric transmission line, fence, or any other structure, nor enter upon the right-of-ways involved until notified that the Owner has secured authority therefore from the proper party. After authority has been obtained, the Contractor shall give said party due notice of his intention to begin work, and shall give said party convenient access and every facility for removing, shoring, supporting, or otherwise protecting such pipeline, transmission line, ditch, fence, or structure, and for replacing same. The Contractor shall not be



entitled to any extension of time or extra compensation on account of any postponement, interference, or delay caused by any such pipeline, transmission line, fence, or structure being on the line of the work except as provided in Section 3.04.

### 3.4 CONSTRUCTION INTERFERENCES

(a) As used in this section, the word "Utility" shall be understood to include tracks, overhead or underground wires, cables, pipelines, conduits, ducts, sewers or storm drains. As used in this Section, the term "Service Connection" shall be understood to mean all or any portion of a pipeline (including sewer house laterals), conduit, wire, cable or duct, including meter, between a utility distribution line and an individual customer, or customers when served by a single service connection. As used in this Section, the term "Construction Interference" shall be understood to include any utility or service connection within the limits of excavation or over excavation required for the work under the Contract as shown or as ordered by the Engineer, or any utility or service connection located in the space which will be required by any of the work under this Contract.

(b) In the event any utility or service connection is required to be disturbed or removed to permit construction of a pipeline or other structure under the Contract, such disturbance or removal shall be done only with the approval of the Engineer and following notification to the Owner of the interfering utility or service connection. Any such utility or service connection removed or otherwise disturbed shall be reconstructed as promptly as possible in its original or other authorized location in a condition at least as good as prior to such removal or disturbance, subject to the inspection of the owner of same. The Contractor's responsibility under this Section to remove or replace shall apply even in the event such damage or destruction occurs after backfilling. The Owner of the utility or service connection shall be notified immediately after damage or destruction occurs or is discovered.

(c) During the performance of the work under this Contract, the Owner of any utility affected by the work shall have the right to enter when necessary upon any portion of the work for the purpose of maintaining service and of making changes in or repairs to said utility.

(d) The Drawings show the approximate positions of known utilities in the immediate vicinity of the work, but the City does not guarantee that all existing utilities are shown. Service connections normally are not shown on the Drawings. The Contractor, before commencing any excavation, shall ascertain from records or otherwise, the existence, horizontal and vertical position, and ownership of all existing utilities and service connections. If the Contractor discovers any utility in the line of the work which is not shown on the Drawings, he shall immediately notify the Engineer of the existence of same. The City will not be liable for any consequences arising as a result of a service connection being incorrectly located in the field by the agency having jurisdiction over said service connection.

"--Notwithstanding any provisions to the contrary contained in Section 4215 of the California Government Code, the provisions of which are hereby waived by the Contractor."

(e) All costs involved in removing, relocating, protecting supporting, repairing, maintaining or replacing a main trunkline or utility facility which actually constitutes a construction interference, when said utility is not shown with reasonable accuracy as an interference or is omitted from the Drawings, will be paid for by the Owner as extra work. In such case, the Owner will also compensate the Contractor for equipment on the project necessarily idled during and by reason of such work. The Owner's obligation to repair damage to such a facility and to compensate the Contractor for idled equipment shall not extend to damage resulting from the failure of the Contractor to use reasonable care.

(f) All costs involved in removing, relocating, protecting, supporting, repairing, maintaining or replacing any utility or service connection other than those described in Subsection (e) herein shall be borne by the Contractor.

(g) The Contractor shall not be assessed liquidated damages for failure to complete the work on time to the extent that such delay was caused by failure of connection to authorize or otherwise provide for its removal, relocation, protection, support, repair, maintenance and replacement.

(h) The City reserves the right, upon the determination of the actual position of existing utilities, and service connections, to make changes in alignment or grade of the Owner's pipelines when, by so doing, the necessity for relocation of existing utilities or services connections will be avoided. Such changes will be ordered in writing by the Engineer. Where applicable, adjustment in the Contract price will be on the basis of the unit prices stated in the Bidding Schedule. Where unit prices in the Bidding Schedule are not applicable, adjustment in Contract price will be in accordance with Section 5.02.

### 3.5 LINES AND GRADES

(a) Lines and Grades shall be provided by the Owner to the extent specified in Special Provisions.

(b) The Contractor shall preserve all bench marks, stakes, and other survey marks, and in case of their removal or destruction by his employees, he shall be liable for the cost of their replacement.

### 3.6 LEGAL ADDRESS OF CONTRACTOR

The address given in the form entitled "INFORMATION REQUIRED OF BIDDER" is hereby designated as the place to which all notices, letters, and other communications to the Contractor will be mailed or delivered. The mailing or delivering to said address of any notice, letter, or other

communication shall be deemed sufficient service thereof upon the Contractor. The date of such service shall be the date of such mailing or delivery. Said address may be changed at any time by written notice signed by the Contractor and delivered to the Engineer.

### 3.7 CONTRACTOR'S SUPERINTENDENCE

A qualified superintendent, acceptable to the Engineer, shall superintend the work and shall provide competent supervision of the work until its completion. The superintendent shall have full authority to act in behalf of the Contractor, and all directions given by the Engineer to the superintendent shall be considered given to the Contractor. If the superintendent is not present on a part of the work where the Engineer desires to give instructions, such instructions may be given by the Engineer to the foreman in charge of the particular work to which the instructions apply. Such instructions given to a foreman likewise shall be considered given to the Contractor. Such instructions given by the Engineer to the superintendent or to a foreman, when they concern items of substantial importance, will be confirmed in writing. All instructions within the Engineer's authority as specified in Section 3.01. All as provided for in this Subsection of the Standard Specifications except the Contractor shall submit a phone number or numbers where he or his representative may be contacted 24 hours a day, 7 days a week in the event of an emergency.

