

GENERAL CONDITIONS FOR

DISCOVERY BAY BLVD. / SANDPOINT ROAD LANDSCAPE IMPROVEMENTS

1-01 DEFINITIONS

- a. The Contract Documents consist of the Contract (also referred to as “Agreement”) and the following:
 - Notice Inviting Sealed Bids
 - Instructions For Bidders
 - “Non-collusion Affidavit”
 - List of Subcontractors
 - Bidder’s Responsibility Statement
 - Bid Table
 - Faithful Performance Bond and Labor and Materials Bond
 - General Conditions
 - Any Published Addenda or Supplements
 - Plans and Specifications including any amendments

- b. The Owner and the Contractor are those mentioned as such in the Contract. They are treated throughout the complete Contract and the Contract Documents as if each were of the singular number and masculine gender.

- c. The term Subcontractor, as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the drawings and specifications of this work, or labor at the site, but does not include one who merely furnishes material not so worked.

- d. Where in any of the Contract Documents or in the complete Contract there is any provision in respect to the giving of any notice, such notice shall be deemed to have been given (as to the Owner) when written notice shall have been placed in the United States mail addressed to the Owner at its place of business; (as to the Contractor) when written notice shall be delivered to the chief representative of the Contractor at the site of the Project or by mailing such written notice in the United States mail addressed to the Contractor at the place stated in the papers prepared by him to accompany his bid as the address of his permanent place of business.

- e. The term “work” of the Contractor or Subcontractor includes labor or materials or both.

- f. All time limits stated in the Contract Documents are of the essence of the Contract.

1-02 EXECUTION, CORRELATION AND INTENT OF DOCUMENT

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include in the Contractor's Bid the costs of all labor and materials, equipment and transportation necessary for the proper execution of the work. Materials or work described in words, which so applied, have a well known technical or trade meaning shall be held to refer to such recognized standards.

1-03 DETAIL DRAWINGS AND INSTRUCTION

- a. The Engineer, if there is one, shall prepare and file either complete and accurate plans and specifications or a work authorization describing the work to be performed, together with an estimate of the cost thereof, prior to commencement of the work.
- b. The Engineer, if there is one, shall furnish with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof and reasonably inferable therefrom.
- c. The work shall be executed in conformity therewith and the Contractor shall do no work without proper drawings and instructions.

1-04 SHOP DRAWINGS

The Contractor shall check and verify all field measurements and submit with such promptness as to cause no delay in his own work or in that of any other Contractor, three (3) copies of all shop or setting drawings and schedules required for the work of the various trades, and the Owner, or the Engineer, if there is one, shall pass upon them with reasonable promptness, making desired corrections, including all necessary corrections relating to artistic effect. The Contractor shall make any corrections required by the Owner, or the Engineer, if there is one, and file with him six (6) corrected copies, and furnish such other copies as may be needed. The approval of such drawings or schedules by the Owner, or the Engineer, if there is one, shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has, in writing, secured approval by the Owner, or the Engineer, if there is one, of such deviations, nor shall it relieve Contractor from responsibility for errors of any sort in shop drawings or schedules.

Contractor agrees that Shop Drawing Submittals processed by the Owner, or the Engineer, if there is one, are not Change Orders; that the purpose of Shop Drawing Submittals by the Contractor is to demonstrate to the Owner, or the Engineer, if there is one, that the Contractor understands the design concept, that he demonstrates his understanding by indicating which

equipment and material he intends to furnish and install and by detailing the fabrication and installation methods he intends to use.

Contractor further agrees that if deviations, discrepancies or conflicts between Shop Drawings and Specifications are discovered either prior to or after Shop Drawing Submittals are processed by the Owner, or the Engineer, if there is one, the design Drawings and Specifications shall control and shall be followed.

- a. Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work.
- b. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.
- c. The Contractor shall employ on the work only workmen skilled in the work assigned to them, and the Owner shall have the right to require the removal from this work of any employee unacceptable to Owner.

