

RESOLUTION NO. 3691

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH
MANITO CONSTRUCTION, INC., FOR CONSTRUCTION OF IMPROVEMENTS FOR
COMPLIANCE WITH 30-30-5 EFFLUENT LEVELS AND POND REPAIRS AT THE
CITY WWTP IN AN AMOUNT NOT TO EXCEED \$1,450,000**

WHEREAS, the City Council previously adopted Resolution No 3557 “Declaring an Emergency Pursuant to Section 20168 of the Public Contract Code and Authorizing Contracting Without Compliance With Mandatory Contract Bidding Procedures” in order to expedite design and construction efforts necessary to resolve the treatment and disposal emergency created by the hydro-geologic conditions at the facility; and

WHEREAS, the work to be completed includes pond repairs shall include, but not be limited to grading and re-shaping of the levee slopes, installation of a 40 mil liner material to protect the slopes, spot patching of multiple ponds with backfill and slurry cap and purchase and installation of a dry-prime trash pump and portable piping with a pumping capacity of 3MGD or better and treatment train modifications needed to achieve the requisite 30-30-5 treatment levels, and

WHEREAS, the work to be completed would be under the provisions of the emergency ordinance for repairs to the wastewater treatment plant that was approved by the City Council on October 20, 2004, and

WHEREAS, the pond repairs need to be completed prior to the onset of the wet season and were necessitated by the extreme operating conditions experienced at the facility during last year’s wet season, and

WHEREAS, Manito Construction, Inc. has proposed to Construct Improvements For Compliance With 30-30-5 Effluent Levels and Pond Repairs In An Amount Not To Exceed \$1,450,000, and City staff believes that Manito Construction, Inc. possesses the necessary professional qualifications necessary to complete the work; and

WHEREAS, in Fiscal-Year 2005-2006 budget \$250,000 is allocated for the City of Soledad Wastewater Treatment Plant (City WWTP) 30-30-5 Modification Project and \$1,000,000 is allocated for facility pond repairs, and

WHEREAS, the City Council approves an amendment to the Fiscal Year 2005-2006 Budget to include an allocation of \$200,000 from the Wastewater Impact Fee Reserves for use on the Project.

NOW THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of Soledad that the Council authorizes the City Manager to execute a contract with Manito Construction, Inc. For Construction of Improvements For Compliance With 30-30-5 Effluent Levels and Pond Repairs In An Amount Not To Exceed \$1,450,000, in substantially the form attached hereto as “Exhibit A”

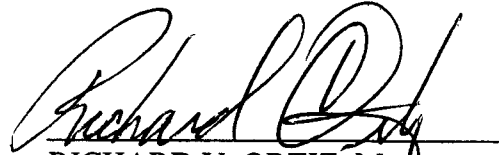
PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 19th of October, 2005 by the following vote:

AYES, and in favor thereof, Councilmembers. Christopher Bourke, Stefanie De La Rosa, Patricia Stephens, Mayor Pro Tem Juan Saavedra

NOES, Councilmembers None

ABSTAIN, Councilmembers. None

ABSENT, Councilmembers. Mayor Richard Ortiz


RICHARD V ORTIZ, Mayor

ATTEST


NOELIA F CHAPA, City Clerk

AGREEMENT

The City of Soledad, ("City") enters into this agreement, dated for reference purposes only, with Manito Construction, Inc ("Contractor")