### 3.8 PROTESTS

If the Contractor considered any work demanded of him to be outside the requirements of the Contract, or if he considers any order, instruction, or decision of the Engineer or of any inspector to be unfair, he shall, immediately upon receipt of such order, instruction, or decision, ask for a written confirmation of the same, whereupon he shall proceed without delay to perform the work or to conform to the order, instruction, or decision satisfactory; but, unless the Contractor finds such order, instruction, or decision satisfactory, he shall within 10 days after receipt of same, file a written protest with the Engineer, stating clearly and in detail his objections and the reasons therefore. Except for such protests or objections as are made of record in the manner specified and within the time stated herein, the Contractor hereby waives all ground for protests or objections to the orders, instructions, or decisions of the Engineer and hereby agrees that, as to all matters not included in such protest, the orders, instructions and decisions of the Engineer will be limited to matters properly falling within the Engineer's authority as specified in Section 3.01.

### 3.9 INSPECTION AND TESTING

(a) All materials furnished and all work performed under the Contract shall be subject to inspection by the Engineer. The Contractor shall be held strictly to the true intent of the Specifications and Drawings in regard to quality to materials, workmanship, and diligent execution of the Contract. Such inspection may include mill, plant, shop or field inspection as required. The Engineer shall be permitted access to all parts of the work, including plants where materials or equipment are manufactured or fabricated, and he shall be furnished with such materials, information and assistance by the Contractor and his subcontractors and suppliers as is required to make a complete and detailed inspection.

(b) Work done in the absence of prescribed inspection may be required to be removed and replaced under the proper inspection, and the entire cost of removal and replacement, including the cost of all materials shall be borne by the Contractor, regardless of whether the work removed is found to be defective or not. Work covered up without the authority of the Engineer, shall, upon the order of the Engineer be uncovered to the extent required, and the Contractor shall similarly bear the entire cost of performing all the work and furnishing all the materials necessary for the removal of the covering and its subsequent replacement, as directed and approved by the Engineer.

(c) Except as otherwise provided herein, the cost of inspection will be paid by the Owner. All inspection fees imposed by agencies other than the Owner shall be paid by the Contractor.

(d) The Engineer will make, or have made, such tests as he deems necessary to insure that the work is being accomplished in accordance with the requirements of the Contract. Unless otherwise specified in the Special Conditions, the cost of such testing will be borne by the Owner. In the event such tests reveal non-compliance with the requirements of the Contract, the Contractor shall bear the cost of such corrective measures deemed necessary by the Engineer, as well as the cost of subsequent retesting.

### 3.10 ASSIGNMENT FORBIDDEN

(a) The Contractor shall not assign, sublet, sell, transfer, or otherwise dispose of the Contract or any portion thereof, or his right, title, or interest therein, or his obligations thereunder, without the written consent of the Owner.

(b) If the Contractor violates the provisions of Subsection 3.10 (a), the Contract may be terminated at the option of the Owner. In such event, the Owner shall be relieved of all liability and obligations to the Contractor, and to his assignee or transferee, growing out of such termination.

### 3.11 SUBCONTRACTS

(a) In the Owner's discretion, subcontracts may be permitted to such extent as shall be shown to be necessary or advantageous to the Contractor in the prosecution of the work and without injury to the Owner's interests. The resubletting of the work by a subcontractor shall be subject to the same limitations as an original subletting. Each subcontractor shall be properly licensed for the type of work which he is to perform.

(b) A copy of each subcontract, if in writing (or if not in writing, then a written statement signed by the Contractor giving the name of the Subcontractor and the terms and conditions of each subcontract), shall be filed promptly upon the Owner's request. Each subcontract shall contain a reference to the Agreement

between the Owner and the Contractor, and the terms of that Agreement covered thereby. Each subcontract shall provide for annulment of the same by the Contractor upon written order of the Engineer, if, in the Owner's opinion, the Subcontractor fails to comply with the requirements of the prime Contract insofar as the same may be applicable to this work.

(c) The Contractor shall be responsible to the Owner for the acts and omissions of his subcontractor and their employees to the same extent as he is responsible for the acts and omissions of his own employees. Nothing contained in this Section shall create any contractual relationship between any subcontractor and the Owner or relieve the Contractor of any liability or obligation under the prime Contract.

### 3.12 SUSPENSION OF WORK

(a) The Owner may, by written notice to the Contractor, suspend the work, in whole or in part, for such period or periods as he may deem necessary, due to unsuitable weather, delay in delivery of Owner-furnished equipment or materials, or such other conditions as are considered unfavorable for prosecution of the work, or failure on the part of the Contractor to carry out the provisions of the Contract or to provide materials or workmanship meeting the requirements of the Specifications. Suspended work shall be resumed by the Contractor within 10 days of receipt from the Owner of written notice to proceed.

(b) The Contractor shall have no claim for damages alleged to have been suffered by reason of any suspension of the work without termination of the Contract, and he shall receive no additional compensation because of any such suspension.