1-07 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has information that the process or article specified is an infringement of a patent he shall be responsible for such loss unless he promptly gives such information to the Owner, or the Engineer, if there is one. The approval of any method of construction, invention, appliance, process, article, device or material of any kind by the Owner, or the Engineer, if there is one, shall only be an approval of its adequacy for the work, and shall not be an approval of the use thereof by the Contractor in violation of any patent or other rights of any third person.

1-08 PERMITS, REGULATIONS AND TAXES

- a. Permits and licenses necessary for the execution of the work shall be secured and paid for by the Contractor unless otherwise specified.
- b. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith he shall promptly notify the Owner, or the Engineer, if there is one, in writing, and any necessary changes shall be adjusted as provided in the contract documents for changes in the work.

The Contractor shall not proceed with the performance of any such work until such changes are agreed upon. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, without such notice to the Owner, or the Engineer, if there is one, and such adjustments of changes as aforesaid, then the Contractor shall bear all costs arising from or in connection with such work.

- c. The Contractor shall pay for all federal, state and local taxes on all materials and labor services furnished by him and all taxes arising out of the operations under this contract.

1-09 PROTECTION OF WORK AND PROPERTY

The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property as provided by law and the Contract Documents, and shall make good any damage, injury or loss thereto arising in connection with this Contract.

1-10 ACCIDENT PREVENTION

Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery and equipment shall be guarded and all hazards eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable law.

1-11 INSPECTION OF WORK

- a. The Engineer, if there is one, and his representatives, and/or the Owner's representatives shall, at all times, have access to the work and the Contractor shall provide proper facilities for such access and for inspection.

- b. Re-examination of questioned work may be ordered by the Owner, or the Engineer, if there is one, and, if so ordered, the work must be uncovered by the Contractor. If such work were found in accordance with the Contract Documents, the Owner shall pay the cost of reexamination and replacement. If such work be found not in accordance with the Contract Documents, the Contractor shall pay such costs, unless he shall show that the defect in the work was caused by some other contractor for whose work the Contractor herein is not responsible and, in that event, the Contractor herein shall not be liable for such cost.
- c. All work shall be under the direct inspection of the Owner, or the Engineer, if there is one.

1-12 CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION

- a. Contractor shall keep on his work, during its progress, a competent superintendent and any necessary assistants, all-satisfactory to the Owner, or the Engineer, if there is one. The Superintendent shall not be changed except with the consent of the Owner, or the Engineer, if there is one, unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, or unless the Superintendent proves to be unsatisfactory to the Owner. The Superintendent shall represent the Contractor in his absences and all directions given to him shall be as binding as if given to the Contractor. Other directions shall be so confirmed on written request in each case.
- b. The Contractor shall give efficient supervision to the work, using his best skill and attention. He shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Owner, or the Engineer, if there is one, any error, inconsistency or omission which he may discover, but he shall not be held responsible for their existence or discovery.
- c. The Contractor shall be specifically responsible for the coordination of all work performed under this Contract. Coordination of the work shall be interpreted to include general laying out of the structures, coordination of the layout and work under various sections, scheduling the sequence of operations ensuring cooperation between the trades, and the preparation of erection diagrams and drawings necessary to ensure proper and expeditious completion of all work.
- d. Each Subcontractor shall be responsible for the proper laying out of his own work, shall coordinate his layout and work with the work of the other sections, and shall be responsible for any damage which may occur to the work of any other Subcontractor or Contractor because of errors or inaccuracy. Neither the

Owner, nor the Engineer, if there is one, nor their representatives, will, in any case, assume the responsibility for laying out the work.

1-13 CHANGES IN THE WORK

- a. The Owner, without invalidating the Contract, may order extra work or make changes by altering, adding to, or deducting from the work, the Contract Sum being adjusted accordingly. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.
- b. In giving instructions, the Owner, or the Engineer, if there is one, shall have authority to make minor changes in the work, not involving extra costs, and not inconsistent with the purposes of the building, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order signed by the Owner and countersigned by the Engineer, if there is one. No claim for an addition to the contract sum shall be valid except for work ordered in writing.
- c. The value of any such extra work or change shall be determined in one of the following ways:
 - 1) By unit prices contained in the original bid.
 - 2) By an acceptable lump sum proposal.
 - 3) On a cost plus limited percentage basis (defined as cost of labor, materials and insurance plus a specified percentage of these items, but not to exceed 15% of the aggregate of the cost of such labor, materials and insurance).
- d. If none of the above is agreed upon, the Contractor, provided he receives an order as above, shall proceed with the work. In such case, he shall keep and present a correct account of the cost, together with vouchers, and the Owner, or the Engineer, if there is one, shall thereupon certify the amount due for such work, including a reasonable allowance for overhead and profit.