AGREEMENT TERMS

The City and the Contractor agree as follows

- 1 THE WORK. The Contractor shall furnish all equipment, tools, apparatus, facilities, material labor, and skill necessary to perform and complete in a good and workmanlike manner the City of Soledad Wastewater Treatment Plant (City WWTP) 30-30-05 Modification Project and pond repairs as shown in the "Scope of Services" attached hereto as "Exhibit B" and other Contract Documents for the City of Soledad.
- 2 LOCATION OF WORK. The Work will be performed at the following location City of Soledad Wastewater Treatment Plant located on Morisoli Road, Monterey County, California.
3. **TIME FOR COMPLETION. The Contractor must complete the Work in accordance with the Contract Documents relative to the 30-30-05 Modification Project by December 31, 2005 and the pond repairs within 90 days from the issuance of the "Notice to Proceed".**
- 4 REMEDIES FOR FAILURE TO TIMELY COMPLETE THE WORK. If the Contractor fails to fully perform the Work in accordance with the Contract Documents by the Time for Completion, as such time may be amended by change order or other modification to this agreement in accordance with its terms, and/or if the Contractor fails, by the Time for Completion, to fully perform all of the Contractor's obligations under this agreement that have accrued by the Time for Completion, the Contractor will become liable to the City for all resulting loss and damage in accordance with the Contract Documents and applicable law. The City's remedies for the Contractor's failure to perform include, but are not limited to, assessment of liquidated damages of \$500 per day in accordance with California Government Code Section 53069.85 and the Contract Documents, and/or obtaining or providing for substitute performance in accordance with the Contract Documents.
- 5 CONTRACT PRICE AND PAYMENT As full compensation in consideration of completion of the Work in accordance with the Contract Documents and in consideration of the fulfillment of all of the Contractor's obligations under the Contract Documents, the City will pay the Contractor in lawful money of the United States the total price of one million four hundred and fifty thousand dollars (\$1,450,000) (the "Contract Price") as specified in the Scope of Services. Payment to the Contractor under this agreement will be for Work actually performed in accordance with the Contract Documents and will be made in accordance with the requirements of the Contract Documents and applicable law

Progress payments will be made every 30 days for the full amount then due. Final payment will be made within 30 days of the completion of the project.

The City will have no obligation to pay the Contractor any amount in excess of the Contract Price unless this agreement is first modified in accordance with its terms. The City's obligation to pay the Contractor under this agreement is subject to and may be offset by charges that may apply to the Contractor under this agreement. Such charges include but are not limited to, charges for liquidated damages and/or substitute performance in accordance with the Contract Documents.

6 PREVAILING WAGES In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. In accordance with California Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work.

7 THE CONTRACT DOCUMENTS This agreement consists of the following documents ("Contract Documents"), all of which are incorporated into and made a part of this agreement as if set forth in full. In the event of a conflict between or among the Contract Documents, precedence will be in the following order:

7.1 This agreement and change orders and other amendments to this agreement signed by authorized representatives of the City and the Contractor

7.2 The General Conditions and change orders and other amendments to the General Conditions signed by authorized representatives of the City and the Contractor

7.3 The Scope of Services prepared by authorized representatives of the Contractor

8 INTERPRETATION OF CONTRACT DOCUMENTS Any question concerning the intent or meaning of any provision of the Contract Documents must be submitted to the Public Works Director, or his/her designee, for issuance of an interpretation and/or decision in accordance with the requirements of the Contract Documents. Interpretations or decisions by any other person concerning the Contract Documents will not be binding on the City. The decision of the Public Works Director, or his/her designee, shall be final.

9 ASSIGNMENT PROHIBITED The Contractor may not assign part or all of this agreement, or any moneys due or to become under this agreement, or any other right or interest of the Contractor under this agreement, or delegate any obligation or duty of the Contractor under this agreement without the prior written approval of an official authorized to bind the City and an authorized representative of Contractor's surety or sureties. Any such purported assignment or delegation without such written approval on behalf of the City and the Contractor's sureties will be void and a material breach of this agreement subject to all available remedies under this agreement and at law and equity.

10 CERTIFICATION RE CONTRACTOR'S LICENSE. By signing this Agreement the Contractor certifies that the Contractor holds a valid license issued by the California State Contractors Licensing Board, and that the Contractor understands that failure to maintain its license in good standing throughout the performance of the Work may result in discipline and/or other penalties pursuant to the California Business and Professions Code, and may constitute a material breach of this agreement subject to all available remedies under this agreement and at law and equity

11 SEVERABILITY If any term or provision or portion of a term or provision of this Agreement is declared invalid or unenforceable by any court of lawful jurisdiction, then the remaining terms and provisions or portions of terms or provisions will not be affected thereby and will remain in full force and effect.