### 3.13 TERMINATION OF CONTRACT BY OWNER (CONTRACTOR NOT AT FAULT)

The Owner may terminate the Contract upon 10 days written notice to the Contractor, if it is found that reasons beyond the control of either the Owner or Contractor make it impossible or against the Owner's interests to complete the work. In such a case, the Contractor shall have no claims against the Owner except (1) for the value of work performed up to the date the Contract is terminated, and (2) for the cost of materials and equipment on hand, in transit or on definite commitment, as of the date the Contract is terminated, which would be needed in the work and which meet the requirements of the Specifications. The value of the work performed and the cost of the materials and equipment delivered to the site, as mentioned above, shall be determined by the Engineer in accordance with the procedure prescribed for the making of the final estimate and payment as described in Section 5.08.

### 3.14 TERMINATION OF CONTRACT BY OWNER (CONTRACTOR AT FAULT)

(a) The Owner may terminate the Contract upon 10 days written notice to the Contractor in the event of any default by the Contractor. It shall be considered a default by the Contractor whenever he shall (1) declare bankruptcy, become insolvent, or assign his assets for the benefit of his creditors; (2) disregard or violate important provisions of the Contract documents or Engineer's instructions, or fail to prosecute the work according to the approved progress schedule; or (3) fail to provide a qualified superintendent, competent workmen, or subcontractors, or materials or equipment meeting the requirements of the Specifications and Drawings.

(b) In the event the Contract is terminated in accordance with Subsection 3.14(a), the Owner may take possession of the work and of all materials, tools, equipment, and property of the Contractor, which have been provided in connection with the work, and may complete the work by whatever method or means he may select. The cost of completing the work shall be deducted from the Contract balance and the work completed in accordance with the Drawings and Specifications. If such cost exceeds the balance which would have been due, the Contractor shall pay the excess amount to the Owner. If such cost is less than the balance which could have been due, the Contractor shall have no claim to the difference except to such extent as may be necessary, in the opinion of the Engineer, to reimburse the Contractor or the Contractor's sureties for any expense properly incurred for materials, tools, equipment, property, and labor, devoted to the prosecution of the work, of which the Owner shall have received the benefit. In computing such expenses, as it relates to equipment and property, the salvage value at completion of the work shall be deducted from the depreciated value at the time the Contract was terminated, and the difference shall be considered as an expense.

### 3.15 TERMINATION OF CONTRACT BY CONTRACTOR

The Contractor may terminate the Contract upon 10 days written notice to the Owner, whenever (1) the entire work has been suspended in accordance with Section 3.12, for 60 consecutive calendar days through no fault or negligence of the Contractor, and notice to resume work or to terminate the Contract has not been received from the Owner within this time period; or (2) the Owner should fail to pay the Contractor any substantial sums due him in accordance with the terms of the Contract and within the time limits prescribed. In the event of such termination, the Contractor shall have no claim against the Owner except for those claims specifically enumerated in Section 3.13.

### 3.16 FAILURE TO COMPLY

If the Contractor should refuse or neglect to comply with the provisions of the Contract or the orders of the Owner, the Owner may have such provisions or orders carried out by others at the expense of the Contractor.

### 3.17 CONTRACT TIME OF COMPLETION

The Contractor shall complete the construction of the work to the satisfaction of the Owner, in accordance with the Standard Specifications and the Special Conditions. A "Notice to Proceed" will be issued by the Owner, the date of which shall commence the Contract time. The allotted time for this project is as follows:

All work shall be performed on a Friday and Saturday, if more than one day is needed, from 7:30am – 6:00pm.

## **SECTION 4 - MATERIALS AND WORKMANSHIP**

### 4.1 SAFEGUARDING OF EQUIPMENT, MATERIALS AND WORK

The Contractor shall properly safeguard all equipment, materials, and work against loss, damage, malicious mischief, or tampering by unauthorized persons until acceptance of the work by the City. Locked and covered storage or continuous surveillance by a watchman shall be provided if required to accomplish this purpose.

### 4.2 NEW MATERIALS AND EQUIPMENT

Unless otherwise specified, shown, or permitted by the Engineer, all materials and equipment incorporated in the work shall be new and current manufacture. The Engineer may request the Contractor to furnish manufacturer's certificates to this effect.

### 4.3 CONTRACTOR'S UTILITIES

The Contractor shall provide his own water, telephone, and all electric power required in performance of the work under the Contract, and shall pay all installation charges and monthly

bills in connection therewith.

#### 4.4 TITLE TO MATERIALS FOUND ON THE WORK

The City reserves the right to retain title to all soils, stone, sand, gravel, and other materials developed and obtained from the excavation and from other operations connected with the work. Unless otherwise specified in the Special Provisions, neither the Contractor nor any subcontractor shall have any right, title, or interest in or to any such materials. The Contractor will be permitted to use in the work, without charges, any such materials which meet the requirements of the Special Provisions and Drawings.

#### 4.5 DEFECTIVE EQUIPMENT, MATERIALS OR WORK

- (a) Inspection of the work shall not relieve the Contractor of any of his obligations under the Contract. Even though equipment, materials or work required to be provided under the Contract have been inspected, accepted and estimated for payment, the Contractor shall, at his own expense, replace or repair any such equipment, materials, or work found to be defective or otherwise not in compliance with the requirements of the Contract up to the end of the maintenance and guarantee period.
- (b) Any equipment or materials brought upon the job site by the Contractor and subsequently rejected by the Engineer as not complying with the requirements of the Contract shall be removed immediately by the Contractor to a satisfactory distance from the job site.
- (c) If the Contractor shall fail to repair or replace unsatisfactory equipment, materials, or work, or to remove unsatisfactory equipment or materials from the job site, within 10 calendar days after being ordered to do so by the Engineer, the Engineer, acting on behalf of the City, may make the ordered repairs or remove the condemned equipment or materials and the City will deduct the cost thereof from any monies due or to become due the Contractor.

