

**TOWN OF FAIRFAX
STAFF REPORT**

Date: October 3, 2012

To: Mayor and Members of the Town Council

From: Interim Town Manager Anderson

Subject: Adoption of Resolution No. 12-65, a Resolution of the Town Council of the Town of Fairfax authorizing the release of Plans and Specifications for the School Bike Route (Fairfax Bike Spine) Project

RECOMMENDATION

Adopt Resolution No. 12-65, a Resolution of the Town Council of the Town of Fairfax authorizing the release of Plans and Specifications for the School Bike Route (Fairfax Bike Spine) Project

BACKGROUND

The Town of Fairfax was awarded a Measure "A" Transportation Tax grant for \$110,000 from the Transportation Authority of Marin for this project. Councilmember Bragman and Vice Mayor Reed have worked with Traffic Engineer Parisi and Renee Goddard to develop this bike route to Fairfax schools through the middle (spine) of Town. Vice Mayor Reed presented the project overview to the Council and the public at the September 5th meeting. A virtual ride along the route was presented and is available on the Town website. The project includes thermoplastic signage on the roadway and upgrades to the markings at intersections.

The Engineer's estimate for this project is \$ 107,754.

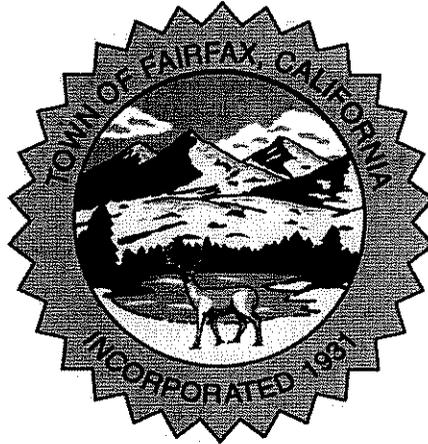
FISCAL IMPACT

The costs will not be covered by the grant, depending on the bids received.

ATTACHMENT:

Plans and Specifications
Resolution No. 12-65

9
AGENDA ITEM # ~~10~~



TOWN OF FAIRFAX
DEPARTMENT OF PUBLIC WORKS
CALIFORNIA

NOTICE TO CONTRACTORS

SPECIAL PROVISIONS, PROPOSAL AND CONTRACT

FOR

School Bike Route Project

Project No.

FOR USE IN CONNECTION WITH SPECIFIED
STANDARD SPECIFICATIONS AND STANDARD PLANS DATED 2010
OF THE CALIFORNIA DEPARTMENT OF TRANSPORTATION

AND

CURRENT GENERAL PREVAILING WAGE RATES AND
LABOR SURCHARGE AND EQUIPMENT RENTAL RATES
OF THE CALIFORNIA DEPARTMENT OF TRANSPORTATION

BID OPENING DATE:

2:00 p.m., October 30, 2012

100 percent of the amount payable by the terms of the project contract and that satisfies the requirements of California Civil Code Section 3248, and a performance bond in an amount of at least 100 percent of the amount payable by the terms of the contract. All project bonds must be executed by an admitted surety insurer in accordance with applicable law and acceptable to the Town.

Pursuant to the provisions of Section 1770 et seq. of the California Labor Code the Director of Industrial Relations for the State of California has ascertained the current general prevailing rate of wages for employer purposes, in Marin County, State of California. Not less than the general prevailing rate of per diem wages for work of a similar character in Marin County and not less than the general prevailing rate of per diem wages for holiday work fixed as provided in the California Labor Code shall be paid to all workers engaged in performing the project.

In accordance with the California Government Code Section 1773.2, copies of the applicable determinations of the Director are on file in the Town of Fairfax, office of the Town Engineer, and may be reviewed upon request.

A pre-bid meeting is not scheduled for this project.

In accordance with California Public Contract Code Section 3300, a valid Class 32 or Class A California contractor's license is required to bid on the project.

In accordance with California Public Contract Code Section 22300, except where prohibited by federal regulations or policies, the successful bidder may, on request and at its expense, substitute securities in lieu of amounts withheld by the Town from progress payments to ensure performance under the contract in accordance with the contract documents.

BY SUBMITTING A BID IN RESPONSE TO THIS NOTICE INVITING BIDS, THE BIDDER SHALL BE CONCLUSIVELY DEEMED TO HAVE READ, UNDERSTOOD AND AGREED WITH ALL OF THE INFORMATION AND MATERIALS CONTAINED IN THE BID DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE CONTRACT, THE GENERAL CONDITIONS, THE SPECIAL CONDITIONS, THE REQUIRED INDEMNIFICATION OBLIGATION, THE REQUIRED NATURE AND AMOUNT OF INSURANCE AND THE ENDORSEMENTS AND CERTIFICATES EVIDENCING SAID INSURANCE. SEE ALSO SECTION 6.08 "INSURANCE" INCORPORATED BY THIS REFERENCE.

The Town of Fairfax reserves the right to postpone the date and time for the opening of proposals at any time prior to the date and time announced in the advertisement in accordance with applicable law.

The Town of Fairfax reserves the right to reject any and all bids or to waive any defects or irregularity in bidding in accordance with applicable law. In accordance with California Public Contract Code Section 20103.8, if the Town elects to award a contract for performance of the project, the contract will be awarded in accordance with California Public Contract Code Section 20162 and other applicable law to the responsible bidder submitting a responsive bid with the lowest total bid price for the base bid without consideration of the bid price for any additive or deductive items. All bids will remain valid for 90 days after the bid opening. Except as

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GENERAL PROVISIONS

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- 2.4 Representatives of the bidder have visited the Project site and have familiarized themselves with the conditions under which the Project work is to be performed so as to ensure that the Project work may be performed for the amount bid.
- 2.5 The bidder has informed the Town in writing no later than five (5) working days prior to the time specified for bid opening of any apparent conflicts, errors, or ambiguities contained in the bid package or between the contents of the bid package and the Project site.

3. EXAMINATION OF PLANS, SPECIFICATIONS, CONTRACT, AND WORK SITE

- 3-1 The bidder shall examine carefully the work site, the Project Plans and Technical Specifications, and the entire Bid Package. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the general and local conditions to be encountered, as to the character, quality and scope of work to be performed, the quantities of materials to be furnished and as to the requirements of the Contract Documents.
- 3-2 The submission of a bid shall also be conclusive evidence that the bidder is satisfied as to ~~the character, quality and quantity of surface and subsurface materials or obstacles to be encountered~~ insofar as this information was reasonably ascertainable from an inspection of the site and the records of exploratory work done by the Town as shown in the bid documents, as well as from the Project Plans and Technical Specifications.
- 3-3 Where the Town has made investigations of work site conditions including subsurface conditions in areas where Work is to be performed, or in other areas, that may constitute possible local material sources, bidders may, upon request, inspect the records of the Town as to those investigations.
- 3-4 Where there has been prior construction by the Town or other public agencies within the project limits, records of the prior construction that are currently in the possession of the Town and that have been used by, or are known to, the designers and administrators of the project will be made available for inspection by bidders, upon request, subject to this Section 3. Such records may include, but are not limited to, as-built drawings, design calculations, foundation and site studies, project reports and other data assembled in connection with the investigation, design, construction and maintenance of the prior projects.
- 3-5 Inspection of the records of investigations and project records in the possession of the Town may be made at the Public Works Office.
- 3-6 When a log of test borings or other record of geotechnical data obtained by the Town's investigation of surface and subsurface conditions is included with the Project Plans, it is furnished for the bidders' information and its use shall be subject to this Section 3.

Questions received less than five (5) working days before the time specified for opening bids may not be answered.

- 4.2 Any interpretation, correction or change of the bid package prior to bid opening will be made by addendum signed by an authorized representative of the Town and transmitted to all bid package recipients. No other interpretation or information concerning the bid package issued prior to the date specified for opening bids will be binding. All addenda signed by an authorized representative of the Town and issued prior to the time and date specified for opening bids will form a part of the contract documents and must be acknowledged on the bid forms. Any changes, exceptions or conditions concerning the Project and/or the bid package submitted by any bidder as part of a bid may render that bid non-responsive.

5. PRE-BID ACCESS TO THE PROJECT SITE

- 5.1 Prior to submitting a bid, it will be the sole responsibility of each bidder to conduct any additional examination, investigation, exploration, testing, study or other inquiry and to obtain any additional information pertaining to the physical conditions (including surface, subsurface, and underground utilities) at or near the Project site that may affect the cost, progress, or performance of the Project, and that the bidder deems are necessary to prepare its bid for performance of the Project in accordance with the bid package and contract documents. Bidders seeking any such additional examination or other inquiries or information concerning the Project will do so at the bidder's sole expense.
- 5.2 Bidders seeking to conduct any additional examination or other inquiry at the Project site must request site access from the Town at least two (2) working days in advance. The location of any excavation, boring or other invasive testing will be subject to approval on behalf of the Town and any other agencies with jurisdiction over such testing. Bidders may not conduct tests at the Project site prior to obtaining Town approval. The Town may require bidders to execute an access agreement prior to approving testing at the Project site. Once approved testing is complete, Bidders must fill all trenches or holes, restore all pavement to match existing structural section, and otherwise clean up and restore the test site to its pre-test condition.

6. BIDDING PROCEDURE

- 6.1 Bids must be delivered to the Town of Fairfax, 142 Bolinas Road, Fairfax, California, 94930, no later than the time and date specified in the Notice to Bidders. Bids will be opened and read publicly at that time. Bids that are submitted late according to the official time kept by the Public Works Department will be returned unopened. Telephones for use by bidders are not available at the Town offices.
- 6.2 In accordance with California Public Contract Code Section 20170, Bids must be presented under sealed cover. Bids must be submitted using the bid forms furnished with the bid package. Bids must include all documents listed in the Bidder's Check List completed in accordance with the bid package. Bids must bear the bidder's legal name

proposal cover page under penalty of perjury. Bids that do not satisfy applicable licensing requirements will be considered non-responsive and rejected and may subject the bidder to criminal and/or civil penalties.

- 6.7 If the bid forms include a bidder's questionnaire, all bids must include a completed bidder's questionnaire on the forms provided. By submitting a bid, bidders authorize Town representatives to verify any and all information provided on the bidder's questionnaire and agree to indemnify, defend and hold harmless the Town and its officials, officers, employees, agents and volunteers to full the extent permitted by law from and against any claims, liability or causes of action, including, without limitation, legal fees and costs, arising out of verification of the information provided on the bidder's questionnaire, and/or arising out of use of information provided in the bidder's questionnaire to determine, in accordance with applicable law, the qualification of the bidder for performing the Project.
- 6.8 Bids may be withdrawn prior to the time set for bid opening by a written request signed by an authorized representative of the bidder filed with the Town Clerk. The bid security submitted with bids so withdrawn will be returned to the bidder. Bidders that have withdrawn their bid in accordance with this provision may submit a new bid prior to the time set for bid opening in accordance with all applicable bid package requirements. Bids may not be withdrawn during the ninety day period after the time set for bid opening except as permitted by law pursuant to California Public Contract Code Section 5100 and following. Any other bid withdrawal will result in forfeiture of the bidder's bid security to the Town.

7. BID PROTESTS

Any protest of the proposed Project award must be submitted in writing to the Town no later than 5:00 PM on the third business day following the date of the bid opening.

- 7.1 The protest must contain a complete statement of the basis for the protest.
- 7.2 The protest must state the facts and refer to the specific portion of the document or the specific statute that forms the basis for the protest. The protest must include the name, address, and telephone number of the person representing the protesting party.
- 7.3 The party filing the protest must concurrently transmit a copy of the protest to the proposed awardee.
- 7.4 The party filing the protest must have actually submitted a bid for the Project. A subcontractor of a party filing a bid for the Project may not submit a bid protest. A party may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest.
- 7.5 The procedure and time limits set forth in these Instructions to Bidders are mandatory and are the bidders' sole and exclusive remedy in the event of a bid protest. Any bidder's

will be deemed to accurately reflect the bidder's intent concerning the bid item and the intended total for the bid item will be deemed to be the unit price as listed in the bid multiplied by the quantity listed.