Executed on Oct 25, 2005 by

CONTRACTOR

[Signature]

By: JEFF PERKO

Title: PRESIDENT

CITY

[Signature]

By: NOELIA F. CHAPIT

Title City Manager

[Attach Notary Page]

Attest.

By: _____

GENERAL CONDITIONS

1 DEFINITIONS

The following terms, as used in any agreement of which these General Conditions are a part, are defined as follows.

- 1.1 Agreement The agreement between the City and Contractor concerning the Project, as evidenced by and comprised of the Contract Documents.
- 1.2 City City of Soledad
- 1.3 Contract Documents All those documents listed in the Project agreement as comprising the entire agreement between the City and the Contractor
- 1.4 Contractor The party to the Project agreement with the City as specified in the Project agreement.
- 1.5 Days. Unless otherwise specified in the Contract Documents, days mean working days.
- 1.6 Project City of Soledad Wastewater Treatment Plant (City WWTP) 30-30-05 Modification Project and pond repairs as described in the Contract Documents.
- 1.7 Construction Manager The City's authorized representative for administration and overall management of the Project agreement and Work. The Construction Manager is the official point of contact between the City and the Contractor. For purposes of the Project agreement, the Construction Manager shall be the Public Works Director
- 1.8 Subcontractor A person, firm or corporation that is obligated as a party to a contract with the Contractor to perform part of the Project work. For purposes of these General Conditions, Subcontractors include, but are not limited to, those that are obligated as parties to a contract with the Contractor to specially fabricate and/or install a portion of the Project Work.
- 1.9 Work The furnishing of all equipment, tools, apparatus, facilities, material, labor and skill necessary to perform and complete in a good and workmanlike manner the Project as shown in the Contract Documents and applicable law
- 1.10 Written Notice Written notice will be deemed to have been duly served for purposes of these General Conditions and any agreement of which they are a part if delivered in person to the individual or to a member of the firm or to any office of the corporation for whom the notice is intended, or if sent by registered or certified mail to the last known business address known to the party giving notice

2 SCOPE OF WORK

- 2.1 Ownership of Documents Furnished by City All documents furnished by the City, including, but not limited to, Project Plans, if any, and any copies, are the property of the City Documents furnished by the City may not to be used on any other work All documents furnished by the City must be returned to City upon completion of the Work.
- 2.2 The Contractor must notify the Construction Manager as soon as possible of any apparent errors or inconsistencies, including, but not limited to, typographical or notational errors in the Scope of Services, and/or in work done by others affecting the Work. The Construction Manager will issue instructions concerning any such apparent errors or inconsistencies. If the Contractor proceeds with Work impacted by apparent errors or inconsistencies without instructions from the Construction Manager, the Contractor shall do so at its sole risk and shall have all of the obligations and the City shall have all of the rights and remedies specified in Section 10 concerning any resulting damage or defect.
- 2.3 The General Conditions apply with equal force to all of the Work, including extra work authorized by the Construction Manager in accordance with the Contract Documents.

3 CONTROL OF WORK AND MATERIAL

- 3.1 Construction Manager's Status. The Construction Manager will administer the Project in accordance with the Contract Documents. After execution of the agreement and issuance of the Notice to Proceed, all correspondence and/or instructions concerning the Project between the Contractor and/or City shall be forwarded through the Construction Manager Except as otherwise provided in the Contract Documents, the Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, or procedures or for safety precautions in connection with the Work. The Construction Manager, however, will have authority to reject materials and/or workmanship that do not conform to the requirements of the Contract Documents. The Construction Manager will also have the authority to require inspection or testing of the Work.
- 3.2 Inspection and Testing of Work and Material
 - 3.2.1 The City and/or Construction Manager and their representatives will have access to the Work at all times wherever it is in preparation or progress. The Contractor must provide proper facilities for such access and for inspection