#### 4.6 SOUND CONTROL REQUIREMENTS

#### 4.7 RUBBISH CONTROL

During the progress of the work, the Contractor shall keep the site of the work and other areas used by him in a neat and clean condition, and free from any accumulation of rubbish.

#### 4.8 DUST CONTROL

The Contractor shall at all times conduct his work so as to avoid unnecessary dust. He shall provide adequate equipment and water as determined by the Engineer to be necessary for accomplishment of this objective.



#### 4.9 CHARACTER OF WORKMEN

None but skilled workmen shall be employed on work requiring special qualifications. When required in writing by the Engineer, the Contractor or any subcontractor shall discharge any person who is, in the opinion of the Engineer, incompetent, disorderly, or otherwise unsatisfactory, and shall not again employ such discharged person on the work except with the consent of the Engineer. Such discharge shall not be the basis of any claim for damages against the City or any of his agents.

### **SECTION 5 - PROGRESS AND PAYMENT**

#### 5.1 BREAKDOWN OF CONTRACT PRICE

Prior to commencement of the work, if requested by the Engineer, the Contractor shall submit a detailed price breakdown of any or all of his bid items for the work. Such price breakdown shall include quantities, unit prices, and any other information required, in sufficient detail, to enable it to be used by the Engineer in preparing the monthly progress estimates. The Contractor shall use the price breakdown form bound with Specifications if one is included.

#### 5.2 CHANGE ORDERS

- (a) The City may, as the need arises, order changes in the work through additions, deletions, or modifications, without invalidating the Contract. Such changes will be effected through written change orders delivered to the Contractor, describing the change required in the work, together with any adjustment in Contract price or time of completion as hereinafter provided. No such change shall constitute the basis of claims for damage or anticipated profits; however, the City will make reasonable allowance for the value of any work materials or equipment furnished and subsequently rendered useless because of such change. Any adjustment in Contract price resulting from a change order will be considered in computing subsequent monthly payments due the Contractor. Any work performed in accordance with a change order shall be subject to all provisions of the original Contract, and the Contractor's sureties shall be bound thereby to the same degree as under the original Contract.
- (b) No labor cost for move in and out of minimum charges, other than the hourly rate, shall be allowed for persons available from the force already on the job site. Only the foremen directly supervising the job shall be included in the labor charges. Labor rates for delays will be the actual costs. Labor rates for extra work will be taken from the rates published periodically by the California Department of Transportation.

Equipment rental rates for delays and for extra work will be taken from the rates published periodically by the California Department of Transportation. Move in and out or minimum charges other than the hourly rate, shall not apply to equipment available from the force already on the job site. Right-of-way delay factors shown on the Equipment Rental Rates do not apply. Copies of the prevailing Equipment Rental Rates are available from the:

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
1900 ROYAL OAKS DRIVE  
SACRAMENTO, CALIFORNIA 95819

- (c) Any adjustment in Contract price shall be based on unit price bid on the work, where such bid items are applicable.
- (d) If the original bid prices are not applicable, the adjustment in Contract price shall be based on a lump sum or unit price agreed upon by the City and the Contractor prior to executing the change order.
- (e) If the original bid prices are not applicable and the City and Contractor are unable to agree upon a lump sum or unit price prior to executing the change order, the adjustment in Contract price shall be made on a cost-plus basis. In such an event, the following items will be included as the direct costs:

Materials and supplies  
Labor (including foremen's wages)  
Workmen's Compensation Insurance  
Unemployment insurance contributions paid to the State  
Social Security Taxes paid to the Federal Government  
Labor union health and welfare, pension, vacation-holiday, and  
apprenticeship fund contributions  
Reasonable value for use of equipment for actual time of use

In addition to the direct costs enumerated above, the City will pay to the Contractor for said extra work a percentage of said direct costs to compensate for the following profit and overhead items:

Profit  
General expenses  
All insurance except Workmen's Compensation Insurance  
Excise taxes  
Property taxes  
License and inspection fees  
Bond premiums  
All other items of expense not specifically enumerated above

Said percentage will be 15 percent of said direct costs provided the Contractor actually performs said extra work himself. In the event said extra work is performed by a Subcontractor, the percentage paid to the Contractor will be 20 percent of said Subcontractor's direct costs. Said percent will include allowance for profit and overhead costs for both the Contractor and Subcontractor. In the event said extra work is performed through more than one Subcontractor in succession, said

percentage will not exceed 25 percent.

- (f) When work is being performed on a cost-plus basis, the Contractor shall submit written reports as directed by the City, showing all items of direct cost, as defined in Subsection 5.02 (e), which enter into the work. If required by the City, the Contractor shall furnish books, vouchers, invoices, and other records to substantiate the direct cost items listed in said reports.

### 5.3 OVERTIME

Except as otherwise provided in this Section, the Contractor shall receive no additional compensation for overtime work even though such overtime work may be required under emergency conditions and may be ordered by the Engineer in writing. Additional compensation will be paid the Contractor for overtime work only in the event extra work is ordered by the Engineer and the change order specifically authorizes the use of overtime work, and then only to such extent as overtime wages are regularly being paid by the Contractor for overtime work of a similar nature in the same locality.

