SARATOGA LIBRARY SOLAR

PROJECT

City of Saratoga
13777 Fruitvale Avenue
Saratoga, CA 95070
(408)-868-1239

CITY OF SARATOGA

CONTRACT DOCUMENTS

FOR

Saratoga Library Solar Project

KEY BID DATES

Date Issued: March 12, 2012

Mandatory Site Walk: 2:00 pm on Tuesday; March 20, 2012

Requests for Equals/Clarifications Due: 5:00 pm; March 21, 2012

Bid Due: 10:00 am on Tuesday; March 27, 2012

CITY OF SARATOGA

Saratoga Library Solar Project

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ATTACHMENTS:

- **Technical Specifications (16 pages) including Single Line Wiring Diagram (1 page) prepared by Michael Mora, SOLectric Electrical, dated 03/12/2012**
- **Structural Sheets S.1 and S.2 prepared by TKJ Structural Engineering , dated 12/20/2011**
- **Structural Calculations and Details (32 sheets) prepared by TKJ Structural Engineering, dated 12/20/2011**
- **Saratoga Library Phase II Construction Documents, 196 sheets (provided on a CD)**

NOTICE INVITING BIDS

Saratoga Library Solar Project

SEALED BIDS will be received by the CITY OF SARATOGA (CITY) until **Tuesday March 27, 2012 at 10:00 am** for Saratoga Library Solar Project. Sealed bids shall be submitted to the address below and addressed and noted as follows:

Public Works Director
City of Saratoga
13777 Fruitvale Ave.
Saratoga, CA 95070

Sealed Bid for Saratoga Library Solar Project

All bids must be accompanied by bidder's security in accordance with California Public Contract Code Sections 20170 et seq.

Following the closure of the bid submittal period, bids will be publicly opened and read for performing work as follows:

Furnishing all labor, materials, equipment, and performing all work necessary and incidental to the construction of the project known as **Saratoga Library Solar Project**, according to drawings and specifications as prepared by TKJ Structural Engineer, SOLectric Electrical, Saratoga Library as-built plan set and according to the Contract Documents. The work to be done consists of supplying all labor, methods or processes, implements, tools, machinery, equipment and materials to install solar panels on Saratoga Library roof including the interconnecting wiring between the solar panels, grounding, supplying and installing inverters, concrete pad for inverters, AC combiner panel for inverters outputs, all electrical conduits, wires, breakers, connections, conductors, switches, and all other equipment not listed here but necessary to complete the work. The work includes design, supply and installation of support system for solar panels and preparation of shop drawings of the support system and its elements to the City satisfaction and other work not specifically mentioned herein, but which may be required as directed by CITY or its designated representative to complete the work.

CITY hereby notifies all Bidders that it will affirmatively ensure that in regard to any contract entered into pursuant to this Invitation for Bid, Disadvantaged Business Enterprises (DBE's) will be afforded full opportunity to submit Bids in response to this invitation and will not be discriminated against on the basis of race, color, sex, national origin, in consideration for an award.

Project is to be completed within forty five (45) calendar days from the date specified in the Notice to Proceed. The Contractor shall pay to the City of Saratoga the sum of $300 for each and every calendar day's delay in finishing the work in excess of the calendar day completion time.

Bidders may obtain copies of the bidding documents at City of Saratoga Public Works Department, 13777 Fruitvale Avenue, Saratoga, CA 95070, 408-868-1239 or 408-868-1274. A set of the documents may be obtained via the mail upon request. As-built plans for Saratoga Library is available only on a CD form, all other bid documents are available in hard copies. All bid documents are also posted on the City of Saratoga website www.saratoga.ca.us under What's New – Bids and RFPs. There is no fee for the documents in any form.

The mandatory pre-bid site walk is scheduled for 2:00 p.m. Tuesday, March 20, 2012 at Saratoga Library located at 13650 Saratoga Avenue, Saratoga, CA 95070. Please note that you must attend this meeting to bid on the project.