9.2 If the Project bid price is a lump sum total made up of smaller individual bid item prices and an inconsistency exists between the lump sum total bid price and any individual bid item price, subject to applicable law, the individual bid item prices as listed in the bid will be deemed to accurately reflect the bidder's intended bid for the Project and the intended lump sum total bid for the Project will be deemed to be the sum of the individual bid item prices as listed in the bid, even if that sum is different from the amount actually listed as the lump sum total bid for the Project.

9.3 Any federal, state, or local tax payable on articles to be furnished for the Project shall be included in the lump sum total bid price and paid by the Contractor under the contract. The Town is exempt from federal excise tax and will provide a certificate of exemption to the successful bidder upon request.

10. QUANTITIES

10.1 Quantities, including but not limited to, material or labor quantities, that are provided in the bid package concerning the Project are estimates only and are provided solely as a general indication of the Project scope. The Town does not warrant that such quantity estimates provided in the bid package represent the actual quantities required to perform the Project in accordance with the contract documents. Such quantity estimates do not bind the Town, and bidders should not rely on them in preparing their bids. Each bidder is solely responsible for determining the quantities on which to base their bids in light of information contained in the bid package, bidder investigation and analysis of the Project and the Project site, and any other analysis or expertise of the bidder concerning the Project.

10.2 The Town may amend, decrease or increase the Project work in accordance with the bidding package and the contract documents. If the Town amends, decreases or increases the Project work prior to award of the Project each bidder will be solely responsible for determining the revised quantities, if any, on which to base their bid in light of information contained in the bid package and any amendments or addenda to the bid package, bidder investigation and analysis of the Project as amended, decreased or increased, the Project site, and any other analysis or expertise of the bidder concerning the Project.

11. SUBSTITUTION OF "OR EQUAL" ITEMS

11.1 In accordance with California Public Contract Code Section 3400, where the Technical Specifications or Project Plans list products by manufacturer's name, brand or model number such information indicates the quality and utility of the items desired and does not restrict bidders to that manufacturer's name, brand or model number, unless the

bid price for which no subcontractor is listed, or for which more than one subcontractor is listed, bidders certify by submitting their bids that they are qualified to perform that portion of the Project work and that they will perform that portion of the Project work with their own forces. Bidders may not substitute another subcontractor for a subcontractor listed in their bid except as permitted by the Town in accordance with Section 4107 and following of the California Public Contract Code.

13. ASSIGNMENT

Bidders may not assign, sublet, sell, transfer, or otherwise dispose of their bid or any right, title or interest in their bid, or their obligations under their bid, without the written consent of an authorized representative of the Town. Any purported assignment, subletting, sale, transfer or other disposition of a bid or any interest in a bid, or of any obligations under a bid without such written consent will be void and of no effect.

14. BONDS

- 14.1 The successful bidder must submit to the Town a performance bond within ten (10) working days of receiving written notice of award. If the Project involves expenditures in excess of twenty five thousand dollars (\$25,000), the successful bidder must submit to the Town a payment or labor and materials bond within ten (10) working days of receiving written notice of award. Prior to issuance of the final Project payment, the successful bidder must submit a maintenance bond. All bonds must be executed by corporate sureties who are admitted surety insurers in the State of California in accordance with applicable law and acceptable to the Town. Individual sureties will not be accepted. All Project bonds must be executed using the forms provided in the bid package.
- 14.2 In accordance with California Civil Code Section 3247, the payment or labor and materials bond must be in the amount of one hundred percent of the total amount payable by the terms of the Project contract and guarantee payment to persons listed in California Civil Code Section 3181 for work performed and for charges for materials, supplies, and equipment provided under the Project contract (including amounts due under or subject to the Unemployment Insurance Code) in accordance with the requirements of California Civil Code Section 3248.
- 14.3 The performance bond must be in the amount of one hundred percent of the amount payable by the terms of the Project contract to guarantee the faithful performance of the Project work.
- 14.4 The maintenance bond must be in the amount of ten percent of the final Project contract amount and guaranty the Project work against defects in materials, equipment, workmanship, or needed repair for one year from the Town's acceptance of the Project work.

BIDDER'S CHECK LIST

Did You:

- Submit equal product proposals, if any, in accordance with the instructions to bidders included in the bid package at least 10 working days before the time specified for opening bids, and have said substitutions approved in writing?
 - Include a copy of the approved submittal.
- Verify that the following documents in the bid book have been properly completed:
 - Bidder's check list.
 - Proposal and Schedule of Bid Prices that state the bid as intended.
 - Copies of each addendum issued signed and dated on behalf of the bidder.
 - Executed bid bond.
 - Contractor license information.
 - List of subcontractors.
 - Non Collusion Affidavit.
 - Workers compensation insurance certification.
 - Signed and notarized non-collusion affidavit.
 - California Debarment Certification.
 - Federal Debarment Certification.
 - Public Contract Code Section 10285.1 Statement.
 - Public Contract Code Section 10162 Questionnaire.
 - Public Contract Code Section 10232 Statement.
 - Bidder's questionnaire, if any.
 - Executed bidder's signature page.
- Arrange to have the sealed bid delivered to the Department of Public Works in the Town of Fairfax offices at 142 Bolinas Road, Fairfax, California 95988 on or before the time specified for bid opening in the notice inviting bids?

Only the above mentioned documents need be filled out to submit a bid. The entire Bid Book including the specifications shall be returned whole and complete with the bid pages filled out.

TOWN OF FAIRFAX

School Bike Route Project

BID SCHEDULE

| Item No. | Item Description | Estimated Quantity | Unit of Measure | Unit Cost | Item Total |
|-----------------|---|---------------------------|------------------------|------------------|-------------------|
| 1 | Traffic Control | 1 | L.S. | | |
| 2 | Remove Pavement Markings | 1 | L.S. | | |
| 3 | Thermoplastic Stripe, 4-inch, White | 287 | L.F. | | |
| 4 | Thermoplastic Stripe, 6-inch, White | 48 | L.F. | | |
| 5 | Thermoplastic Stripe, 12-inch, White | 331 | L.F. | | |
| 6 | Thermoplastic Stripe, Detail 39 | 4,610 | L.F. | | |
| 7 | Thermoplastic Stripe, Detail 39A | 190 | L.F. | | |
| 8 | Thermoplastic Crosswalk Markings, White | 740 | S.F. | | |
| 9 | Thermoplastic Detail A24D, "STOP" Markings | 28 | Each | | |
| 10 | Thermoplastic Detail 9C-C, Shared Lane Marking, White | 3 | Each | | |
| 11 | Preformed Pavement Marking Panel, Shared Lane, Green | 54 | Each | | |
| 12 | Preformed Pavement Marking Panel, Bike Rider Plus Arrow, Green | 26 | Each | | |
| 13 | Paint Curb, Red | 126 | L.F. | | |
| 14 | Sign Post, Metal | 58 | Each | | |
| 15 | Sign, R1-1 (Stop Sign) | 11 | Each | | |
| 16 | Sign, R2-1, 25 (Speed Limit, 25mph) | 1 | Each | | |
| 17 | Sign, R2-1, 25 (Speed Limit, 25mph) with S4-2 (When Children are Present) | 2 | Each | | |

TOWN OF FAIRFAX
School Bike Route Project

Total Base Bid in Words

Respectfully submitted:
(Please type or print)

Name of Prime Contractor

SEAL - if BID is by a Corporation

Signature

Name and Title

Address

Date

attest

License Number (if applicable)

Telephone Number

- (b) If said Proposal shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said Proposal) and shall furnish a bond for his/her/its faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Proposal;

then, this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Town may accept such Proposal; and said Surety does hereby waive notice of any such extension.

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

NOTE: To be signed by Principal and Surety and acknowledgment and notarial seal attached.

(SEAL)

PRINCIPAL

By: _____

Title:

SURETY

By: _____

Title:

(Address of Surety)

EXPERIENCE AND FINANCIAL QUALIFICATIONS

TOWN OF FAIRFAX

School Bike Route Project

The following statement as to experience and financial qualifications of the Bidder are submitted in conjunction with the proposal, as a part thereof and the truthfulness and accuracy of the information is guaranteed by the bidder.

The Bidder has been engaged in the contracting business under the present business name for ____ years. Experience in work of a nature similar to that covered in the proposal extends over a period of ____ years.

The Bidder currently holds a valid Contractor's License of the following Class or Classes, _____ issued by the Contractors License Board under the provision of Chapter 9 of Division 3 of the Business and Professions Code of the State of California.

The Bidder, as a contractor, has never failed to satisfactorily complete a contract awarded to him, except as follows: (Name any and all exceptions and reasons therefor).

In the last 10 years, have you or your firm been a party to an arbitration, lawsuit or any other proceeding involving work that you or your firm performed? yes ____ no ____.

If so, please provide the following information as to each such proceeding:

- (1) the name, address and telephone numbers of all parties to the proceeding;
- (2) the general nature of the claims being made against or by your firm;
- (3) the outcome of the proceeding.

WORKERS COMPENSATION INSURANCE CERTIFICATION

By submitting its bid the bidder certifies as follows:

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

DEBARMENT CERTIFICATION

By submitting its bid, the bidder certifies in accordance with California Public Contract Code Section 6109 that neither the bidder nor any subcontractor included on the list of proposed subcontractors submitted with the bid 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, Contractors and 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 public works projects.

PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats, 1986), The bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has _____, has not _____ been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided.

The above Statement is part of the Proposal. Signing the Contractor's Proposal on the signature portion thereof shall also constitute signature of this Statement.

Bidders are cautioned that making false certification may subject the certifier to criminal prosecution.

PUBLIC CONTRACT SECTION 10232 STATEMENT

In accordance with Public Contract Code Section 10232, the Contractor hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

NOTE: To be signed by Principal and Surety and acknowledgment and notarial seal for both attached.

(SEAL)

PRINCIPAL

By: _____

Title: _____

By: _____

Title: _____

It has been confirmed that the Surety is admitted by the Department of Insurance to transact business in the State of California and has a Best's rating of at least A+.

The above bond is accepted and approved this ___ day of _____, 20__.

TOWN OF FAIRFAX

2. This bond is given to comply with the provisions of Chapter 7, Part 4, Division 3, of the Civil Code. The liability of the Principal and Surety hereunder is governed by the provisions of said Chapter, all acts amendatory thereof, and all other statutes referred to therein.

And 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 wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the work or to the specifications.

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

NOTE: To be signed by Principal and Surety and acknowledgment and notarial seal attached.

(SEAL)

PRINCIPAL

By: _____
Title: _____

By: _____
Title: _____

It has been confirmed that Surety is admitted by the Department of Insurance to transact business in the State of California and has a Best's rating of at least A+.

The above bond is accepted and approved this ___ day of _____, 20__.

TOWN OF FAIRFAX

And 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 wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the work or to the specifications.

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

NOTE: To be signed by Principal and Surety and acknowledgment and notarial seal attached.

(SEAL)

PRINCIPAL

By: _____

Title: _____

By: _____

Title: _____

The above bond is accepted and approved this ___ day of _____, 20__.

TOWN OF FAIRFAX

notices have been filed; (2) the CONTRACTOR is not in default hereunder; and (3) the work has been satisfactorily completed.