### 5.04 EXTENSION OF TIME

- (a) The Contractor may be entitled to an extension of Contract time (1) if the work has been suspended by the City, in whole or in part; or (2) Where weather or other circumstances occur which delay progress and which are clearly beyond the control of the Contractor; provided that, in either case, the Contractor is not at fault and is not negligent under the terms of the Contract. The extension of time allowed shall be as determined by the City.
- (b) To receive consideration, a request for extension of time must be made in writing to the City stating the reason for said request, and such request must be received by the City within 10 days following the end of the delay-causing condition.

### 5.05 LIQUIDATED DAMAGES

- (a) The Contractor shall pay to the City the amount of two hundred and fifty dollars per day, not as a penalty but as liquidated damages, if he fails to complete the work within the time agreed upon. The period for which said damages shall be paid shall be the number of calendar days from the date of termination of any extension of time approved by the City. The City may deduct the amount of said damages from any monies due or to become due the Contractor.
- (b) The said amount is fixed and agreed upon by and between the Contractor and the City because of the impracticability and extreme difficulty fixing and ascertaining the actual damages the City would sustain; and said amount is agreed to be the amount of damages which the City would sustain.
- (c) The Contractor will not be assessed liquidated damages for delay in completion of

the project, which such a delay was caused by the failure of the City or the Owner of a utility to provide for removal or relocation of an existing unknown utility facility.

## 5.6 PROGRESS SCHEDULES

Within 10 days after award of the Contract, or at such times as may be required by the City, the Contractor shall submit progress schedules showing the order in which he proposed to carry on the work and the dates when the various parts will begin and be completed. Progress schedules shall be subject to the approval of the City and if in his opinion a schedule submitted is inadequate to secure the completion of the work in the time agreed upon, or is otherwise not in accordance with the Specifications, he may require the Contractor to submit a new schedule which will insure timely completion of the work.

## 5.7 MONTHLY ESTIMATES AND PAYMENTS

- (a) On or about the 25th day of each month, the Engineer shall prepare and transmit to the City, an estimate of the cumulative amount and value of work performed by the Contractor up to that date. Except as may otherwise be provided in the Special Provisions, said amount will include 80 percent of the value of all acceptable materials and equipment delivered to the site of the work. Said value will be based on certified copies of invoices delivered by the Contractor and Engineer. To this figure will be added all amounts due or paid the Contractor for performance of extra work in accordance with change orders. From the total computed above, a deduction of 10 percent will be made. Further deductions will be made for: (1) amounts due the City for equipment or materials furnished or services rendered; (2) amounts due the City under the terms of the Contract; (3) amounts of any claims of lien filed with the City in accordance with Section 6.05; and (4) amounts required to be deducted by Federal, State, or local governmental authority. From the balance thus determined will be deducted the amount of all previous payments and the remainder shall constitute the partial payment due the Contractor.
- (b) The City's estimate of the partial payment due the Contractor will not be required to be made by strict measurement, and an approximate estimate will suffice. The partial payments may be withheld or reduced if in the City's opinion, the Contractor is not diligently or efficiently endeavoring to comply with the intent of the Contract, or if the Contractor fails to pay his labor and material bills as they become due.
- (c) Contractor shall furnish the City promptly, upon request, all information and records necessary to determine the cost of the work for purposes of estimating partial payments, including an itemized statement, in a form satisfactory to the City, of the actual cost of all acceptable materials delivered by the Contractor to the site.
- (d) No partial payment shall be construed as an acceptance of the work or of any portion of the work, nor shall the making of such payment preclude the City from demanding the recovering from the Contractor such damages as it may sustain by reason of the Contractor's failure to comply with requirements of the Contract.

- (e) In the event the Contract is terminated, any funds due the Contractor and retained by the City in accordance with Subsection 5.07 shall become the property of the City to the extent necessary to repay to the City any excess in the Contract price above the cost of the work completed at the time of termination. After issuance of notice of discontinued work, no further payments will be made to the Contractor for the work covered by the notice until completion of the work and final settlement has been made.
- (f) Securities may be substituted by the Contractor for monies withheld as a retention by the City to insure the performance of the work described in the Contract agreement. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a State or Federally chartered bank as the escrow agent, who shall pay such moneys to the Contractor upon satisfactory completion of the Contract.

Securities eligible for investment under this Section shall include those listed in Section 16430 of the Government Code or bank or savings and loan certificates of deposit. The Contractor shall be the beneficial owner of any securities substituted for money withheld and shall receive any interest thereon.

#### 5.08 FINAL ESTIMATE AND PAYMENT

- (a) When the City is of the opinion that the Contractor has completely performed all work required under the Contract, he will submit to the Contractor a draft of the final estimate. The Contractor will be expected to submit his written approval of said final estimate within 5 calendar days after receipt or, in the event the Contractor disagrees with said final estimate, he shall, within said 5-day period, file a written statement of all claims which he intends to present. If the Contractor delays more than 5 calendar days in approving said final estimate or in presenting his own claims, the time for the final payment shall be extended by the period of such delay.
- (b) Upon receipt by the City of the Contractor's written approval of said final estimate in accordance with Subsection 5.08(a), the City will certify physical completion of the work.
- (c) After acceptance of the work by the City and 35 calendar days after filing of the Notice of Completion, the City will pay to the Contractor the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract. In the event acceptance of the work is delayed more than 30 calendar days beyond the date of the last partial payment under the Contract, the City will make further partial payment in accordance with Section 5.07.
- (d) If the Contractor disagrees with the City's final estimate and files a written statement of his claims in accordance with Subsection 5.08(a), the City will issue, as a semi-final estimate, the proposed estimate submitted to the Contractor, and

the City will make payment estimate submitted to the Contractor, in accordance with the provisions of Subsection 5.08(c). The City then will investigate the Contractor's claims, make any revisions to said semi-final estimate as he appropriate. The City then will make final payment to the Contractor in accordance with the provisions of Subsection 5.08(c).