1-14 CLAIMS FOR EXTRA COST

All claims for extension or extra costs of \$375,000 or less which are not resolved by change order shall be resolved in accordance with Public Estimate Code Section 20104 and following, a copy of which is attached to these General Conditions.

1-15 DEDUCTIONS FOR UNCORRECTED WORK

If the Owner, and the Engineer, if there is one, deem it inexpedient to correct work injured or

done not in accordance with the Contract, an equitable deduction from the contract price shall be made therefor.

1-16 DELAYS AND EXTENSION OF TIME

- a. If the Contractor be delayed at any time in the progress of the work by an act or neglect of the Owner, or the Engineer, if there is one, or of any employee of either, or by any separate Contractor employed by the Owner, or by changes ordered in the work or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any cause beyond the Contractor's control, or by any cause which the Owner or Engineer shall decide justifies the delay, then the time of completion shall be extended for such reasonable time as the Owner or Engineer may decide.
- b. No such extension shall be made for delay occurring more than seven (7) days before claim therefor is made in writing to the Owner, or to the Engineer, if there is one. In the case of a continuing cause of delay, only one claim is necessary.
- c. If no schedule or agreement stating the dates upon which drawings shall be furnished is made, then no request for delay shall be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such request be reasonable.

1-17 CORRECTIONS OF WORK BEFORE FINAL PAYMENT

- a. The Contractor shall promptly remove from the premises all materials condemned by the Owner, or the Engineer, if there is one, as failing to conform to the Contract, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good work of other contractors destroyed or damaged by such removal or replacement.
- b. If the Contractor does not remove such condemned work and materials within a reasonable time, fixed by written notice, the Owner may remove them and may store the material at the expense of the Contractor.

1-18 CORRECTION OF WORK AFTER FINAL PAYMENT

Neither the final certificate nor payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship, and, unless otherwise specified, he shall remedy any defects due thereto and pay for any damage to their work resulting therefrom which shall appear within a period of one year from the date of the acceptance by the Owner. The Owner shall give notice of observed defects with reasonable

promptness. All questions arising under this article shall be decided by the Engineer, if there is one, subject to the right of either party to obtain judicial review.

1-19 OWNER'S RIGHT TO DO WORK

If the Contractor should neglect to execute the work properly or fail to perform any provisions of the Contract, the Owner, after three days written notice to the Contractor, may without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor; provided, however, that the Engineer, if there is one, shall approve both such action and the amount charged the Contractor.

1-20 PAYMENT

- a. Not later than the 10th day of each calendar month, the Owner will cause partial payment to be made to the Contractor as provided in the Construction Contract on the basis of a duly certified approved estimate of the work completed as of the 20th day of the preceding calendar month pursuant to this contract. These estimates will be prepared by the Owner, or by the Engineer, if there is one.
- b. The Contractor shall pay (1) for all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered; (2) for all materials, tools, and other expendable equipment to the extent of 90 per cent of the cost thereof, not later than the 20th day of the calendar month following that in which such material, tools, and equipment are delivered at the site of the project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used; and (3) to each of his Subcontractors not later than the 5th day following each payment to the Contractor on account of the work performed by his Subcontractors, to the extent of each such Subcontractor's interest therein.

1-21 OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF

- a. The Owner may withhold from agreed payments to the Contractor such an amount or amounts as may be necessary to cover:
 - 1) Payments that may be earned or due for just claims for labor or materials furnished in and about the work;
 - 2) Defective work not remedied;
 - 3) Failure of a Contractor to make proper payments to his subcontractors;
 - 4) Reasonable doubt that the Contract can be completed for the balance then unpaid; and
 - 5) Evidence of damage to another contractor.