3. CONTRACTOR reserves the right to modify said plans and specifications as the development progresses should unforeseen conditions occur, providing written approval is first obtained from the Town'S Engineer and appropriate adjustments are made to the contract price. Town reserves the right to make reasonable modifications to the plans and specifications whenever field conditions and/or public safety require such modifications. In addition, the Town may make changes in this agreement or the plans and specifications in the course of construction to bring the completed work into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after the agreement has been awarded or entered into. The CONTRACTOR shall be paid for the changes in accordance with paragraph 22.

a. This agreement may be terminated for environmental considerations at the discretion of the Town. Notice of termination of this Agreement shall be given in writing to CONTRACTOR, and shall be sufficient and complete when same is deposited in the United States mail postage prepaid and certified, addressed as set forth in paragraph 35 of this Agreement. The Agreement shall be terminated upon receipt of the Notice of Termination by CONTRACTOR. If Town should terminate this Agreement, the CONTRACTOR shall be compensated for all work satisfactorily performed prior to time of receipt of cancellation notice, and shall be compensated for materials ordered by the CONTRACTOR or his employees, or services of others ordered by the CONTRACTOR or his employees prior to receipt of notice of cancellation whether or not such materials or final instruments of services of others have actually been delivered, provided that the CONTRACTOR or employees are not able to cancel such orders for materials or services of others. Compensation for the CONTRACTOR in the event of cancellation shall be determined by the Public Works Director in accordance with the percentage of project completed and agreed to by the CONTRACTOR. In the event of cancellation, all notes, sketches, computations, drawings and specifications, or other data, whether complete or not, produced through the time of the Town's last payment shall be relinquished to the Town. The Town may, at its own expense, make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.

b. CONTRACTOR shall comply with all federal, state and local regulations and laws pertaining to hazardous materials or hazardous substances as those terms are defined by any such law or regulation. CONTRACTOR shall indemnify, hold harmless, release and defend Town, its officers, employees and agents from and against any and all actions, claims, demands, damages, disabilities, losses, costs of clean-up, remediation and/or expenses, including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including CONTRACTOR arising out of or in any way connected with CONTRACTOR's failure to comply with said hazardous substance and/or hazardous materials laws and regulations.

4. The Town's Engineer and inspector shall inspect all of the improvements to be accepted for maintenance by the Town. All improvements shall be inspected for compliance with Town standards, plans, and specifications.

11. CONTRACTOR shall comply with applicable provisions of ' 1777.5 of the Labor Code for all apprenticeable occupations. In the event CONTRACTOR willfully fails to comply with the applicable provisions of ' 1777.5, CONTRACTOR shall forfeit as a civil penalty the sum of FIFTY DOLLARS (\$50.00) for each calendar day of non-compliance, which money may be withheld by Town pursuant to the provisions of Labor Code ' 1777.7.

12. CONTRACTOR shall comply with the applicable provisions of ' 1773.8 of the Labor Code regarding the payment of travel and subsistence payments to each worker necessary to execute the work.

a. It shall be the responsibility of the CONTRACTOR to insure compliance with this section 12(a). Each CONTRACTOR and SUBCONTRACTOR shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONTRACTOR in connection with the work described herein. The CONTRACTOR shall comply with each and every provision of Labor Code Section 1776 pertinent to said records as well as any other records governed by said Section 1776, including, but not limited to, providing copies of payroll records to employees and to the Town, advising the Town of the location of said records, preserving the confidentiality of the identities of individual employees, and complying with the penalty provisions of Section 1776. Specifically, in the event that the CONTRACTOR'S noncompliance with Section 1776 is evident after the ten day period specified in subparagraph (f) of Section 1776, CONTRACTOR shall pay, as a penalty, to the Town \$25 for each calendar day or portion thereof for each worker until strict compliance is effectuated.

13. CONTRACTOR agrees to complete the work within 20 working days from the date of issuance of the Notice to Proceed (or approved extensions thereof) and to the entire satisfaction of the Town before final payment is made. The CONTRACTOR is required to give at least one day's advance notice of the date upon which work is commenced and the date upon which the work is to be completed.

14. It is agreed that CONTRACTOR'S failure to complete the work within the time allowed will result in damages being sustained by the Town. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified, as adjusted in accordance with standard specifications, for completion of the work the CONTRACTOR shall pay to the Town, or have withheld from monies due it, the sum as stipulated in the special provisions as liquidated damages. Progress payments made after the scheduled completion date shall not constitute a waiver of liquidated damages.

15. CONTRACTOR shall comply with all applicable laws, rules and regulations barring discrimination on the basis of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sex.

which the work shall be performed. In addition, the CONTRACTOR shall make those investigations and inspections reasonably required of the area surrounding the site on which the work will be performed where that surrounding area may be used by the CONTRACTOR or affected by the CONTRACTOR's work and determine whether or not said surrounding area, as affected by the performance of the work presents a danger or hazard to person or property. If such a danger or hazard is likely to be caused by the performance by the CONTRACTOR of the work, the CONTRACTOR shall take those steps reasonably necessary to eliminate said danger and hazard, to the extent reasonably feasible, and the CONTRACTOR shall indemnify the Town in accordance with paragraph 20, below, for any liability arising from CONTRACTOR's failure to comply with this paragraph or from injury or damage to property or person located in said surrounding area caused by CONTRACTOR's activities hereunder.

19. CONTRACTOR shall, prior to the execution of the contract, furnish two bonds in a form approved by the Town, one in the amount of One Hundred Percent (100%) of the contract price to guarantee the faithful performance of the work, and one in the amount of One Hundred Percent (100%) of the contract price to guarantee payment of all claims for labor and materials furnished. The surety for such security shall be currently admitted to transact surety insurance by the California Department of Insurance and shall carry a Best's rating of no less than A+. This contract shall not become effective until such bonds are supplied to and approved by the Town.

20. To the extent permitted by law, CONTRACTOR shall indemnify, hold harmless, release and defend Town, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, expenses including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including CONTRACTOR from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of CONTRACTOR, his SUBCONTRACTOR, employees and agents hereunder and regardless of Town's passive negligence. CONTRACTOR shall be solely responsible and save Town harmless from all matters relative to payment of his employees including compliance with Social Security, withholding, etc.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for CONTRACTOR under Worker's Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this agreement, or the terms, applicability or limitations of any insurance held by CONTRACTOR.

21. CONTRACTOR shall obtain insurance acceptable to the Town in a company or companies acceptable to the Town and with a Best Rating of no less than A:XIII. The required documentation of such insurance shall be furnished to the Town at the time CONTRACTOR returns the executed contract. The proper insurance shall be provided within ten (10) days of the date of mailing of the notice that the contract has been awarded and prior to the Town executing the contract and issuing a notice to proceed. The CONTRACTOR shall not commence work nor shall s/he allow his employees or SUBCONTRACTORS or anyone to commence work until all

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Completed operations and product liability insurance shall continue for not less than 365 days following acceptance of the work by the Town. Each Policy required herein shall be endorsed with the following language:

(1) The TOWN OF FAIRFAX, its officers, officials, employees, agents and volunteers are named as additional insureds for all liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONTRACTOR and; with respect to liability arising out of the work or operations by or on behalf of the named insured, including materials, parts or equipment furnished in connection with such work or operations, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.

(2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(3) The insurance provided herein is primary as respects the Town, its officers, officials, employees, agents and volunteers, and no insurance held or owned by the TOWN OF FAIRFAX shall be called upon to contribute to a loss.

(4) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the Town by certified mail, return receipt requested.

(5) This policy does not exclude explosion, collapse, underground excavation hazards or removal of lateral support.

CONTRACTOR shall furnish the Town with original certificates and amendatory endorsements effecting coverage required by this clause. The certificates and endorsements shall be on the TOWN OF FAIRFAX forms attached hereto as Exhibits "A", "B", "C", and "D", properly executed by the authorized agent and the insurance company(ies). All certificates and endorsements are to be received and approved by the Town before work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

c. To the extent the following described damage is not covered by insurance, the CONTRACTOR shall be responsible for the cost of repairing or restoring damage to the

the maximum rate allowed by law from the date of notification of such cost and expense until paid. Such obligation for reimbursement shall be unlimited by the amount of the estimates set forth in or by such security as may have been provided to Town in connection with this agreement. Such amounts and interest accrued thereon shall constitute a lien on the subject property and shall not be reimbursable to the CONTRACTOR under any agreement between the CONTRACTOR and Town. CONTRACTOR acknowledges and agrees that if the improvements are not completed to the satisfaction of the Town within the time specified by this agreement, the Town, in addition to any other remedy at law or equity or provided in this agreement, may withhold occupancy, building, and zoning permits until the work and improvements have been satisfactorily completed.

24. Neither the final certificate of payment nor any provision in the contract nor partial or entire use of the improvements embraced in this contract by the Town or the public shall constitute an acceptance of work not done in accordance with the contract or relieve the CONTRACTOR of liability in respect to any warranties or responsibility for faulty materials or workmanship. The CONTRACTOR shall promptly remedy any defects in the work and materials and pay for the costs of any damages resulting therefrom which shall appear within a period of twelve (12) months from the date of final acceptance of the work. The Town will give notice of defective materials and work with reasonable promptness. Before requesting acceptance of the project, the CONTRACTOR shall execute the attached guarantee that all work shall be free from defects in material and workmanship for a period of at least one year after acceptance of the work. CONTRACTOR shall also post a guarantee bond or security in an amount of not less than 10% of the contract amount assuring corrective work required during the guarantee period. For purposes of determining the amount of the guarantee bond, "contract amount" shall mean the entire amount paid by the Town to the CONTRACTOR under this agreement, including but not limited to, the bid amount and any change orders.

25. No material, supplies, or equipment to be installed or furnished under this contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The CONTRACTOR shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed thereon by him to the Town free from any claims, liens, or charges. Neither the CONTRACTOR nor any person, firm or corporation furnishing any material or labor for any work covered by this contract shall have any right to a lien upon any improvement or appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the CONTRACTOR for their protection or any rights under any law permitting such persons to look to funds due the CONTRACTOR in the hands of the Town. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

26. In order to minimize traffic hazards and public nuisance arising out of CONTRACTOR'S work, CONTRACTOR shall ensure that adjacent properties and improved surfaces of surrounding streets stay free and clear of silt, tracked mud, dust, etc., coming from or

(c) For claims of less than \$50,000, the Town shall respond in writing to a claim within 45 days of the receipt of the claim, or may request in writing, within 30 days of the receipt of a claim, any additional documents supporting the claim or relating to defenses or claims the Town may have against the CONTRACTOR. The CONTRACTOR shall supply the requested documentation within 15 days of the request therefor. The Town's written response to the claim, as further documented, shall be submitted to the CONTRACTOR within 15 days after receipt of the further documentation.

(d) For claims above \$50,000 and up to \$375,000, the Town shall respond in writing to all written claims within 60 days of receipt of the claim, or may request in writing within 30 days of receipt of the claim, any additional documentation needed to support the claim or relating to any defenses or claims the Town may have against the CONTRACTOR. The CONTRACTOR shall deliver the requested documentation to the Town within 30 days after the receipt of the request therefor. The Town's written response to the claim, as further documented, shall be submitted to the CONTRACTOR within 30 days after receipt of the further documentation.

(e) If the CONTRACTOR disputes the Town's written response, or the Town fails to respond within the time prescribed, the CONTRACTOR may so notify the Town, in writing, either within 15 days of receipt of the Town's response or within 15 days of the Town's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the Town shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(i) If the meet and confer process does not produce an agreement, the CONTRACTOR may file a claim in accordance with Public Contracts Code 20104.2(e).

32. This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.

33. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to included terms and a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure, section 1856. No modification hereof shall be effective unless and until such modification is evidenced by a writing signed by all parties to this Agreement.

34. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a demand for assurance, either party's failure to provide within a reasonable time but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances is a repudiation of this Agreement by that party. Acceptance

(State License No.)

(Notary Acknowledgment)

By _____

Title _____

Date _____

TOWN OF FAIRFAX, A Public Corporation

By _____, Mayor

By _____, Clerk

Approved as to Form:

Town Attorney

Attachments: Exhibits "A", "B", "C" and "D"
Performance and L & M Bonds (Construction)
Guarantee

This certificate is issued as a matter of information. This certificate is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms exclusions and conditions of such policies.

Agency or Brokerage

Insurance Company

Address

Home Office

Name of Person to be Contacted

Authorized Signature

Date

Telephone Number

Note: Authorized signatures may be the agent's if agent has placed insurance through an agency agreement with the Insurer. If insurance is brokered, authorized signature must be that of official of Insurer.

(original signature required on endorsement furnished to the Town)

ORGANIZATION: _____

TITLE: _____

ADDRESS: _____

TELEPHONE: _____

**WORKERS' COMPENSATIONS/EMPLOYERS
LIABILITY ENDORSEMENT
The TOWN OF FAIRFAX ("the Town")
142 Bolinas Road
Fairfax, CA 94930**

A. POLICY INFORMATION

Endorsement # _____

1. Insurance Company _____ Policy Number _____

2. Effective Date of This Endorsement _____

3. Named Insured _____

4. Employer's Liability Limit (Coverage B) _____

B. POLICY AMENDMENTS

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. **Cancellation Notice.** The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail return receipt requested has been given to the Town. Such notice shall be addressed as shown in the heading of this endorsement.
2. **Waiver of Subrogation.** The Insurance Company agrees to waive all rights of subrogation against the Town, its elected or appointed officers, officials, agents and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured.

C. SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, _____ warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind the company.

SIGNATURE OF AUTHORIZED REPRESENTATIVE
(original signature required on endorsement furnished to the Town)

ORGANIZATION: _____

TITLE: _____

ADDRESS: _____

TELEPHONE: _____

**ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between the Town of Fairfax, whose address is 142 Bolinas Road, Fairfax, California 95988 hereinafter called "Town", _____

_____, whose address is _____, hereinafter called "Contractor", and _____, whose address is _____, hereinafter called "Escrow Agent"

For consideration hereinafter set forth, the Town, Contractor, and Escrow Agent agree as follows:

1. Pursuant to Section 22200 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Town pursuant to the Construction Contract entered into between the Town and Contractor for the project entitled School Bike Route Project in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Town shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as substitute for Contract earnings, the Escrow Agent shall notify the Town within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Town and Contractor. Securities shall be held in the name of _____ and shall designate the Contractor as the beneficial owner.
2. The Town shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
3. When the Town makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investments of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Town pays the escrow agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Town. These expenses and payment terms shall be determined by the Town, Contractor and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of the Contractor and shall be

Address

At the time the Escrow Account is opened, the Town and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Town:

Contractor:

Title

Title

Name

Name

Signature

Signature

Address

Address

- 1-1.12 Culvert:** Any structure, other than a bridge, which provides an opening under a roadway for drainage or other purposes.
- 1-1.13 Days:** Unless otherwise specified in the Contract Documents, days mean working days.
- 1-1.14 Designer:** The person or persons so specified on the Technical Specifications and/or Project Plans.
- 1-1.15 Detour:** A temporary route for traffic around a closed portion of a road.
- 1-1.16 Divided Highway:** A highway with separated traveled ways for traffic, generally in opposite directions.
- 1-1.17 Engineer:** The Town's authorized representative for administration and overall management of the Project agreement and Work. The Engineer is the official point of contact between the Town and the Contractor.
- 1-1.18 Frontage Road:** A local street or road auxiliary to and located generally on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.
- 1-1.19 Grading Plane:** The surface of the basement material upon which the lowest layer of subbase, base, pavement, surfacing or other specified layer is placed.
- 1-1.20 Highway:** The whole right of way or area which is reserved for and secured for use in constructing the roadway and its appurtenances.
- 1-1.21 Laboratory:** The established laboratory of the Materials and Research Department of the Department of Transportation of the State of California or laboratories authorized by the Engineer to test materials involved in the contract.
- 1-1.22 Manual on Uniform Traffic Control Devices, California:** The California Manual of Uniform Traffic Control Devices (MUTCD) shall mean the latest version of the California MUTCD adopted by the California Department of Transportation.
- 1-1.23 Median:** That portion of a divided highway separating the traveled ways for traffic in opposite directions including inside shoulders.
- 1-1.24 Office of Structure Design:** The Offices of Structure Design of the Department of Transportation. When the specifications require working drawings to be submitted to the Offices of Structure Design, the drawings shall be submitted to: Offices of Structure Design, Documents Unit, Mail Station 9-4/4I, 1801 30th Street, Sacramento, CA 95816, Telephone (916) 227-8252.
- 1-1.25 Pavement:** The uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.

Provisions Subcontractors include, but are not limited to, those that are obligated as parties to a contract with the Contractor to specially fabricate and install a portion of the Project Work according to the Technical Specifications and/or Project Plans.

- 1-1.37 Subgrade:** That portion of the roadbed on which pavement, surfacing, base, subbase, or a layer of any other material is placed.
- 1-1.38 Substructure:** All that part of the bridge below the bridge seats, tops of piers, haunches of rigid frames, or below the spring lines of arches. Backwalls and parapets of abutments and wingwalls of bridges shall be considered as parts of the substructure.
- 1-1.39 Superstructure:** All that part of the bridge except the bridge substructure.
- 1-1.40 Surfacing:** The uppermost layer of material placed on the traveled way, or shoulders. This term is used interchangeably with pavement.
- 1-1.41 Technical Specifications:** The detailed Project requirements contained in the Bid Package and any addenda to the Technical Specifications signed by authorized Town representatives and issued prior to bid opening, Equal Product Proposals accepted by the Town and signed by authorized Town representatives prior to bid opening, and change orders and other amendments to the Technical Specifications signed by authorized representatives of the Town and the Contractor in accordance with the requirements of the Contract Documents.
- 1-1.42 Traffic Lane:** That portion of a traveled way for the movement of a single line of vehicles.
- 1-1.43 Traveled Way:** That portion of the roadway for the movement of vehicles, exclusive of the shoulders.
- 1-1.44 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 Technical Specifications and Project Plans in accordance with the Contract Documents and applicable law.
- 1-1.45 Written Notice:** Will be deemed to have been duly served for purposes of these General Provisions 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. Unless otherwise specified in the Contract Documents, the last known address of the Contractor shall be that listed in the Contractor's completed Proposal and Schedule of Bid Prices.

Project Plans concerning details not previously shown, field conditions and the condition of the Work. Engineer review of such shop diagrams and/or drawings will concern conformance with the requirements of the Contract Documents only. The Engineer assumes no responsibility for the correctness or accuracy of the dimensions or any other contents of any shop diagrams and/or drawings submitted by the Contractor. The Contractor must check all dimensions at the Work site. Shop diagrams and/or drawings must be clearly marked with the name of the Project and the name of the Contractor, subcontractor or supplier making the submittal, and must be stamped and signed by the Contractor and submitted under a signed transmittal letter from the Contractor certifying that all dimensions have been checked at the Work site. These requirements are mandatory. The Engineer will not review shop diagrams and/or drawings that do not satisfy these requirements. The Contractor will be responsible for any and all discrepancies between dimensions of the actual Project site and/or Work and those shown on shop diagram and/or drawings submitted by the Contractor, and for any other errors contained in or resulting from such shop diagrams and/or drawings, including, but not limited to, errors in material and/or equipment quantities and any resulting errors, delays or additional cost in the performance of the Work. The Contractor will have all of the obligations and the Town will have all of the rights and remedies that are specified in Section 9, Remedies and Disputes, concerning any discrepancies or errors in shop diagrams and/or drawings submitted by the Contractor, and concerning any resulting errors, delays or additional costs in the performance of the Work.

2-1.04 Governing Documents.

All work shall be governed by and done in accordance with the following:

- a. Contract Documents, consisting of the Notice Inviting Bids, Bidder's Proposal, Affidavits, Bid Bond, Designation of Subcontractors, Experience and Financial Qualifications, Faithful Performance Bond, Labor and Materials Bond, Defective Material and Workmanship Bond, Construction Contract, Insurance Certificates and Endorsements, Guarantee, Plans entitled School Bike Route Project, consisting of nine sheets prepared by Parisi Associates and dated September 26, 2012, these General Provisions, Special Provisions, Technical Specifications, Standard Specifications and Addenda, if any.
- b. Standard Specifications, Cities and County of Marin, Department of Public Works, latest edition -- hereinafter called the County Standard Specifications.
- c. Uniform Construction Standards Approved and Adopted by Cities of Marin and County of Marin, latest edition -- hereinafter called the County Standard Drawings and sometimes referred to as MUCS.
- d. State of California Business and Transportation Agency, Department of Transportation, Standard Plans and Specifications, latest edition, -- hereinafter called State Plans and/or Standard Specifications.

Any and all work and requirements called for in any one or more of the above listed documents shall be deemed to be called for in all.

SECTION 3
CONTROL OF WORK AND MATERIAL
AND
CHANGES IN THE WORK

- 3-1.01 Authority of the Public Works Director.** The Public Works Director shall decide all questions which may arise as to the quality and acceptability of the final work product and shall decide all questions which may arise as to the interpretations of the plans and specifications, and all questions as to the acceptable fulfillment of the contract on the part of the Contractor and as to compensation. His decision shall be final.
- 3-1.02 Engineer's Status.** The Engineer 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 Town shall be forwarded through the Engineer. Except as otherwise provided in the Contract Documents, the Engineer 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 Engineer, however, will have authority to reject materials and/or workmanship that do not conform to the requirements of the Contract Documents. The Engineer will also have the authority to require inspection or testing of the Work.
- 3-1.03 Designer's Status.** The Designer will advise the Engineer concerning decisions on all claims of the Contractor and all other matters relating to the execution and progress of the Work or the interpretation of the Contract Documents. The Designer will also advise the Engineer concerning Work that does not conform to the Contract Documents. Whenever, in the Designer's opinion, it is necessary or advisable in accordance with the Contract Documents, the Designer may recommend to the Engineer inspection or testing of the Work, whether or not such Work is then fabricated, installed or completed.
- 3-1.04 Inspection and Testing of Work and Material.**
- a. The Town, the Engineer, the Designer 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. The Contractor shall furnish the Engineer a list of the Contractor's sources of materials and the locations at which those materials will be available for inspection. The list shall be furnished to the Engineer in sufficient time to permit inspecting and testing of materials to be furnished from the listed sources in advance of their use. Within three (3) business days of receipt of the list, the Engineer may inspect, sample or test materials at the source of supply or other locations, but the inspection, sampling or testing will not be undertaken until the Engineer is assured by the Contractor of the cooperation and assistance of both the Contractor and the supplier of the material. The Contractor shall assure that the Engineer or the Engineer's authorized representative has free access at all times to the material to be inspected, sampled or tested. Adequate

without timely notice to or approval of the Engineer. 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 Town will have all of the rights and remedies that are specified in Section 9 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.

- f. 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 Town 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 Town will have all of the rights and remedies that are specified in Section 9 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 Town has not consented to accept.
- g. Any work done beyond the lines and grades shown on the Project Plans or established by the Engineer, or any extra work done without written authority will be considered as ~~unauthorized work and will not be paid for.~~ Upon order of the Engineer unauthorized work shall be remedied, removed or replaced at the Contractor's expense.
- h. The inspection of the Work or materials shall not relieve the Contractor of any of the Contractor's obligations to fulfill the Agreement. Work and materials not meeting Agreement requirements shall be made good, and unsuitable Work of materials may be rejected, notwithstanding that the Work or materials have been previously inspected by the Engineer or that payment therefore has been given.
- i. Unless otherwise specified, all tests shall be performed in accordance with the methods used by Caltrans and shall be made by the Engineer or the Engineer's designated representative.
- j. The Town has developed methods for testing the quality of materials and work. These methods are identified by number and are referred to in the Technical Specifications as California Tests. Copies of individual California Tests are available at the Transportation Laboratory, Sacramento, California, and will be furnished to interested persons upon request.
- k. Whenever the specifications require compliance with specified values for the following properties, tests will be made by the California Test indicated unless otherwise specified:

| Properties | California Test |
|---------------------|-----------------|
| Relative Compaction | 216 or 231 |

material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Technical Specifications. A Certificate of Compliance shall be furnished with each lot of material delivered to the work and the lot so certified shall be clearly identified in the certificate.

- b. Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the Project Plans and Technical Specifications, and any material not conforming to the requirements will be subject to rejection whether in place or not.
- c. The Town reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.
- d. The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

3-1.06 Samples Furnished by the Contractor. The Contractor must furnish all samples for approval as directed in sufficient time to permit the Designer or Engineer to examine, approve and select samples before they are required by the progress of the Work. Portions of the Work for which samples are required and for which the Designer or Engineer has selected samples must be in accordance with such approved samples. Samples must be sent prepaid to the office of the Engineer or to such place as the Engineer may direct.

3-1.07 Materials and Substitutions.

- a. 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.
- b. If the Contractor submitted complete information to the Public Works Department for products proposed as equals in accordance with the bid package, and the Town approved such products proposed as equals in writing, the Contractor may either furnish such products approved as equals, or furnish the products listed by manufacturer name, brand or model number in the Technical Specifications or Project Plans. The Town retains the right, in its sole discretion, to accept or reject any other proposed substitution. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the Town to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer's name, brand or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and useful life requirements. If the Town does not accept a proposed substitution, the Contractor must furnish the product specified in

have all of the obligations and the Town will have all of the rights and remedies that are specified in Section 9 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.