#### 5.09 FINAL PAYMENT TERMINATES LIABILITY OF OWNER

The acceptance by the Contractor of the final payment referred to in Subsection 5.08(c) shall be a release of the City and its agents from all claims of and liability to the Contractor for anything done or furnished for, or relating to, the work or for any act or neglect of the City or of any person relating or affecting the work, except claims against the City for the remainder, if any, of the amounts kept or retained under the provisions of Section 6.05.

## **SECTION 6 - BONDS, INSURANCE, LEGAL RESPONSIBILITY, AND PUBLIC SAFETY**

### **6.1 FAITHFUL PERFORMANCE BOND**

Each bond which is written by an out-of-state bonding company shall contain the name, address and telephone number of an agent located in the State of California who is authorized to act for the bonding company.

The Contractor shall secure with a corporate surety or sureties satisfactory to the City, a bond in the amount of 100 percent of the total Bid Amount to guarantee faithful performance of the Contract. The amount of this Faithful Performance Bond shall be reduced to 50% of the Contract amount or \$500.00 whichever is greater and shall remain in full force and effect for one year from the date of the Final Notice of Completion to assure and guarantee against any defective materials furnished in the performance of the Contract.

### **6.2 LABOR AND MATERIAL BOND**

The Contractor shall secure with a corporate surety or sureties satisfactory to the City, a bond in the amount of 100 percent of the total Bid Amount to guarantee payment of claims of laborers and material-men under the Contract.

### **6.3 ADDITIONAL SURETY**

If, during the life of the Faithful Performance Bond, any of the sureties named in said bond become insufficient in the opinion of the City, he may require the Contractor to furnish additional sufficient sureties within 5 days of receipt of written order to do so. In the event the Contractor fails or neglects to furnish sufficient additional sureties, when ordered, within the prescribed time period, the City may suspend the work or terminate the Contract, and the Contractor shall have no claim for damages.

### **6.4 CONTRACTOR INDEBTEDNESS**

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

### **6.5 UNPAID CLAIMS**

If, upon or before the completion of the work, or at any time prior to expiration of the period within which claims of lien may be filed of record, any person claiming to have performed any labor or to have furnished any materials, supplies, or services toward the performance of this Contract, or to have agreed to do so, shall file with the City a verified statement of such claim stating in general terms the kind of labor and materials, the value of same, and the name of the

person to or for whom the same was furnished, together with a statement that the same has not been paid; or if any person shall bring against the City or any of its agents. Any action to enforce such claim the City will, until the action is settled, withhold from monies due the Contractor an amount sufficient to satisfy the decision of the court together with costs.

## 6.6 INSURANCE

- (a) General - The Contractor shall not commence work under this Contract until he has obtained all the insurance required under this Section and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved. All insurance required under this Section shall be maintained continuously during the life of the Contract up to the date of acceptance of the work by the City.
- (b) Worker's Compensation Insurance - The Contractor shall procure and maintain Workmen's Compensation Insurance as required by applicable State or territorial law for all of his employees to be engaged in work at the site of the project under this Contract, and, in case of any such work sublet the Contractor shall require the subcontractor similarly to provide Workman's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this Contract is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.
- (c) Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance - The Contractor shall procure and maintain Contractor's Liability Insurance in the amounts specified herein.
- (d) Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance - The Contractor shall either (1) require each of his subcontractors to procure and to maintain Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Special Provisions or, (2) insure the activities of his subcontractors in his own policy, in like amount.
- (e) Builder's Risk Insurance (Fire and Extended Coverage) - The Contractor shall procure and maintain Builder's Risk Insurance (All Risk Coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the City, the Contractor and subcontractors as their interests may appear.



- (f) Scope of Insurance - The insurance required under Subsections (c) and (d) hereof shall provide adequate protection for the Contractor and his subcontractor's respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him. In addition, the insurance required under subsections (c), (d) and (e) hereof shall name the City and Engineer, and their officers, agents and employees, as "additional insured" under the policies. The insurance coverage should contain the following provisions: "Solely as respects work done by and on behalf of the named insured for the City of Grand Terrace, it is agreed that the City of Grand Terrace, is added as an additional insured under this policy. It is further agreed that the other insurance conditions of the policy are amended to conform therewith."

All liability insurance policies shall bear an endorsement or shall have attached a rider whereby it is provided that, in the event of expiration, material alteration, or proposed cancellation of such policies for any reason whatsoever, the City shall be notified by registered or certified mail not less than 30 days before expiration, material alteration or cancellation is effective.