- b. In any of the above instances, the Owner shall disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment therefrom. The Owner will render a proper accounting of all such funds disbursed.

1-22 CONTRACTOR'S INSURANCE

- a. The Contractor shall not commence work under this contract until he has obtained all insurance required under this section and such insurance, and companies carrying such insurance, have been approved by the Owner; nor shall the Contractor allow any Subcontractor to commence work on his subcontract until all similar insurance required to the Subcontractor has been so obtained and approved.

- 1) Compensation Insurance

The Contractor shall take out and maintain during the life of this Contract, Workers' Compensation insurance for all of his employees employed at the site of the project and, in case any work is sublet, the Contractor shall require the Subcontractor similarly to provide Workers' Compensation insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Workers' Compensation statute, the Contractor shall provide Employer's Liability Insurance for the protection of his employees not otherwise protected.

- 2) Public Liability and Property Damage Insurance

The Contractor shall take out and maintain during the life of this Contract such Public Liability and Property Damage insurance in which the Owner, and the Engineer, if there is one, shall be named as additional insured and which shall protect him and any Subcontractor performing work covered by this Contract, from claims for damages for personal injury, including accidental death, as well as claims for property damages, which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them, and shall include a hold harmless agreement which will indemnify the Owner, and the Engineer, if there is one, for loss or damage howsoever caused by the Contractor in performing the Contract, and the amounts of such insurance shall be as follows:

Public Liability insurance in an amount not less than \$1,000,000 for

injuries, including accidental death, to any one person, and subject to the same limit for each person, in an amount not less than \$1,000,000, on account of one accident, and Property Damage insurance in amount no less than \$500,000.

3) Insurance Covering Special Hazards

A rider or riders to the Public Liability and Property Damage insurance policy or policies herein required shall be furnished by the Contractor for special hazards, such as blasting, operation of material hoist, etc.

4) Automobile Insurance

The Contractor shall take out and maintain during the life of his contract, automobile public liability insurance in amounts not less than \$500,000/\$1,000,000 and property damage liability insurance in amount not less than \$500,000, if any teams or motor vehicles are engaged in operations within the terms of this contract on the site of the work to be performed thereunder, covering the use of all such teams or motor vehicles, unless such coverage is included in the insurance required by sub-section 2) hereof

5) Contingent Insurance

The Contractor shall provide contingent or protective public liability insurance in amounts not less than \$1,000,000/\$1,000,000, and contingent or protective property damage insurance in amount not less than \$500,000 if any work is subcontracted; and this requirement shall be applicable to Subcontractors as well in the event they sublet any of their work.

b. It is understood that the Contractor will submit prior to the execution of the final Contract certificates of insurance evidencing coverage as set forth herein and which shall name the Owner, and the Engineer, if there is one, and their employees as an additional insured under all such policies. Any and all amounts of deductible shall be assumed by the Contractor at his sole risk.

c. Cancellation Clause

All policies must provide for ten- (10) day's cancellation notice in writing to the Owner, and to his Engineer, if there is one, before cancellation becomes effective.

d. The Owner may accept insurance covering a Contractor or Subcontractor in character and amounts less than the standard requirements set forth herein where such standard requirements appear excessive because of the character or extent of the work to be performed by such Contractor or Subcontractor; but such acceptance as to any Contractor or Subcontractor shall not thereby relieve any other Contractor or Subcontractor of meeting the full extent of the

requirements herein.

1-23 INDEMNIFICATION OF OWNER AND ENGINEER

Contractor agrees to protect, indemnify, and hold the Owner, and the Engineer, if there is one, harmless from and against any and all liability, loss or expense (including attorney's fees) in connection with any claim, demand, action or cause of action asserted against Owner or Engineer because of any injury to or death, loss or damage, however caused, results from, or is alleged to result from, or is alleged to result from, or occurs in connection with the performance of this Contract whether before or after completion, by Contractor, his agents, employees, or Subcontractors, except where such injury, death, loss, or damage is caused by the sole negligence of Owner or Engineer. As a part of such indemnification, Contractor agrees, if requested by Owner or Engineer, to assume, without expense to Owner or Engineer, the defense of any such claim, demands, actions or causes of action.