- 3.2.2 The Contractor must inspect all materials as delivered and promptly return all defective materials without waiting for their rejection by the Construction Manager
- 3.2.3 If the Construction Manager or any laws, ordinances, or any public authority require any Work to be tested or approved, the Contractor must give the Construction Manager timely notice of the Contractor's readiness for inspection. Inspections will be promptly made, and where practicable, at the source of supply. Any work subject to such testing that is covered up without timely notice to the Construction Manager or without the approval or consent of the Construction Manager must, if required by the Construction Manager, be uncovered for examination at the Contractor's expense. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 10 concerning any work subject to testing that is covered up without timely notice to the Construction Manager and that is not uncovered for examination at the Contractor's Expense if required by the Construction Manager
- 3.2.4 The City or its representatives may order re-examination of questioned Work. If ordered to do so, the Contractor must uncover such Work. If such Work is found to be according to the Contract Documents, the City shall pay the cost of uncovering and restoring the Work, unless such Work was subject to testing and covered up without timely notice to or approval of the Construction Manager. If re-examined Work is found not in accordance with the Contract Documents, the Contractor must pay the cost of uncovering and restoring the Work. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 10 concerning any re-examined Work not in accordance with the Contract Documents that the Contractor fails to uncover and restore at the Contractor's expense.
- 3.2.5 The Contractor must replace or correct without charge any material or workmanship found not to conform to the requirements of the Contract Documents, unless the City consents to accept such material or workmanship with an appropriate adjustment in the Contract Price. The Contractor must promptly segregate and remove non-conforming material from the Work site. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 10 concerning any failure by the Contractor to replace or correct without charge any material or workmanship that does not conform to the requirements of the Contract Documents and that the City has not consented to accept.

3.3 Materials.

3.3.1 Materials used for the Work must be new and of the quality specified. When not particularly specified, materials must be the best of their class or kind. The Contractor must, if required, submit satisfactory evidence as to the kind and quality of materials.

3.3.2 During the performance of the Work, all materials must be neatly stacked, properly protected from the weather and other adverse impacts, and placed so as to avoid interference with efficient progress of the Work, with other activities of the City, or with the use of existing City facilities by the public. All materials must be delivered so as to ensure efficient and uninterrupted progress of the Work. Materials must be stored so as to cause no obstruction and so as to prevent overloading of any portion of the Work. The Contractor will be responsible for damage or loss of materials delivered to and/or stored at the Work site due to weather or other causes. The Contractor must promptly remove from the Work site all materials rejected by the City or its representatives as failing to conform to the requirements of the Contract Documents, whether such non-conforming materials have been incorporated in the Work or not. If the City or its representatives so direct, the Contractor must promptly replace and re-execute Work performed by the Contractor and order the replacement and re-execution of Work performed by subcontractors using non-conforming materials with materials that satisfy the requirements of the Contract Documents without expense to the City. The Contractor will bear the expense of making good all Work destroyed or damaged by such removal. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 10 concerning any failure by the Contractor to replace or re-execute Work using non-conforming materials, and/or to make good all work destroyed or damaged by such removal and/or execution.

3.4 Audit and Examination of Records. The City may examine and audit at no additional cost to the City all books, estimates, records, contracts, documents, subcontract job cost reports and other Project related data of the Contractor, subcontractors engaged in performance of the Work, and suppliers providing supplies, equipment and other materials required for the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other project related data. The Contractor will make available all such Project related data at all reasonable times for examination, audit, or reproduction at the Contractor's business office at or near the Work site, and at any other location where such Project related data may be kept until three years after final payment under the Agreement. Pursuant to California Government Code Section 8546.7, if the amount of public funds to be expended is in excess of \$10,000, this Agreement shall be subject to the examination and audit of the State Auditor, at the request of the City, or as part of

any audit of the City, for a period of three (3) years after final payment under the Agreement.

- 3.5 Advertising. No advertising signs of any kind may be displayed on the Work site, or on fences, offices or elsewhere adjacent to the Work site.