All liability insurance shall cover comprehensive general and automobile liability for both bodily injury (including death) and property damage, including but not limited to aggregate products, aggregate operations, aggregate protective and aggregate contractual with the following minimum limits:

Bodily injury (including death) \$1,000,00 each person, \$1,000,000 each occurrence

Property Damage \$500,000 each occurrence, \$1,000,000 aggregate

Special attention is directed to possible flood hazards, and/or nuisance water such as irrigation and other runoff. The Contractor shall be responsible for all injuries or damages to any portion of the work occasioned by the above causes and he shall make good such injuries or damages at no cost to the City prior to the completion and acceptance of the work.

- (g) Proof of Insurance - The Contractor shall furnish the City with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statements: "The insurance covered by this certificate will not be cancelled or materially altered, except after 30 days written notice has been received by the City."

## 6.7

## NO PERSONAL LIABILITY

The Contractor shall indemnify and save harmless the City, its officers, agents, and employees, against and from all claims and personal liability arising under or by reason of the Contract or any performance of the work.

## 6.8 DIR REQUIREMENTS

Pursuant to State Bill 854, the following new requirements apply to all public works projects:

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. The website for contractor registration with the Department of Industrial Relations (DIR) is <https://efiling.dir.ca.gov/PWCR>; the annual non-refundable fee, valid July 1 through June 30 (state fiscal year), is \$300.

Contractors and subcontractors must submit electronic payroll records to the DIR's Compliance Monitoring Unit (CMU) in addition to providing wet-ink original copies to the City or its designated labor compliance officer.

## 6.9 PERMITS AND LICENSES

Unless otherwise provided in the Special Provisions, the Contractor shall obtain at his own expense all permits and licenses required for prosecution of the work and shall pay all taxes properly assessed against his equipment or property used in connection with the work.

No work shall be started within the street right-of-way or on City property until the Contractor has obtained the necessary permits. The Contractor shall obtain and pay for all permits and fees and give all notices necessary and incident to the due and lawful prosecution of the work and to the preservation of the public health and safety. Fees will not be collected on those permits obtained from the City Engineer's Office.

For work on private property where shown on the plans, the City will provide rights of entry at no cost to the Contractor. Such rights of entry do not relieve the Contractor of the need to provide at his cost, permits and insurance required of the Contractor by other agencies and organizations.

The Contractor shall obtain and pay for all costs incurred for licenses necessitated by his operations. Prior to starting any work, the Contractor shall be required to have a City Business License valid for the life of the Contract; his subcontractors shall also have Business Licenses valid for the time they are engaged in work.

## 6.10 SALES AND USE TAXES

The Contractor shall pay all sales and use taxes assessed by Federal, State or local authorities on materials furnished by the Contractor in performance of the work.

#### 6.11 PATENTS AND COPYRIGHTS

The Contractor shall indemnify and save harmless the City and its officers, agents, and employees, against all claims or liability arising from the use of any patented or copyrighted design, device, material, or process by the Contractor or any of his subcontractors in the performance of the work.

#### 6.12 Reserved

#### 6.13 PUBLIC SAFETY AND CONVENIENCE - Please refer to Special Provisions

For convenience to the Contractor to comply with the other provisions of this section, the following telephone numbers are listed.

Fire Department	909-825-0221
Sheriff Department	909-824-0680
Courtesy Ambulance Service	909-884-3155
RTA	909-682-1234
Colton Unified School District	909-976-4110

If the above telephone numbers are changed, the Contractor is not relieved of his responsibility of notifying the various departments.

#### 6.14 SANITARY PROVISIONS

The Contractor shall provide and maintain such sanitary accommodations for the use of his employees and those of his subcontractors as may be necessary to comply with the requirements of local and State health departments.

#### 6.15 FEDERAL SAFETY AND HEALTH REGULATIONS

- (a) Contractors and subcontractors shall comply with the provisions of the Safety and Health Regulations for construction, promulgated by the Secretary of Labor under Section 107 of the "Contract Work Hours and Safety Standards Act", as set forth in Title 29, C.F.R.
- (b) Contractors and subcontractors shall comply with the provisions of the Occupational Safety and Health Standards, promulgated by the Secretary of Labor under the "Occupational Safety and Health Act of 1970," as set forth in Title 29, C.F.R.

## **SECTION 7 - STATE OF CALIFORNIA REQUIREMENTS**

### **7.1 WAGES**

(a) Pursuant to the provisions of the California Labor Code, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the said work is performed, and not less than the general prevailing rate of per diem wages for legal holidays and overtime work in each craft or type of workmen needed to execute the work contemplated under the Contract, shall be paid to all workmen on and in connection with said work by the Contractor and by any subcontractor doing or contracting to do any part of said work. The Contractor shall, as a penalty to the City, forfeit \$25.00 for each calendar day, or portion thereof, for each workman paid less than the stipulated prevailing rates of such work or craft in which such workman is employed, whether paid by the Contractor or by any subcontractors under him. The Contractor agrees to comply with the provisions of Sections 1775 and 1776 of the California Labor Code. The Contractor is also required to post the applicable prevailing wage rates at the jobsite.

Pursuant to 1773.2, the Contractor shall refer to the wage schedule on file at the City Clerk's Office at 22795 Barton Road, Grand Terrace, California, 92313.

(b) The Contractor and the subcontractors shall comply with the Davis-Bacon Fair Labor Standards Act (40 USC a--276a-5) and the implementation regulations issued pursuant thereto (29 CFR Section 1.5) and any amendments thereof.

(c) The issuance, as payment for wages, of any evidence of indebtedness is prohibited unless the same is negotiable and payable on demand without discount.

(d) In accordance with the provisions of Section 3700 of the California Labor Code, the Contractor shall secure the payment of compensation to his employees.