1-24 SURETY BONDS

The Contractor shall furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder, each in the amount of one hundred percent (100%) of the estimated amount, as stated in the Contract and in such form as the Owner may prescribe and with such sureties as he may approve. The Contractor shall pay the cost of the premium.

1-25 DAMAGES

- a. If either party to this Contract should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone employed by him, then he shall be reimbursed by the other party for such damage.
- b. Should the Contractor fail to complete the work included in the Contract within the time limit agreed upon or such extensions thereof as may be granted, a deduction of **Two Hundred Fifty dollars (\$ 250) per day** will be made from amounts otherwise due the Contractor for each and every calendar day, or fraction thereof, that the work, or each stated portion, remains incomplete after the date set for its completion.
- c. Claims under this clause shall be made in writing to the party liable within a reasonable time after the first observance of such damage and not later than the time of final payment, except as otherwise provided in the Contract Documents in the case of faulty work or materials.

1-26 TRANSFER OF CONTRACT

The Contractor shall not transfer his Contract without the approval of the Owner. No transfer shall, under any circumstances relieve the Contractor of his liabilities and obligations under

his Contract. No transfer shall be made until after the Surety has been given due notice of such transfer and has furnished written consent thereto.

1-27 SEPARATE CONTRACTS

The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

1-28 SUBCONTRACTORS

- a. The Contractor shall submit with the Bid a list of all subcontractors who will perform work in excess of one-half percent of the total bid or, in the case of streets or highways, one-half percent or \$10,000, whichever is greater, and the Contractor shall not employ any that the Owner, or Engineer, if there is one, may within a reasonable time object to as incompetent or unfit.
- a. The Contractor agrees that he is fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them, as well as for the acts and omissions of persons directly employed by him.
- c. Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the Owner.

1-29 ENGINEER'S STATUS

- a. The Engineer, if there is one, shall have general supervision and direction of the work as provided in his Contract with the Owner. He is an agent of the Owner only to the extent provided in the Contract Documents and when in special instances he is authorized by the Owner so to act, and in such instances he shall, upon request, show the Contractor written authority. He has authority to stop the work whenever such stoppage maybe necessary to insure the proper execution of the Contract.
- b. As the Engineer, if there is one, is in the first instance, the interpreter of the conditions of the Contract and the judge of its performance he shall side neither with the Owner nor with the Contractor, but shall use his powers under the Contract to enforce its faithful performance by both.

1-30 ENGINEER'S DECISIONS

- a. The Engineer, if there is one, shall, within a reasonable time, make decisions on all claims of the Owner or Contractor and on all other matters relating to

the execution and progress of the work or the interpretation of the Contract Documents.

- b. The decisions of the Engineer, if there is one, in matters relating to artistic effect, shall be final, if within the terms of the Contract Documents.

1-31 DISPUTES

Any disputes, claims or questions arising under the Contract or any documents thereof shall be resolved pursuant to PCC §§ 20104 – 20104.6, attached hereto.

1-32 CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH ACT

Contractor shall adhere to all provisions of the California Occupational Safety and Health Act of 1973 (CALOSHA) as amended.

1-33 TRENCHING REQUIREMENTS

- a. If the contract involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall:
 - 1) Promptly, and before the following conditions are disturbed, notify the Owner, in writing, of any:
 - (a) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - (b) Subsurface or latent physical conditions at the site differing from those indicated.
 - (c) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- b. That the Owner, or Engineer, if there is one, shall promptly investigate the conditions, and if he finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described herein. In the event that a dispute arises between the Owner and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the

work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided herein which pertain to the resolution of disputes and protests between the contracting parties.

1-34 UTILITY RELOCATION

- a. Owner shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities which may be located on the project site if either Owner, or Engineer, if there is one, fails to identify the utilities in the plans and specifications made a part of the Notice Inviting Bids, and Owner shall compensate Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work. If the Contractor while performing the contract discovers utility facilities not identified by the Owner in the Contract plans or specifications, he shall immediately notify Owner, or Engineer, if there is one, in writing.
- b. Contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay was caused by the failure of the public agency or the owner of the utility to provide for removal or relocation of such utility facilities.
- c. Nothing herein shall be deemed to require Owner to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve Owner, or Engineer, if there is one, from identifying main or trunklines in the plans and specifications.