4 CHANGES IN WORK

4.1 City Directed Change Orders. The City may at any time during the progress of the Work direct any amendments to the Work or any of the Contract Documents. Such amendments will in no way void the agreement, but will be applied to amend the Contract Price, if such amendments affect the Contract Price, the Project schedule, or any other provision of the Contract Documents based on a fair and reasonable valuation of the amendment in accordance with this Section 4

4.2 Writing Requirement. Change orders and other amendments to the Contract Documents may be made only by a writing executed by authorized representatives of the City and the Contractor

4.3 Contractor Proposed Change Orders. Unless the Construction Manager otherwise authorizes or the City and the Contractor otherwise agree, change order proposals submitted by the Contractor must be submitted to the Construction Manager no later than the time of the proposed change

4.4 All Change Orders. All change order proposals must be submitted on completed Change Order forms provided by the Construction Manager All such change order proposals must itemize all cost impacts of the proposed change order and include a total price for that change order and the amended Contract Price that would become effective upon execution of the change order All change order proposals must specify any change in the Project schedule, or in any project milestone including, but not limited to, the Time for Completion, under the change order It is understood that change orders that do not specify a change in any milestone, including, but not limited to, the Time for Completion, may be accomplished by the Time for Completion then in effect.

4.5 Change Order Pricing. Change order pricing will be governed by the following

4.5.1 Unit prices specified in the Contract Documents will apply to cost impacts involving items for which the Contract Documents specify unit prices.

4.5.2 Cost impacts involving items for which no unit prices are specified will be calculated by adding the itemized actual direct cost that would be added or reduced under the change order and an allowance for indirect costs in accordance with this Section.

Itemization for direct costs for required labor must include the classifications of labor required, the total hours required for each

classification, the hourly rate for each classification and other labor related costs such as liability and workers compensation insurance, social security, retirement and unemployment insurance. All other cost impacts for which no unit prices are specified must be itemized as appropriate, including the cost of tools, vehicles, phones and other equipment, and the cost of all required materials or supplies. Indirect costs added under a change order may not exceed an allowance of fifteen (15) percent of the total of combined Contractor and subcontractor direct costs added under the change order. Such allowance covers Contractor overhead and profit under the change order and includes the cost of insurance in addition to that required pursuant to Section 8.8, bond premiums, superintendent labor, clerical labor, home office expenses, worksite office expenses, and utility costs under the change order. Such costs may not be itemized as direct costs under a change order. Indirect costs deducted under a change order will be calculated in exactly the same way as indirect costs added under a change order, except indirect costs deducted under a change order may not exceed an allowance of seven and a half (7.5) percent of the total of combined Contractor and subcontractor direct costs deducted under the change order.

- 4.6 Liability Under Unapproved Change Orders. The Contractor shall be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any third party that are incurred pursuant to Contractor-proposed change orders prior to issuance of an approved change order executed in accordance with this Section 4. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any work or resulting losses, costs, or liabilities pursuant to a Contractor proposed change order before issuance of an approved change order executed in accordance with this Section 4.
- 4.7 Changes Subject to Contract Documents. Any changes in the Work and/or the Contract Documents pursuant to change orders and any other amendments issued in accordance with the Contract Documents, including this Section 4, will in all respects be subject to all provisions of the Contract Documents, except as modified by such change orders or amendments.
- 4.8 Change Order Disputes.
- 4.8.1 Disputed City Directed Change Orders. If the Contractor disputes a City directed change order following a reasonable effort by the City and the Contractor to resolve the dispute including, at a minimum, a meeting between appropriate representatives of the Contractor and the City, the Contractor must commence performing the Work consistent with the disputed change order within five (5) working days of the last meeting.

between representatives of the Contractor and the City to resolve the dispute, or within the time specified in the disputed City directed change order, whichever is later. In performing Work consistent with a disputed City-directed change order pursuant to this provision the Contractor will have all of the Contractor's rights concerning claims pursuant to the Contract Documents and applicable law.