3-1.09 Audit and Examination of Records. The Town may examine and audit at no additional cost to the Town all books, estimates, records, contracts, documents, bid documents, bid cost data, 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 computations and projections related to bidding, negotiating, pricing or performing the Work or contract modifications and other materials concerning 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 Town, or as part of any audit of the Town, for a period of three (3) years after final payment under the Agreement.

3-1.10 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.

3-1.11 Project Schedule. Within 7 days of issuance of the Notice to Proceed, the Contractor must submit a schedule showing each task of Work, the sequence of each task, the number of days required to complete each task, and the critical path controlling the completion of the entire Work. The schedule must allow for the completion of the entire Work within the Time for Completion.

- a. **Town Review of Schedule.** The Town may review the Contractor's submitted schedule and may note any exceptions. The Contractor must correct any exceptions noted by the Town within five (5) working days of being notified of the exceptions.
- b. **Update of Schedule.** After submission of a schedule to which the Town has taken no exceptions, the Contractor must submit an updated schedule on a biweekly basis or as otherwise specified by the Town until completion of the Work. The updated schedule must show the progress of Work as of the date specified in the updated schedule.
- c. **Float.** The schedule shall show early and late completion dates for each task. The number of days between these dates will be designated as "float". The Float will be designated to the Project and will be available to both the Town and the Contractor as needed.

- d. Detours used exclusively by the Contractor for hauling materials and equipment shall be constructed and maintained by the Contractor at the Contractor's expense.
- e. The failure or refusal of the Contractor to construct and maintain detours at the proper time shall be sufficient cause for suspending the Work until the detours are in satisfactory condition for use by public traffic.
- f. Where the Contractor's hauling is causing such damage to the detour that its maintenance in a condition satisfactory for public traffic is made difficult and unusually expensive, the Engineer shall have authority to regulate the Contractor's hauling over the detour.

3-1.13 Town Directed Change Orders. The Town may at any time during the progress of the Work direct any amendments to the Work or any of the Contract Documents, including, but not limited to the Technical Specifications, or Project Plans. 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, if such amendments affect 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 3.

3-1.14 Writing Requirement. Change orders and other amendments to the Technical Specifications, the Project Plans, or other Contract Documents may be made only by a writing executed by authorized representatives of the Town and the Contractor.

3-1.15 Contractor Proposed Change Orders. Unless the Engineer otherwise authorizes or the Town and the Contractor otherwise agree, change order proposals submitted by the Contractor must be submitted to the Engineer no later than the time of the proposed change. The Project Manager shall review the proposed change order and respond by acknowledging the contract change, supplying information and not acknowledging a change order, or recommending other action. If the Project Manager acknowledges the contract change, the Contractor shall submit a change order to the Project Manager as set forth in this Section. Each change order submitted by the Contractor shall be accompanied by the following certification executed by an officer of Contractor:

I, _____, being the _____ of _____ (Contractor), declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached request for change order and know its contents, and said request for change order is made in good faith; that it is supported by truthful and accurate data; that the amount requested and the additional time requested accurately reflects the allowable expenses that would be incurred, and the time necessary, to perform the change order; and further, that I am familiar with California Penal Code section 72 and California Government Code section 12650, et seq., pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment, or other severe legal consequences.

in the performance of the Work, excluding the Actual Wages as defined above.

- Fixed Markup: A fixed markup of 15% of the sum of the actual wages paid and the labor surcharge applicable to such actual wages, together with the actual wage and labor surcharge costs described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all labor for the Work.
2. Materials: Materials costs will be the direct costs for materials actually exhausted, consumed or entering permanently into the Work, plus a fixed markup of 15% of such direct materials costs, which, together with the direct cost of materials as described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all materials for the Work.
 3. Equipment: All equipment used will be paid in accordance with the rates in subsection 9-1.04D entitled "Equipment Rental" of the Standard Specifications, which subsection 9-1.03D is made a part of this Contract, plus a fixed markup of 10% of such equipment rates, which, together with the equipment rates as described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all equipment for the Work.
 4. Unless approved in writing in accordance with provision 4-1.02 of this Contract in advance of performance of the Work, any and all other cost impacts (including, but not limited to profit, bond premiums or fees, insurance premiums or fees, superintendent labor, clerical expenses, home office expenses, Work site office expenses, utility costs, permit costs, and licensing costs) involving items for which the Contract Documents do not specify prices, and for which no lump sum amount has been approved by the Town, will constitute incidentals, full compensation for which will be deemed included in the markups for labor, material, and equipment specified above, and no additional compensation for such cost impacts will be allowed.

3-1.18 Liability Under Unapproved Change Orders. The Contractor will 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 3. The Contractor will have all of the obligations and the Town will have all of the rights and remedies that are specified in Section 9 concerning any work or resulting losses, costs, or liabilities pursuant to a

**SECTION 4
TRENCHING AND UTILITIES
AND
PROJECT FACILITIES**

4-1.01 The Construction Safety Orders of the Division of Occupational Safety and Health shall apply to all excavations.

- a. Detailed plans of protective systems for which the Construction Safety Orders require design by a registered professional engineer shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California, and shall include the soil classification, soil properties, soil design calculations that demonstrate adequate stability of the protective system, and any other design calculations used in the preparation of the plan.
- b. No plan shall allow the use of a protective system less effective than that required by the Construction Safety Orders.
- c. If the detailed plan includes designs of protective systems developed only from the allowable configurations and slopes, or Appendices, contained in the Construction Safety Orders, the plan shall be submitted at least 5 days before the Contractor intends to begin excavation. If the detailed plan includes designs of protective systems developed from tabulated data, or designs for which design by a registered professional engineer is required, the plan shall be submitted at least 3 weeks before the Contractor intends to begin excavation.

4-1.02 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 Town 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 Town will promptly investigate any such conditions for which notice is given. If the Town 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 Town will issue a change order pursuant to Section 3 of these General Provisions. If a dispute arises between the Town 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

- e. If the Contractor while performing the Work discovers utility facilities not identified by the Town in the Technical Specifications and/or Project Plans, the Contractor must immediately notify the Town and utility in writing.
- f. Either the Town 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.

4-1.05 Utility and Non-Highway Facilities

- a. The Contractor shall protect from damage utility and other non-highway facilities that are to remain in place, be installed, relocated or otherwise rearranged.
- b. It is anticipated that some or all of the utility and other non-highway facilities, both above ground and below ground, that are required to be rearranged (as used herein, rearrangement includes installation, relocation, alteration or removal) as a part of the highway improvements comprising part of the Work will be rearranged in advance of construction operations. Where it is not anticipated that the rearrangement will be performed prior to construction, or where the rearrangement must be coordinated with the Contractor's construction operations, the existing facilities that are to be rearranged will be indicated on the Project Plans or in the Special Provisions. Where a rearrangement is indicated on the Project Plans or in the Special Provisions, the Contractor will have no liability for the costs of performing the work involved in the rearrangement.
- c. The right is reserved to the Town and the owners of facilities, or their authorized agents, to enter upon the highway right of way for the purpose of making those changes that are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in this Work and shall conduct operations in such a manner as to avoid any unnecessary delay or hindrance to the Work being performed by the other forces. Wherever necessary, the work of the Contractor shall be coordinated with the rearrangement of utility or other non-highway facilities, and the Contractor shall make arrangements with the owner of those facilities for the coordination of the Work.
- d. Attention is directed to the possible existence of underground main or trunk line facilities not indicated on the Project Plans or in the Special Provisions and to the possibility that underground main or trunk lines may be in a location different from that which is indicated on the Project Plans or in the Special Provisions. The Contractor shall ascertain the exact location of underground main or trunk lines whose presence is indicated on the Project Plans or in the Special Provisions, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities which can be inferred from the

rearrangement made to facilitate the Contractor's construction operations or delays due to a strike or labor dispute). Compensation for the delay will be determined in conformance with the provisions in Section 3.

4-1.06 Work Site Offices. Any Work site office facilities used by the Contractor and/or its privities must conform to all applicable codes, ordinances and regulations. The cost of such Work site office facilities shall be paid from and included in the Contract Price.

4-1.07 Town Rights of Access and Ownership. The Town and its authorized representatives will at all reasonable times while such office facilities are located at the Work site (including, at a minimum, all times during which the Work is performed), have access to any such Work site office facilities used by the Contractor and/or its privities. With respect to the right of access of the Town and its authorized representatives, neither the Contractor nor its privities shall have a reasonable expectation of privacy pursuant to the Fourth Amendment to the Unites States Constitution or other applicable law concerning such Work site office facilities used by the Contractor and/or its privities. Without exception, any and all Project related materials located at such Work site facilities will be deemed at all times to be Town property subject to inspection and copying by the Town and its authorized representatives at all reasonable times while such facilities are located at the Work site (including, at a minimum, all times during which the Work is performed). Any interference by the Contractor or its privities with the Town's rights of access and/or ownership pursuant to this Section 4 will constitute a material breach of the Agreement subject to any and all remedies available pursuant to the Contract Documents and at law and equity.

5-1.03 Cooperation and Coordination with Property Owners. The Contractor shall schedule his work to minimize inconvenience or disruption of residences during the course of the work. Any private property which is disturbed by the work shall be repaired to its original condition and to the satisfaction of the Public Works Director. The cost of said repairs shall be included in the prices paid for the various items of work and no extra compensation shall be allowed therefor.

5-1.04 Liquidated Damages. Time is of the essence in the Agreement. The Town and the Contractor agree that it will be difficult and/or impossible to determine the actual damage which the Town 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 Town and the Contractor agree in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the Town liquidated damages in the sum of \$1,000 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 Town 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 Town may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor under the Agreement.

5-1.05 No Damage for Delay Beyond Town 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 Town 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 Town 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 Town 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 Town, its officials, officers, employees, agents, or volunteers, or delays caused by the Engineer or the Designer or Engineer, which delays are reasonable under the circumstances involved and/or are within the contemplation of the Town 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).

5-1.06 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

the U.S. Department of Commerce for the record station that is nearest or most applicable to the Work site. Extensions of the Time for Completion for delays due to adverse weather will be allowed only if the number of rain days exceeds those that can be anticipated based on the NOAA data and the Contractor can verify to the Town's reasonable satisfaction that such adverse weather caused actual delay in the timely completion of the Work. No extensions of the Time for Completion will be granted for rain days that exceed those that can be anticipated based on the NOAA data and that merely result in delays that do not or would not, themselves, result in failure to complete the Work by the Time for Completion.

5-1.10 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.

5-1.11 Contractor Coordination of the Work.

- a. The Town 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 Town, 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.
- b. If any part of the Work depends for proper execution or results upon the work of the Town or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the Town 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 Town's or other contractor's Work as fit and proper.
- c. The Contractor will anticipate the relations of the various trades to the progress of the Work and will ensure that required anchorage or blocking is furnished and set at proper times. Anchorage and blocking necessary for each trade shall be part of the Work except where stated otherwise.
- d. The Contractor will provide proper facilities at all times for access of the Town, the Engineer, Designer, and other authorized Town representatives to conveniently examine and inspect the Work.
- e. Should construction be under way by other forces or by other contractors within or adjacent to the limits of the Work specified or should work of any other nature be under way by other forces within or adjacent to those limits, the Contractor shall cooperate with all the other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

- b. However, nothing in this Section 5-1.13 providing for relief from maintenance and responsibility will be construed as relieving the Contractor of full responsibility for making good any defective Work or materials found at any time before the formal written acceptance of the entire Agreement by the Town.

unfit person or anyone not skilled in the Work assigned, or anyone incompetent or unfit for the duties of that person. When the Town determines that a Contractor employee does not satisfy the requirements of this provision, upon notice from the Town, 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 Town approval. If any subcontractor or person employed by the Contractor shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, they shall be discharged immediately on the request of the Engineer, and that person shall not again be employed on the work.

6-1.05 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.