1-35 TIME OF COMPLETION

The Contractor shall commence work within five (5) calendar days after receipt of Notice to Proceed and shall complete the Contract work within the time limit specified herein:

Time of Completion: 40 Working Days

- a. Workdays shall be Monday through Fridays and work hours shall be 7:00a.m. to 5:00p.m. Owner must be notified if other work days are to be utilized.

1-36 UNFAIR BUSINESS PRACTICES CLAIMS

In entering into this Contract, Contractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 4) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or subcontract. This assignment is made and becomes effective at the time the Owner tenders final payment to the Contractor, without further acknowledgment by the parties.

1-37 OWNER'S RIGHT TO TERMINATE, AMEND, OR MODIFY CONTRACT

- a. 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 5 percent of the contracted amount, provided, that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of the awarding authority. "Acts of God" shall include only the following occurrences or conditions and effects: earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves.
- b. Owner may make changes in the Contract in the course of construction to bring the completed improvements into compliance with environmental requirements or standards established by state and federal statutes and regulations enacted after the Contract has been awarded or entered into. Contractor shall be paid for the changes in accordance with the provisions of the Contract governing payment for changes in the work or, if no provisions are set forth in the Contract, payment shall be as agreed to by the parties.
- c. Owner may, by mutual consent of the contracting parties, terminate, amend, or modify the Contract. The compensation payable, if any, for amendments and modifications shall be determined as the parties so agree. The compensation payable, if any, in the event the contract is so terminated shall be determined as the parties so agree or under applicable statutory provision providing for the termination.
- d. Owner may, at its discretion, terminate the Contract for environmental considerations, whether or not such considerations were foreseen at the time the parties entered into the Contract.
- e. If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen, proper materials, or if he should

fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Owner, or Engineer, if there is one, or otherwise be guilty of a substantial violation of any provision of the contract, then the Owner may without prejudice to any other right or remedy and after giving the Contractor seven days written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Engineer, if there is one.

1-38 CONTRACTOR STAGING OF MATERIALS

- a. The Contractor shall be allowed to stage construction materials needed for the project at the immediate job site, providing that such materials do not impose on Public Right of Ways and poses no hazard to the general public. Contractor shall plan for delivery of material to the extent possible that has the least impact to the job site. In the event that a product cannot be stored at the job site and will be used within a short period of time, advance arrangements may be made with the Town of Discovery Bay CSD. The Town of Discovery Bay CSD does not assume any liability for any material or product stored at or near the job site.

1-39 PARKING OF VEHICLES AND EQUIPMENT

- a. Due to the limited space available at the job site, construction equipment and vehicles cannot be stored on any Public Right of Way. In the event that a unit of construction equipment needs to remain at or near the job site after normal business hours, arrangement must be made in advance with the Town of Discovery Bay Community Services District (CSD), and the Town of Discovery Bay CSD assumes no liability for such equipment.
- b. Parking of company and personal vehicles is limited due to space available at the job site. All local and county traffic and parking ordinances must be followed during the course of construction. If other than normal Legal Street parking is needed during business hours, arrangements must be made in advance with the Town of Discovery Bay CSD.

1-40 MAINTENANCE

- a. Contractor shall perform maintenance on all hardscape and softscape for a period of 120 (One hundred-twenty) days after acceptance of the project by the Town of Discovery Bay CSD. The Town of Discovery Bay CSD will maintain hardscape and softscape after the 120 days of acceptance, and will maintain in a manner consistent with industry standards. The warranty period of one year from date of acceptance of all mechanical, electrical, trees/shrubs, and plantings is not waived for normal routine maintenance, provided that industry standards are used.

CERTIFICATION BY CONTRACTOR

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

CONTRACTOR:

BY: _____

TITLE: _____

CONTRACTOR'S LICENSE NUMBER: _____

TELEPHONE NUMBER: _____