- 4 8.2 Disputed Contractor Proposed Change Orders. If the City disputes a Contractor proposed change order, the City and the Contractor will use reasonable efforts to resolve the dispute including, at a minimum, holding a meeting between appropriate representatives of the Contractor and the City. Regardless of and throughout any such efforts to resolve the dispute the Contractor must continue performing the Work irrespective of and unmodified by the disputed change order. In continuing to perform the Work, the Contractor will retain all of the Contractor's rights under contract or law pertaining to resolution of disputes and protests between contracting parties. Disputes between the City and the Contractor concerning any Contractor-proposed change order or other amendment do not excuse the Contractor's obligation to perform the Work in accordance with the Contract Documents excluding such Contractor-proposed change order or other amendment by the Time for Completion or waive any other Project milestone or other requirement of the Contract Documents.

5 TRENCHING AND UTILITIES

- 5 1 Excavation More Than Four Feet Deep. In accordance with California Public Contract Code Section 7104, if the Work involves excavation more than four feet deep the Contractor must promptly notify the City in writing before disturbing any material that the Contractor believes may be 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; any subsurface or latent physical conditions at the Work site differing from those indicated, or any unknown physical conditions at the Work 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 Documents. The City will promptly investigate any such conditions for which notice is given.

If the City finds that the conditions do materially differ, or involve hazardous waste, and would cause a decrease or increase in the cost or time of performance of the Work, the City will issue a change order pursuant to Section 4 of these General Conditions. If a dispute arises between the City and the Contractor concerning whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the cost or time of performance, the Contractor will not be excused from any completion date provided in the Contract Documents, but shall proceed with all Work to be performed. The Contractor will retain all rights under contract or law pertaining to resolution of disputes and protests between contracting parties.

- 5.2 Excavation of Five Feet or More. In accordance with California Labor Code Section 6705, contractors performing contracts exceeding \$25,000 in cost and involving excavation five or more feet deep must submit for the City's acceptance, prior to excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer
- 5.3 Utility Relocation Costs.
- 5.3.1 In accordance with California Government Code Section 4215, the City assumes the responsibility for the timely removal, relocation or protection of existing main or trunkline utility facilities located on the Work site if such utilities are not identified by the City in the Technical Specifications and/or Project Plans. The City will compensate the Contractor for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating existing main or trunkline utility facilities located at the Work site and not identified with reasonable accuracy in the Technical Specifications and/or Project Plans. The City will also compensate the Contractor for the cost of equipment on the Project necessarily idled during such work. The Contractor will not be assessed liquidated damages for Work completion delays caused by the City's failure to provide for removal or relocation of such main or trunkline utility facilities.
- 5.3.2 Nothing in this provision or the Contract Documents will be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Work site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Work site, provided, however, that nothing in this provision or the Contract Documents shall relieve the City from identifying main or trunklines in the Technical Specifications and/or Project Plans.
- 5.3.4 Nothing in this provision or the Contract Documents will preclude the City from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility
- 5.3.5 Nothing in this provision or the Contract Documents will be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.
- 5.3.6 If the Contractor while performing the Work discovers utility facilities not identified by the City the Contractor must immediately notify the City and utility in writing

5.3.7 Either the City or the utility, whichever owns existing main or trunkline utility facilities located on the Work site, shall have sole discretion to effect repairs or relocation work or to permit the Contractor to perform such repairs or relocation work at a reasonable price.

6 PROSECUTION AND PROGRESS OF THE WORK

6.1 Liquidated Damages. Time is of the essence in the Agreement. The City and the Contractor agree that it will be difficult and/or impossible to determine the actual damage which the City will sustain in the event of the Contractor's failure to fully perform the Work or to fully perform all of the Contractor's obligations that have accrued pursuant to the Agreement by the Time for Completion. Accordingly, the City and the Contractor agree in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the City liquidated damages in the sum of \$500 per day for each and every calendar day completion of the Work and/or performance of all of the Contractor's obligations that have accrued pursuant to the Agreement is delayed beyond the Time for Completion. The City and the Contractor further agree in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time the Agreement was made, and that the City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor under the Agreement.

6.2.1 No Damage for Delay Beyond City and Contractor Control. The Contractor will not be held responsible for delays in performance of the Work caused by delay beyond the control of both City and Contractor, such as by strikes, lockouts, or labor disturbances that are not within the control of the Contractor to resolve, lack or failure of transportation, or acts of other government entities. This provision will not apply where the delay would not have occurred but for a previous Contractor caused delay in the prosecution of the Work.