6-1.06 Construction Reports. The Contractor must submit daily construction logs detailing the daily progress of the Work to the Engineer on a weekly basis.

6-1.07 Subcontracting.

- a. By executing the Agreement, the Contractor certifies that no subcontractor included on the list of proposed subcontractors submitted with the Contractor's bid 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 Town. The Contractor will be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform the Work.
- b. 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

- i. Pursuant to the provisions of Section 6109 of the Public Contract Code, the Contractor shall not perform Work on a public works project with a subcontractor who is ineligible to perform Work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- j. When a portion of the Work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the Town, the subcontractor shall be removed immediately on the request of the Town and shall not again be employed on the Work.
- k. The roadside production of materials produced by other than the Contractor's forces shall be considered as subcontracted. Roadside production of materials shall be construed to be production of aggregates of all kinds with portable, semiportable or temporary crushing or screening, proportioning and mixing plants established or reopened for the purpose of supplying aggregate or material for a particular project or projects. The erection, establishment or reopening of the plants and the operation thereof in the production of materials for use on the Work shall conform to the requirements relating to labor set forth in these General Provisions and in the Special Provisions.

6-1.08 Insurance.

INSURANCE REQUIREMENTS FOR CONTRACTORS

BIDDERS' ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT BIDDERS CONFER WITH THEIR RESPECTIVE INSURANCE CARRIERS OR BROKERS TO DETERMINE IN ADVANCE OF BID SUBMISSION THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS AS PRESCRIBED AND PROVIDED HEREIN. IF AN APPARENT LOW BIDDER FAILS TO COMPLY STRICTLY WITH THE INSURANCE REQUIREMENTS, THAT BIDDER MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- 1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Commercial General Liability and Insurance Services Office form number GL 0404 covering

the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, its officers, officials, employees or volunteers.

- b. The Contractor's insurance coverage shall be primary insurance as respects the Agency, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Agency, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, its officers, officials, employees or volunteers.
- d. The Contractor'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.
- e. Other endorsements providing coverage at least as broad as the ISO forms described in 'A above.

2. **Workers' Compensation and Employers Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the Agency, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the Agency.

3. **All Coverages**

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

E. **ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

F. **VERIFICATION OF COVERAGE**

Contractor shall furnish the Agency with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that

- d. Approval of the Contractor's certificates of insurance and/or endorsements does not relieve the Contractor of liability under Sections 6-1.08 or 6-1.09. The Contractor will defend, with legal counsel reasonably acceptable to the Town, any action or actions filed in connection with any Claims and will pay all related costs and expenses, including attorney's fees incurred. The Contractor will promptly pay any judgment rendered against the Town, its officials, officers, employees, agents, volunteers or consultants for any Claims. In the event the Town, its officials, officers, employees, agents, volunteers or consultants is made a party to any action or proceeding filed or prosecuted against Contractor for any Claims, Contractor agrees to pay the Town, its officials, officers, employees, agents, volunteers and consultants any and all costs and expenses incurred in such action or proceeding, including but not limited to, reasonable attorneys' fees.

- e. In accordance with California Civil Code Section 2782(a), nothing in the Agreement will be construed to indemnify the Town for its sole negligence, willful misconduct, or for defects in design furnished by Town. In accordance with California Civil Code Section 2782(b), nothing in the Agreement will be construed to impose on the Contractor or to relieve the Town from liability for the Town's active negligence. By execution of the Contract Documents the Contractor acknowledges and agrees that the Contractor has read and understands the insurance and indemnity requirements of the Contract Documents, which are material elements of consideration.

6-1.10 Licenses/Permits. The Contractor must, without additional expense to the Town, obtain all licenses, permits and other approvals required for the performance of the Work.

6-1.11 California Labor Code Requirements.

- a. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under the Agreement.

- b. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Work is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

- c. The Contractor and its subcontractors will forfeit as a penalty to the Town \$25 for each worker employed in the performance of the Work for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 et seq.

employed in performance of the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to California Labor Code Section 1776 must be certified and must be available for inspection by the Town and its authorized representatives, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations and must otherwise be available for inspection in accordance with California Labor Code Section 1776.

- f. In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- g. In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the Work to employ on the Work any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor must pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by that person. The minimum rate thus furnished will be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

6-1.12 Laws and Ordinances. The Contractor and all subcontractors engaged in the performance of the Work must conform to the following specific rules and regulations as well as all other laws, ordinances, rules and regulations that apply to the Work. Nothing in the Technical Specifications or Project Plans is to be construed to permit Work not conforming to these codes:

- National Electrical Safety Code, U. S. Department of Commerce
- National Board of Fire Underwriters' Regulations
- California Building Standards Code as adopted by the Town
- Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- Industrial Accident Commission's Safety Orders, State of California
- Regulations of the State Fire Marshall (Title 19, California Code of Regulation) and Applicable Local Fire Safety Codes
- Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.

6-1.13 Guaranty. The Contractor guarantees all of the Work for one year from the date the Town accepts the Work. Upon receiving written notice of a need for repairs which are

belts and nets. The Contractor must provide and maintain any other necessary systems or devices required to secure safety of life or property at the Work site in accordance with accepted standards of the industry and applicable law. The Contractor must maintain during all night hours sufficient lights to prevent accident or damage to life or property.

6-1.15 Load Limitations.

- a. Unless expressly permitted in the Special Provisions, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated bases, surfacing, pavement or structures in any areas within the limits of the project.
- b. After application of the curing seal, no traffic or Contractor's equipment will be permitted on cement treated base or lean concrete base for a period of 72 hours. After 72 hours, traffic and equipment operated on the base shall be limited to that used in paving operations and placing additional layers of cement treated base. No traffic or Contractor's equipment will be permitted on treated permeable base except for that equipment required to place the permeable base and the subsequent layer of pavement. Trucks used to haul treated base, portland cement concrete, or asphalt concrete shall enter onto the base to dump at the nearest practical entry point ahead of spreading equipment. Empty haul trucks shall exit from the base at the nearest practical exit point. Entry and exit points shall not be more than 1,000 feet ahead of spreading equipment except in locations where specifications prohibit operation of trucks outside the area occupied by the base or where steep slopes or other conditions preclude safe operation of hauling equipment. In those locations, entry and exit points shall be established at the nearest point ahead of spreading equipment permitted by specifications and allowing safe operation of hauling equipment. Damage to curing seal or base shall be repaired promptly by the Contractor, at the Contractor's expense, as directed by the Engineer.
- c. Within the limits of the project and subject to the control of the Engineer, and provided that the Contractor, at the Contractor's expense, shall provide such protective measures as are deemed necessary by the Engineer and shall repair any damage caused by the operations, the Contractor will be permitted to:
 1. Make transverse crossings of those portions of an existing public road or street that are within the highway right of way, with construction equipment that exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
 2. Make transverse crossings of treated bases, surfacing or pavement which are under construction or which have been completed, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.

the Contractor's own operations, the Contractor may request the Engineer to consider redesigning the structure or structures. Proposals by the Contractor to increase the load carrying capacity of structures above 130,000 pounds per single axle or pair of axles less than 8 feet apart, or above 330,000 pounds total gross vehicle weight, will not be approved. The request shall include a description of the structure or structures involved and a detailed description of the overloads to be carried, the date the revised plans would be required, and a statement that the Contractor agrees to pay all costs involved in the strengthening of the structure or structures, including the cost of revised plans, and further that the Contractor agrees that no extension of time will be allowed by reason of any delay to the work which may be due to the alteration of the structure or structures. If the Engineer determines that strengthening the structure or structures will be permitted, the Engineer will inform the Contractor of the estimated cost of the alterations, including engineering, and the date that revised plans could be furnished. If the cost and date are satisfactory to the Contractor, the Engineer will prepare a change order providing for the agreed upon alterations.

6-1.16 Public Convenience.

- a. The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of Work than can be prosecuted properly with due regard to the rights of the public.
- b. Unless otherwise provided in the Special Provisions, all public traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. Where possible, public traffic shall be routed on new or existing paved surfaces.
- c. Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.
- d. Existing traffic signals and highway lighting shall be kept in operation for the benefit of the traveling public during progress of the Work, and other forces will continue routine maintenance of existing systems.
- e. Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.
- f. Convenient access to driveways, houses, and buildings along the line of the Work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

- n. In order to expedite the passage of public traffic through or around the work and where ordered by the Engineer, the Contractor shall install signs, lights, flares, temporary railing (Type K), barricades and other facilities for the sole convenience and direction of public traffic. Also where directed by the Engineer, the Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the Work. The cost of furnishing and installing the signs, lights, flares, temporary railing (Type K), barricades, and other facilities, not to be paid for as separate contract items, will be paid for as provided in Section 3.
- o. The Contractor will be required to pay the cost of replacing or repairing all facilities installed for the convenience or direction or warning of public traffic that are lost while in the Contractor's custody, or are damaged by reason of the Contractor's operations to such an extent as to require replacement or repair, and deductions from any moneys due or to become due the Contractor will be made to cover the cost.
- p. Whenever a section of surfacing, pavement or the deck of a structure has been completed, the Contractor shall open it to use by public traffic if the Engineer so orders or may open it to use by public traffic if the Engineer so consents. In either case the Contractor will not be allowed any compensation due to any delay, hindrance or inconvenience to the Contractor's operations caused by public traffic, but will thereupon be relieved of responsibility for damage to completed permanent facilities caused by public traffic, within the limits of that use. The Contractor will not be relieved of any other responsibility under the contract nor will the Contractor be relieved of cleanup and finishing operations.
- q. Except as otherwise provided in this Section 6-1.16 or in the Special Provisions, full compensation for conforming to the provisions in this Section 6-1.16 shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

6-1.17 Public Safety.

- a. It is the Contractor's responsibility to provide for the safety of traffic and the public during construction.
- b. Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense and without cost to the Town, furnish, erect and maintain those fences, temporary railing (Type K), barricades, lights, signs and other devices and take such other protective measures that are necessary to prevent accidents or damage or injury to the public.
- c. Fences, temporary railing (Type K), barricades, lights, signs, and other devices furnished, erected and maintained by the Contractor, at the Contractor's expense, are

- m. Temporary facilities which could be a hazard to public safety if improperly designed shall comply with design requirements specified in the Agreement for those facilities or, if none are specified, with standard design criteria or codes appropriate for the facility involved. Working drawings and design calculations for the temporary facilities shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California and shall be submitted to the Engineer for approval. The submittals shall designate thereon the standard design criteria or codes used. Installation of the temporary facilities shall not start until the Engineer has reviewed and approved the drawings.
- n. Should the Contractor appear to be neglectful or negligent in furnishing warning devices and taking protective measures as above provided, the Engineer may direct attention to the existence of a hazard and the necessary warning devices shall be furnished and installed and protective measures taken by the Contractor at the Contractor's expense. Should the Engineer point out the inadequacy of warning devices and protective measures, that action on the part of the Engineer shall not relieve the Contractor from responsibility for public safety or abrogate the obligation to furnish and pay for these devices and measures.
- o. Provision for the payment for signs, lights, flares, temporary railing (Type K), barricades, and other facilities as provided in Section 6-1.16, "Public Convenience," or by contract item, shall in nowise relieve the Contractor from the responsibility as provided in this Section 6-1.17.
- p. Except as otherwise provided in this Section 6-1.17 or in the special provisions, full compensation for conforming to all of the provisions in this Section 6-1.17 shall be considered as included in the prices paid for the various contract items of Work and no additional compensation will be allowed therefor.

6-1.18 Alternate Pedestrian Circulation Paths

General

An alternate circulation path shall be provided whenever the existing *pedestrian access route* in the *public right-of-way* is blocked by construction, alteration, maintenance, or other temporary conditions. The alternate circulation path shall comply with Section 6-1.18.

The Contractor is directed to Chapter 6D, Pedestrian and Worker Safety, in the CAMUTCD, the improvement plans, and these Special Provisions. The Contractor shall submit in writing a complete pedestrian traffic control plan (1"=100' scale min. drawing) to the Engineer within ten (10) working days after award of contract.

Pedestrians shall be provided with a safe, convenient and accessible path that, at a minimum, replicates the most desirable characteristics of the existing sidewalk, path or

5. At the down *curb ramp* of an intersection, if the opposite up curb ramp is temporarily and completely blocked, and no adjacent alternative circulation path is provided.