### **7.2 PAYROLL RECORDS**

Contractor shall provide the City with certified copies of payroll records upon demand, and within 24 hours of such demand.

### **7.3 APPRENTICES ON PUBLIC WORKS**

The Contractor shall comply with all applicable provisions of Sections 1775.5 of the California Labor Code relating to employment of apprentices on public works.

#### 7.4 WORKING HOURS

- (a) The Contractor shall comply with Chapter 8.108 G.T.M.C. restricting work between the hours of eight p.m. and seven a.m. weekdays, including Saturday or at any time on Sunday or a National Holiday.
- (b) The Contractor shall comply with all applicable provisions of Sections 1810 to 1817, inclusive, of the California Labor Code relating to working hours. The Contractor shall, as penalty to the City, forfeit \$25.00 for each workman employed in the execution of the Contract by the Contractor or by any subcontractor for each calendar day during which such workman is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the above-mentioned Sections of the California Labor Code.

#### 7.5 PROTECTION OF WORKERS IN TRENCH EXCAVATION

Contractor shall comply with all of the requirements of California Division of Industrial Safety. The protection of workers must meet the requirements of Construction Safety Orders.

#### 7.6 CONTRACTOR NOT RESPONSIBLE FOR DAMAGES RESULTING FROM CERTAIN ACTS OF GOD

As provided in Sections 4150 and 4152, inclusive, of the California Government code, the Contractor shall not be responsible for the cost of repairing or restoring damage to the work, which damage is determined to have been proximately caused by an Act of God in excess of five percent of the contracted amount, provided, that the work damaged is built in accordance with accepted and applicable building standards and the attached plans and specifications. The Contractor shall obtain insurance to indemnify the City for any damage to the work caused by an Act of God if the premium for said insurance coverage is not called for as a separate bid item in the Bidding Schedule for the work.

For the purpose of this Section, the term "Acts of God" shall include only the following occurrences or conditions and effect; earthquakes in excess of a magnitude of 3.5 on the Richter Scale.

#### 7.7 NOTICE OF COMPLETION

As required by the Civil Code, and within ten calendar days after date of acceptance of the work by the City's governing body, the City will file, in the County Recorder's Office, a Notice of Completion of the work.

#### 7.8 CONCRETE FORMS, FALSEWORK AND SHORING

The Contractor shall comply fully with the requirements of Section 1717 of the Construction Safety Orders, State of California, Department of Industrial Relations,

regarding the design of concrete forms, falsework and shoring, and the inspection of same prior to placement of concrete. Where the said Section 1717 requires the services of a registered civil engineer in the State of California to approve design calculation and working drawings of the falsework or shoring system, or to inspect such system prior to placement of concrete, the Contractor shall employ a registered civil engineer for these purposes.

## **PART 3**

### **CONSTRUCTION METHODS**

#### **SECTION 300 - EARTHWORK**

##### **300-1 CLEARING AND GRUBBING**

###### **300-1.2 Preservation of Property.**

Any irrigation systems in conflict with the proposed improvements that are removed, damaged, disturbed, or broken shall be modified/relocated, repaired, and/or replaced to be operable and provide full irrigation coverage to the areas requiring irrigation using new materials, equal or better than the original materials, with 20 mm (3/4 in) Schedule 40 PVC being the minimum acceptable for underground lines and 13 mm (1/2 in) Schedule 80 being minimum acceptable for risers and with the systems not being out of operation for more than two (2) days.

All trees, shrubbery and lawns deprived of normal irrigation watering due to a disruption of service caused by the Contractor's operations shall be regularly and thoroughly irrigated by the Contractor so that said plantings will not be damaged. If any trees, shrubbery or lawns die or suffer unacceptable damage as a result of or precipitated by the Contractor's operations the Contractor shall replace same with the same plant species and size. Existing grass lawns within areas that must be excavated and/or re-graded shall be replaced with grass sod in kind. Dead, dying, and unacceptably damaged grass shall be replaced with new grass sod.

# **BARTON RD. GUARDRAIL REMOVAL AND REPLACEMENT SERVICES**

## **SCOPE OF SERVICES**

### **1. Project Overview:**

- The City of Grand Terrace spans approximately 3.1 square miles.
- The Consultant shall install Midwest Guardrail Systems per Caltrans Standard Plans A77L1 to A77N4 and per Caltrans Standard Specifications (2022 or latest edition at the time of construction).
- The location of the guardrail is situated on the east end of Barton Road, spanning from coordinates 34.044663078465824, -117.29959679495683 to 34.0443055519631, -117.2999051880687.

### **2. Deliverables:**

- Removal and replacement of damaged guardrail sections along the west side of Barton Road spanning about 150 feet.
- Upgrading existing guardrail with new guardrail per Caltrans standards.
- Compliance with Caltrans Chapter 4: Construction Details, Section 83 regarding Railings and Barriers.
- Project to be executed under prevailing wage regulations.
- Timeline for completion of the project and milestones.

### **3. Optional Add-On:**

- Concrete vegetation control may be considered as an optional add-on.

### **4. Additional Details:**

- The project will involve linking upgraded guardrail sections to non-upgraded guardrail sections, as the entire length of guardrail will not be upgraded.
- Contractor is responsible for due diligence, including performing dig alerts, contacting utility companies, ensuring regulatory compliance, conducting site assessments, sourcing materials, implementing safety measures, obtaining necessary permits, and preparing required documentation.