The City will not be liable to the Contractor, any subcontractor or other entity engaged in the performance of the Work, any supplier, or any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from (i) delays beyond the control of the City and the Contractor including but not limited to fires, floods, epidemics, abnormal weather conditions, earthquakes and acts of God or acts or neglect by utility owners or other contractors performing other work, or (ii) delays caused by the City, its officials, officers, employees, agents, or volunteers, which delays are reasonable under the circumstances involved and/or are within the contemplation of the City and the Contractor. An extension of the Time for Performance in an amount equal to the time loss due to such delay(s) will be the Contractor's sole and exclusive remedy for such delay(s).

- 6.3 No Damage for Contractor Caused Delay Contractor shall not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays to the extent such delays are caused by the failure of the Contractor or any subcontractor or other entity engaged in performance of the Work to perform the Work in accordance with the Contract Documents. Contractor may be eligible for additional compensation in excess of the Contract Price for delays caused by the City and/or its privities.
- 6.4 No Damage for Other Delay Contractor will not be entitled to damages for delay to the Work caused by the following, which the City and Contractor agree will be deemed for purposes of California Public Contract Code Section 7102 either not caused by the City, and/or within the contemplation of the City and the Contractor, and/or reasonable under the circumstances
- 6.4.1 Exercise of the City's right to sequence the Work in a manner that would avoid disruption to the City and other contractors based on the failure of the Contractor or any subcontractor or other entity engaged in the performance of the Work to perform the Work in accordance with the Contract Documents, enforcement by the City or any other governmental agency of competent jurisdiction of any government act or regulation, or enforcement by the City of any provisions of the Agreement.
- 6.4.2 Requests for clarification or information concerning the Contract Documents or proposed change orders or modifications to the Contract Documents, including extensive and/or numerous such requests for clarification or information or proposed change orders or modifications, provided such clarifications or information or proposed change orders or modifications are processed by the City or its representatives in a reasonable time in accordance with the Contract Documents.
- 6.5 Delays Caused by the City and/or Its Privities. Either the City or the Contractor may propose a change in the Time for Completion for delays that are purported to be caused by the City and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the City and the Contractor. Such proposed changes in the Time for Completion will constitute change order proposals subject to Section 4. In accordance with Section 4, the City and the Contractor may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing is in anticipation of cost impacts that may, but have not yet occurred, the City will be obligated to pay the Contractor for such anticipated impacts in accordance with the Agreement and any applicable, approved change orders only to the extent the Contractor actually incurs the anticipated cost impacts. Notwithstanding anything to the contrary in Section 4, the City and the Contractor may agree to a daily rate or cap or lump sum that will apply to the cost impacts, if any, resulting from delay purportedly

caused by the City and/or its privities subject to this provision. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred, the City will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

6 6 Delay Claims. Whenever the Contractor claims a delay for which the Time for Completion may be extended, the Contractor must request an extension of time within five (5) days of the start of the delay. The request must be in writing and describe in detail the cause for the delay, and, if possible, the foreseeable extent of the delay.

6 7 Contractor Coordination of the Work.

6 7 1 The City reserves the right to do other work in connection with or in the vicinity of the Project by contract or otherwise, and Contractor shall at all times conduct the Work so as to impose no hardship on the City, others engaged in the Work or other contractors working at the Work site. The Contractor will adjust, correct and coordinate the Work with the work of others so that no delays result in the Work or other work at or near the Work site.

6 7.2 If any part of the Work depends for proper execution or results upon the work of the City or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the City any apparent discrepancies or defects in such other Work. Failure of the Contractor to promptly report any apparent discrepancy or defect will be deemed an acceptance of the City's or other contractor's Work as fit and proper.

6 7.3 The Contractor will provide proper facilities at all times for access of the City and the Construction Manager, and other authorized City representatives to conveniently examine and inspect the Work.