Exception

Barricades are not required where the construction site or alternate circulation path is enclosed with a solid, cane-detectable fence or wall. Where protection is provided using a solid fence or wall, a painted or applied horizontal 6-inch (150mm) minimum stripe in 70 percent contrast shall be provided at between 42 inches (1065mm) and 60 inches (1525mm) above the adjacent grade.

Barricade Specifications

The construction barricade at the alternate circulation path shall be continuous, stable and non-flexible. It shall have a solid toe rail with its top edge at 6 inches (150mm) minimum in height and its bottom edge no higher than 1-1/2 inches (38mm) above the adjacent surface. It shall have a continuous railing mounted at a top height of 36 to 42 inches (915-1065mm) with diagonal stripes having at least 70 percent contrast. The top rail shall be parallel to the toe rail and be situated to allow pedestrians to use the rail as a guide for their hand(s) for wayfinding purposes. No barricade support member shall protrude more than 4 inches beyond the toe rail into the alternate circulation path. See Figure A, "Curb Ramp Barricade".

Warnings and Signage

General

When an alternate circulation path or a barricade is created in the *public right-of-way*, a warning shall be provided and comply with Section 6-1.18.

Warning Locations

Warning shall be located at both the near side and the far side of the intersection preceding a temporarily completely blocked pedestrian way. Warnings shall include visual warning devices and audible warning devices for the visually impaired. Signage located at the intersection preceding the blocked way shall, at a minimum, conform to the requirements of Cal/OSHA.

- a. Roadside trees, shrubs and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway facilities and any other improvements or facilities within or adjacent to the highway shall be protected from injury or damage, and if ordered by the Engineer, the Contractor shall provide and install suitable safeguards, approved by the Engineer, to protect the objects from injury or damage. If the objects are injured or damaged by reason of the Contractor's operations, the objects shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the Work, or as good as required by the Agreement, if any of the objects are a part of the Work. The Engineer may make or cause to be made those temporary repairs that are necessary to restore to service any damaged highway facility. The cost of the repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the contract.
- b. The fact that any underground facility is not shown upon the Project Plans shall not relieve the Contractor of the responsibility under Section 4-1.05, "Utility and Non-Highway Facilities." It shall be the Contractor's responsibility, pursuant thereto, to ascertain the location of those underground improvements or facilities which may be subject to damage by reason of the Contractor's operations.
- c. Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the Work involved in protecting or repairing property as specified in this Section 6-1.19, shall be considered as included in the prices paid for the various contract items of Work and no additional compensation will be allowed therefor.

6-1.20 Sound Control Requirements. The Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Agreement. Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without the muffler.

6-1.21 Disposal Of Material Outside The Right Of Way.

- a. If the Contractor elects to dispose of materials at locations other than those where arrangements have been made by the Town, or, if material is to be disposed of and the Town has not made arrangements for disposal of the material, the Contractor shall make arrangements for disposing of the materials outside the highway right of way and shall pay all costs involved. Arrangements shall include, but not be limited to, entering into agreements with property owners and obtaining necessary permits, licenses and environmental clearances. Before disposing of any material outside the highway right of way, the Contractor shall furnish to the Engineer satisfactory evidence that the Contractor has entered into agreements with the property owners of the site involved and has obtained the permits, licenses and clearances.

1. Executed a document that will guarantee to hold the owner harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises and also agree to conform to all other provisions set forth in the arrangement made between the Town and the property owner. The document will be prepared by the Engineer for execution by the Contractor, or
 2. Entered into an agreement with the owner of the disposal site on any terms mutually agreeable to the owner and the Contractor; provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving the Town of any and all obligations under the Town's arrangement with the owner.
- h. If the Contractor elects to dispose of material under (1), the use of the site shall be subject to the terms, conditions and limitations of the arrangement made between the property owner and the Town and the Contractor shall pay those charges that are provided for in the arrangement made by the Town with the property owner, and deductions will be made from any moneys due or that may become due the Contractor under the contract sufficient to cover the charges for the material disposed of.
 - i. ~~If the Contractor elects to dispose of material under (2), the Contractor shall pay those charges that are provided for in the agreement between the owner and the Contractor and deductions will not be made from any moneys due or that may become due the Contractor under the contract to cover the charges.~~
 - j. The Engineer may require the Contractor to submit written evidence that the owner of the disposal site is satisfied that the Contractor has satisfactorily complied with the provisions of either - (1), the arrangement between the Department and the owner, or (2), the agreement between the owner and the Contractor, as the case may be.
 - k. Full compensation for all costs involved in disposing of materials as specified in this Section 6-1.21, including all costs of hauling, shall be considered as included in the price paid for the contract item of work involving the materials and no additional compensation will be allowed therefor.

6.1-22 Assignment of Unfair Business Practice Claims. In accordance with California Public Contract Code Section 7103.5, the Contractor and any subcontractors offer and agree to assign to the Town all rights, title, and interest in and to all causes of action the Contractor or any subcontractors may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this contract. This assignment shall be made and become effective at the time the Town tenders final payment to the Contractor, without further acknowledgement by the parties.

6-1.23 Notice of Potential Claim

SECTION 7 MEASUREMENT AND PAYMENT

7-1.01 F.O.B. All shipments must be F.O.B. destination to the Work site and/or other sites indicated in the Contract Documents. The Contract Price is all-inclusive (including sales tax). There shall be no additional compensation paid for containers, packing, unpacking, drayage or insurance. The Contract Prices includes full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the Town, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to this Agreement.

7-1.02 Payment.

- a. On or about the first day of each calendar month the Contractor will submit to the Engineer a verified application for payment and schedule of values supported by a statement showing all materials actually installed during the preceding month and the cost of labor actually expended in the performance of the Work. Unless otherwise provided in the Contract Documents, no allowances or payments will be made for material or equipment not placed at the Work site. Each invoice shall contain the following certification executed by a duly authorized officer of the Contractor:

I, _____, being the _____ of _____ (Contractor), declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached application for payment and know its contents, and said application is made in good faith; that it is supported by truthful and accurate data; that the amount requested accurately reflects the costs incurred during the period covered by this application; and further, that I am familiar with California Penal Code section 72 and California Government Code section 12650, et seq., pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment, or other severe legal consequences.

- b. To be eligible for payment, the Contractor's applications for payment must include certified payroll reports prepared in accordance with California Labor Code Section 1776 and the Agreement for each employee of the Contractor and any subcontractors engaged in the performance of the Work during the preceding months. Applications for payment will not be processed without certified payroll reports.
- c. In accordance with California Public Contract Code Section 20104.50, the Town will review applications for payment as soon as practicable after receipt. Any application or part of an application that is determined to be improper will be returned to the Contractor as soon as practicable, but no later than seven days after receipt by the Town, along with a written description of the reasons why the application is improper. The Contractor's

incurring an interest obligation pursuant to this provision and California Public Contract Code Section 20104.50 will be reduced by the number of days, if any, by which the Town has delayed return of an application for payment beyond the seven day return requirement set forth in Section 7-1.02.

7-1.03 Non-Allowable Direct Charges. The following costs are not allowable direct charges under the Agreement. The following costs may only be paid under the Agreement, if at all, as part of any allowance for Contractor overhead and/or profit established under the Agreement.

- a. Labor costs in excess of applicable prevailing wages pursuant to the Agreement and applicable law, liability and workers compensation insurance, social security, retirement and unemployment insurance and other employee compensation and benefits pursuant to bona fide compensation plans in effect at the time specified for the opening of Project bids for Contractor and subcontractor employees engaged in the performance of the Work. However, in no event will allowable direct labor charges under the agreement include employee bonuses, employee vehicles or vehicle allowances, employee telephones or telephone allowances, or employee housing or housing allowances, whether or not such benefits are part of a bona fide compensation plan in effect at the time specified for the opening of Project bids.
- b. Superintendent labor and clerical labor.
- c. Bond premiums.
- d. Insurance in excess of that required under Section 6-1.08.
- e. Utility costs.
- f. Work Site office expenses.
- g. Home office expenses.

7-1.04 Retention. The Town or its agent may, in accordance with the Contract Documents and applicable law, withhold any payment of monies due or that may become due the Contractor because of:

- a. Defective work not remedied or uncompleted work.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure to properly pay subcontractors or to pay for material or labor.
- d. Reasonable doubt that the Work can be completed for the balance then unpaid.
- e. Damage to another contractor.
- f. Damage to the Town.
- g. Damage to a third party.
- h. Delay in the progress of the Work, which, in the Town's judgment, is due to the failure of the Contractor to properly expedite the Work.

SECTION 8

PROJECT ACCEPTANCE AND CLOSEOUT

- 8-1.01 Occupancy.** The Town reserves the right to occupy or use any part or parts or the entire of the Work before the Work is fully performed. Subject to applicable law, exercising this right will in no way constitute acceptance of any part of the Work so occupied or used or acceptance of the entire Work, nor will such occupancy or use in any way affect the times when payments will become due the Contractor, nor will such occupancy or use in any way prejudice the Town's rights under the Agreement, any Agreement bonds, or at law or equity. Occupancy or use shall not waive the Town's rights to assess liquidated damages in accordance with Section 5 after the date of such occupancy or use.
- 8-1.02 Work Completion and Final Inspection.** When the Contractor considers the Work is completed, the Contractor will submit written certification to the Engineer specifying that: the Contract Documents have been reviewed; the Work has been inspected for compliance with the Contract Documents; the Work has been completed in accordance with the Contract Documents; and that equipment and systems have been tested in the presence of the Town's representative and are operational. The Town and/or the Town's authorized representatives will make an inspection to verify that the Work is complete and will notify the Contractor in writing of any incomplete or deficient Work. The Contractor will take immediate steps to remedy the stated deficiencies and give notice of correction to the Engineer. Upon receiving a notice of correction, the Town or the Town's authorized representatives will re-inspect the Work. The Contractor must correct all punch list items within 15 working days after the issuance of the punch list. Before acceptance of the Work the Contractor must submit: one set of the Project Record Drawings (As-Built), and any equipment operating and maintenance instructions and data, warranties.
- 8-1.03 Project Record Documents.** The Contractor shall mark up clearly and legibly one set of paper prints to show the As-Built conditions. They shall include all information as shown on the contract set of clean drawings and a record of all deviation, modifications, or changes from those drawings, however minor, which were incorporated in the work, all additional work not appearing on the contract drawings and all changes which are made after the final inspection of the contract work. These As-Built marked prints shall be kept current and available on the job site at all times. All changes from the contract plans which are made in the work or additional information which might be uncovered in the course of construction shall be accurately and neatly recorded as they occur by details and notes. No construction work shall be concealed until it has been inspected, approved and recorded. The As-Built marked prints will be jointly inspected for accuracy and completeness by the Agency Engineer's representative and a responsible representative of the construction contractor prior to submission of the monthly pay estimate. Failure to keep the As-Built marked prints on a current basis shall be sufficient justification to suspend progress payments. The drawings shall show the following information, if applicable, but not be limited thereto:

SECTION 9

REMEDIES AND DISPUTES

9-1.01 Failure to Correct Work. Within ten (10) working days of receiving written notice from the Town describing Work that is defective or that is otherwise not in accordance with the requirements of the Agreement and/or applicable law and directing that such Work be corrected, the Contractor and/or the Contractor's sureties must give the Town written notice of the intent of the Contractor and/or the Contractor's sureties to correct such Work and commence correction of such Work in accordance with the Town's notice and the Agreement. If the Contractor and/or the Contractor's sureties do not give the Town written notice of intent to correct such Work and commence correction of such Work within ten (10) working days of receipt of the Town's notice, then the Town may correct such work and/or have such work corrected for the account and at the expense of the Contractor and/or its sureties, and the Contractor and/or its sureties will be liable to the Town for any resulting excess cost. The Town may, in addition to all other remedies that the Town may have under the Agreement and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contractor.

9-1.02 Termination.

- a. In accordance with California Public Contract Code Section 7105, in addition to all other available remedies that the Town may have under the Agreement, and at law or equity, the Town may terminate the Agreement:
 1. If the Contractor or any of its subcontractors engaged in the performance of the Work fails to timely perform the Work and/or any of the Contractor's material obligations under the Contract Documents, including but not limited to submission of an acceptable schedule, that have accrued except for due to reasons beyond the control of the Contractor pursuant to the Contract Documents.
 2. If the Contractor is adjudged bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of its creditors.
 3. If the Contractor or any of the subcontractors engaged in the performance of the Work persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials for the timely completion of the Work.
 4. If the Contractor fails to make prompt payment to subcontractors engaged in the performance of the Work or for material or labor used in the performance of the Work in accordance with the Contract Documents and applicable law.
 5. If the Contractor or any subcontractors engaged in the performance of the Work persistently disregards laws or ordinances applicable to the performance of the

specified in Section 9-1.02(a) 1 through 5, above, the Town will neither be liable for nor account to the Contractor or the Contractor's sureties in any way for the time within which, or the manner in which such Work is performed, or for any changes made in such Work or for the money expended in satisfying claims and/or suits and/or other obligations in connection with completing the Work. If, following termination of the Contractor's control of the Work for any of the reasons specified in Section 9-1.02(a) 1 through 5, above, the unpaid balance of the Contract Price exceeds the expense of completing the Work, including compensation for additional legal, managerial and administrative services and all other amounts due for the completion of the Work and/or satisfaction of claims of the Town and/or others arising out of the Agreement and any other charges that apply to the Contractor under the Agreement, the difference will be paid to the Contractor. If such expenses of completing the Work exceed the unpaid balance of the Contract Price, the Contractor or its sureties will pay the difference to the Town.

- f. If the Agreement or Contractor's control of the Work is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor.
- g. In accordance with California Government Code Section 4410, in the event a national emergency occurs, and public work being performed by contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work, then the Town and the Contractor may, by written agreement, terminate the Agreement. In accordance with California Government Code Section 4411, such an agreement will include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party will pay to the other or any other person, under the facts and circumstances in the case. Compensation to the Contractor will be determined on the basis of the reasonable value of the Work done, including preparatory Work. As an exception to the foregoing, in the case of any fully completed separate item or portion of the Work for which there is a separate contract price, the Contract Price shall control. The parties may in any other case adopt the Contract Price as the reasonable value of the Work or any portion of the Work done.

9-1.03 Disputes.

- a. In accordance with California Public Contract Code Section 20104.2, the following procedures apply to claims of \$375,000 or less between the Contractor and the Town:
 - 1. Any claim submitted by Contractor to the Town shall be in writing and include the documents necessary to substantiate the claim. All claims must be filed on or before the date of final payment. Any compromise, agreement, or understanding with respect to any claim submitted by Contractor shall have no effect unless and

7. The Town's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
 8. If the Contractor disputes the Town's written response, or the Town fails to respond within the time prescribed, the Contractor may so notify the Town, in writing, either within 15 days of receipt of the Town's response or within 15 days of the Town's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the Town shall schedule a meet and confer conference within 30 days for settlement of the dispute.
 9. Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
 10. This section does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
- b. In accordance with California Public Contract Code Section 20104.4, The following procedures apply to civil actions to resolve claims of \$375,000 or less between the Town and the Contractor:
1. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

SECTION 10 SPECIAL PROVISIONS

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The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, and coastal waters from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials and shall conduct and schedule his operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

Water pollution control work is intended to provide prevention, control and abatement of water pollution to streams, waterways, and other bodies of water, and shall consist of constructing those facilities which may be shown on the plans, specified herein or in the special provisions, or directed by the Engineer.

10-1.04 Public Safety: The Contractor shall at all times conduct his work in accordance with Construction Safety Orders of the Division of Industrial Safety, State of California, and Sections 7-1.03, "Public Convenience," and 7-1.04, "Public Safety," of the Standard Specifications to ensure the least possible obstruction to traffic and inconvenience to the general public, and adequate protection of persons and property in the vicinity of the work. Attention is directed to Section 6-1.17, "Public Safety," of the General Provisions.

No access way shall be closed to the public without first obtaining permission of the Engineer.

Should the Contractor fail to provide public safety as specified or if, in the opinion of the Engineer, the warning devices furnished by the Contractor are not adequate, the Town may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Contractor's operations and the Contractor shall be liable to the Town for all costs incurred including, but not limited to, administrative costs.

Nothing in this section shall be construed to impose tort liability on the Town or Engineer.

10-1.05 Water for Construction: Construction and testing water shall conform to Section 17, "Watering," of the Standard Specifications and these Special Provisions. The Contractor shall be responsible for providing all water necessary for construction and testing and disposing of all water.

10-1.06 Protection of Existing Facilities and Property: The Contractor shall take all necessary measures to avoid injury to existing surface and underground utility facilities in and near the site of the work. No error or omission of utility markouts shall be construed to relieve the Contractor from his responsibility to protect all underground pipes, conduits, cables or other structures. The Contractor shall indemnify the Town and hold it harmless from any and all claims, demands, or liability made or asserted by any person or entity on account of or in connection with any damage to such surface or underground facilities caused by the Contractor or any of his agents or subcontractors.

10-1.10 Cleanup: Attention is directed to Section 4-1.13, "Cleanup," of the Standard Specifications.

Before final inspection of the work, the Contractor shall clean the construction site and all ground occupied by him in connection with the work, of all rubbish, excess material, falsework, temporary structures and equipment. All parts of the work shall be left in a neat and presentable condition.

Nothing herein shall require the Contractor to remove warning, regulatory, and guide signs prior to formal acceptance by the Engineer.

10-1.11 Payment: Full compensation for conforming to the provisions of this section shall be considered as included in the contract price paid for various other items of work and no additional allowance will be allowed.

10-3 TRAFFIC CONTROL

10-3.01 Maintaining Traffic: Attention is directed to Section 7-1.03, “Public Convenience,” Section 7-1.04, “Public Safety,” and Section 12 “Temporary Traffic Control,” of the Standard Specifications. Nothing in these Special Provisions shall be construed as relieving the Contractor from his responsibilities as provided in said Section 7-1.04.

All traffic control shall be between 8:00 a.m. and 5:00 p.m.; unobstructed two-way traffic shall be maintained daily from 5:00 p.m. to 8:00 a.m. **All streets shall be open to traffic and all driveways shall be fully accessible at the end of each work day. Overnight street closures will not be allowed.**

The contractor shall coordinate with the local Postmaster to ensure that mail service continues uninterrupted for the duration of the project.

Adequate traffic control, flagmen, signing, and barricades shall be provided by the Contractor at all times as approved by the Engineer.

10-3.02 Traffic Control Plan: It is the responsibility of the Contractor to provide a Traffic Control Plan five (5) working days prior to beginning construction. Work shall not begin until the plan is approved by the Engineer.

The content of the Traffic Control Plan shall include, but not be limited to, the following:

- a. Show location and limits of the work zone.
- b. Give dimensions of lanes affected by traffic control that will be open to traffic.
- c. Indicate signing, cone placement, and other methods of delineation and reference to appropriate Town or Caltrans standard.
- d. Dimension location of signs and cone tapers.
- e. Identify side streets and driveways affected by construction and show how they will be handled.
- f. Show how pedestrian traffic will be handled through the construction site.
- g. Demonstrate how two-way traffic will be maintained.

No work will be allowed to commence prior to approval of the work zone Traffic Control Plan.

10-3.03 Removal of On-Street Parking: In the event that on-street parking needs to be removed to facilitate the work, the Contractor shall place barricades signed “NO PARKING –TOW AWAY – Specific Time and Date(s)” at the necessary locations forty-eight (48) hours prior to construction. “NO PARKING” signs must also state “C.V.C. 22651 (L)”. See example below.

10-4 TRAFFIC STRIPES AND PAVEMENT MARKINGS

10-4.01 Traffic Stripes and Pavement Markings: Thermoplastic traffic stripes, and pavement markings shall conform with the provisions of Section 84-2, "Thermoplastic Traffic Stripes and Pavement Markings," of the Standard Specifications. Traffic stripes, crosswalk markings, limit lines and "STOP" markings shall be installed in accordance with the details shown on the Plans and on the Caltrans Standard Plans

Preformed thermoplastic pavement marking panels shall be PreMark Bike Lane Markings with ViziGrip manufactured by Flint Trading or equal.

Painting of curbs shall with the provisions of Section 59-6, "Painting Concrete," of the Standard Specifications.

The Contractor shall measure and layout all new traffic striping and pavement markings prior to installation. The layout for the traffic striping and pavement markings shall be reviewed and approved in writing by the Engineer prior to installation of the new striping and pavement markings. The Contractor shall provide a three day time period for review of layout markings. Striping changes shall be approved by the Engineer.

Any layout markings that remain after the final striping shall be "blacked-out" using paint to the satisfaction of the Engineer. This work shall be considered as fully compensated in the related items of work and no additional compensation will be made thereof.

Where pavement markings are to be replaced or refreshed and where markings are designated on the Plans to be removed, the existing pavement markings shall be completely removed in accordance with Section 15-2.02C, "Remove Traffic Stripes and Pavement Marking," of the Standard Specifications.

All surfaces which are to receive traffic stripes or pavement markings shall be thoroughly cleaned, free from loose materials and dry, and such areas shall be prepared by the Contractor to the satisfaction of the Engineer.

Existing stripes and pavement markings to remain in place which are damaged by the work shall be replaced at the Contractor's expense.

10-4.02 Measurement and Payment:

Thermoplastic Traffic Stripes and Pavement Markings will be paid for at the contract price per **Lineal Foot, Square Foot or Each in accordance with Units on the Bid Schedule for** the various detail types on the Plans and in the Bid Schedule, which price shall include full compensation for furnishing all labor, materials, tools and equipment, and doing all work involved in placing traffic stripes, complete in place, including layout, surface preparation, glass beads, and any other work required to install thermoplastic traffic stripes and pavement markings, and no additional compensation will be allowed.

10-5 ROADSIDE SIGNS

10-5.01 Roadside Signs: Roadside signs shall conform to the applicable provisions of Section 56-2, "Roadside Signs," of the 2006 Caltrans Standard Specifications and these Special Provisions. Sign panels shall be furnished by the Contractor. Materials and finishes shall conform to Caltrans Standards. The following signs shall be fluorescent yellow-green: R2-1 with "When Children are Present", S1-1, W11-1, W16-9p, W4-4p, W11-15.

The "School Bike Route" signs shall be in accordance with the detail included in these Specifications. The size and layout of all other signs shall be in accordance with Caltrans Standards. For non-standard signs and plaques, the Contractor shall submit shop drawings to the Engineer for approval prior to fabrication.

New sign posts shall be metal posts in accordance with Section 56-2.02A of the 2006 Caltrans Standard Specifications. New poles shall be installed in accordance with Marin County Uniform Construction Standards Drawing No. 310, including concrete footing. Sign panel installation shall conform to Caltrans Standard Plan RS4. Contractor shall provide all new mounting hardware.

Where the plans call for relocating existing poles, new sign posts shall be installed and existing signs shall be transferred over to the new poles with new mounting hardware. Existing signs that are to be removed or replaced shall be salvaged and delivered to the Town.

The final determination of pole locations and configuration of the signs shall be as directed by the Engineer.

10-5.02 Measurement and Payment:

New **Roadside Signs** will be paid for at the contract price **per each** for the type of sign panel listed in the Bid Schedule regardless of whether the sign is installed on a new or existing pole, or is an extra sign to be provided to the Town, which payment shall include full compensation for furnishing all equipment, tools, materials and labor, and doing all the work involved, as herein specified, including salvaging the existing sign panels, installing new signs with new mounting hardware and any other items necessary to install the signs not specifically enumerated in the plans or specifications, except for the installation of new posts, and no additional allowance will be made therefor.

New **Roadside Sign Posts** will be paid for at the contract price **per each** which payment shall include full compensation for furnishing all equipment, tools, materials and labor, and doing all the work involved, as herein specified to install new sign posts and any other items necessary to install the signs not specifically enumerated in the plans or specifications, and no additional allowance will be made therefor. Sign posts that are to be relocated will be paid for as new roadside sign posts and said payment will be