7 CONTRACTOR RESPONSIBILITIES

7 1 Eligibility. By executing the Agreement, the Contractor certifies that the Contractor is not ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), contractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform the Work. The Contractor shall hold harmless and indemnify the City from and against any and all damages, costs, and liability arising from or as a consequence of any violation of Public Contract Code Section 6109.

7.2 Supervision of the Work. The Contractor will be solely responsible for the performance of the Work, including portions of the Work to be performed by subcontractors. The Contractor is charged with ensuring that all orders or

instructions from the City and Construction Manager are disseminated to and followed by all subcontractors engaged in performance of the Work. The Contractor will supervise the Work using the Contractor's best skill and attention. At any time during the progress of the Work, the City or Construction Manager may require the Contractor and/or subcontractors engaged in performance of the Work to attend a project meeting and the Contractor will attend, and ensure the attendance of any subcontractors whose attendance is required by the City and/or advisable in light of the matters to be addressed at the meeting.

- 7.3 Contractor's Superintendent. The Contractor will keep on the Work, throughout its progress, and without any additional charge to City, a competent superintendent and any necessary assistants, all satisfactory to the City. The superintendent may not be changed without the consent of the City. The superintendent will represent the Contractor and all directions given by the City to the superintendent will bind the Contractor in accordance with the Agreement.
- 7.4 Competent Employees. The Contractor must at all times enforce strict discipline and good order among the Contractor's employees and may not employ on the Work any unfit person or anyone not skilled in the Work assigned, or anyone incompetent or unfit for the duties of that person. When the City determines that a Contractor employee does not satisfy the requirements of this provision, upon notice from the City, the Contractor must ensure that employee performs no further Work and is no longer present at the Work site. Any such Contractor employee may not again be employed on the Work without City approval.
- 7.5 Items Necessary for Proper Completion of the Work. Except as otherwise noted in the Contract Documents, the Contractor will provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities and services necessary for the proper execution and timely completion of the Work in accordance with the Contract Documents.
- 7.6 Construction Reports. The Contractor must submit daily construction reports detailing the daily progress of the Work to the Construction Manager on a weekly basis.
- 7.7 Subcontracting.
- 7.7.1 By executing the Agreement, the Contractor certifies that no subcontractor identified in the Contract Documents is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on the Work. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. The

Contractor will ensure that no debarred subcontractor receives any public money for performing the Work, and any public money that may have been paid to a debarred subcontractor for the Work is returned to the City. The Contractor will be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform the Work.

7 7.2 The Agreement and the performance of the Work are subject to the requirements of the Subletting and Subcontracting Fair Practices Act codified at California Public Contract Code Section 4100 and following. If the Contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of the Work in excess of one-half of 1 percent of the Contractor's total bid, the Contractor agrees that the Contractor is fully qualified to perform that portion of the Work with the Contractor's own forces, and that the Contractor will perform that portion of the Work with the Contractor's own forces. If after award of the Agreement the Contractor subcontracts, except as provided for in California Public Contract Code Sections 4107 or 4109, any such portion of the Work, the Contractor will be subject to the penalties set forth in California Public Contract Code Sections 4110 and 4111, including cancellation of the Agreement, assessment of a penalty of up to 10 percent of the amount of the subcontract, and disciplinary action by the Contractors State License Board.

7 7.3 No contractual relationship exists between the City and any subcontractor engaged in performance of the Work.

7 7.4 Incorporation of Contract Documents. The Contractor must incorporate the Contract Documents in each contract with a subcontractor engaged in the performance of the Work. The Contractor shall be solely responsible for any delay or additional costs incurred as a result of its failure to provide adequate or accurate project information to a subcontractor that results in improper submittals and/or work, or time or other impacts is the sole responsibility of the Contractor. The Contractor will have all of the obligations and the City will have all of the remedies that are specified in Section 10.

7 7.5 Coordination of Subcontract Work. The Contractor is responsible for scheduling the Work of subcontractors so as to avoid delay or injury to either Work or materials.

7 8 Insurance

7 8.1 All required insurance shall be provided in the form of "occurrence"-type policies underwritten by admitted insurers in the State of California with a rating of A or better from the current year Best Rating Guide. All policies