Requests for information/equals and questions shall be received in writing no later than 5:00 pm on Wednesday, March 21, 2012. All questions should be addressed in writing to Iveta Harvancik, Public Work Department, 13777 Fruitvale Avenue, Saratoga, CA 95070; phone and fax number (408) 868-1274 or email iharvancik@saratoga.ca.us .

Pursuant to California Labor Code Section 1771, the successful bidder and all subcontractors shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are available for view at the City of Saratoga Department of Public Works.

Pursuant to California Public Contract Code Section 22300, the Contractor may, at its option, choose to substitute securities for monies earned by the Contractor and retained by CITY to ensure the performance of the Contract.

Pursuant to California Public Contract Code Section 3300, City has determined that the Contractor shall possess a valid Class A (General Engineering Contractor) or Class B (General Building Contractor) AND Class C10 (Electrical Contractor) license at the time that the bid is submitted. The contractor shall also possess a valid City of Saratoga Contractor's Business License at the time the contract is awarded. Failure to possess the specified license shall render the bid non-responsive.

The successful bidder will be required to furnish a payment bond in the amount equal to one hundred percent (100%) of the Contract Price, as well as a faithful

performance bond, in the amount equal to one hundred percent (100%) of the Contract Price. The bonds shall be on the forms included in the Contract Documents.

The successful bidder shall insure that employees and applicants for employment are not discriminated against on the basis of age, color, race, national origin, ancestry, religion, sex, sexual preference, or marital status, and shall comply with the Americans with Disabilities Act.

Bids will be examined and reported to the City of Saratoga City Council (Council) at a meeting within sixty (60) days of the bid opening. CITY reserves the right to reject any and all bids, or to waive any irregularities or informalities in any bid or in the bidding procedure, or to postpone the bid opening or award for good cause. No Bidder may withdraw its bid for a period of sixty (60) calendar days after the date of opening of the bids. Each bidder will be notified of award of contract, if award is made. Contract Documents, Forms of Bid and any questions concerning this bid should be addressed to Senior Engineer Iveta Harvancik, (408) 868-1274 or iharvancik@saratoga.ca.us

CITY OF SARATOGA
Office of the Clerk
Notice Issued March 13, 2012

INFORMATION FOR BIDDERS

Saratoga Library Solar Project

SCOPE AND LOCATION OF WORK

The work to be performed under this contract consists of the furnishing of all labor, materials, plant, equipment and services for the construction of the Project, complete, and in satisfactory operating condition, all as shown on the Contract Documents and/or as specified herein. The work is to be performed in the City of Saratoga, County of Santa Clara.

INSPECTION OF WORK SITE

Bidders are required to inspect the site of the work in order to satisfy themselves, by personal examination or by such other means as they may prefer, of the location of the proposed work and the actual conditions of and at the site. Bidders may apply to the Director of Public Works for additional information and explanation before submitting bids. However, no supplemental information requested or furnished shall vary the terms of the Contract Documents or affect the Contractor's sole responsibility to satisfy itself as to the conditions of the work to be performed. No claim for additional compensation will be allowed which is based upon a lack of knowledge of the actual conditions or location of the Work.

Submission of a bid by the bidder shall constitute acknowledgment that, if awarded the contract, the bidder has relied and is relying on its own examination of (a) the site of the work; (b) access to the site; (c) all other data, matters, and things requisite to the fulfillment of the work, including but not limited to the availability of labor and materials; and (d) its own knowledge of existing facilities on and in the vicinity of the site of the Project and not on any representation or warranty by City or its agents of the above items. Removal, relocation, or protection of existing public utilities not identified by City shall be done in conformance with California Government Code Section 4215.

EXAMINATION OF CONTRACT DOCUMENTS

Each bidder shall thoroughly examine and be familiar with legal and procedural documents, general conditions, specifications, drawings and addenda (if any). Submission of a bid shall constitute acknowledgment, upon which City may rely, that the bidder has thoroughly examined and is familiar with the Contract Documents. Failure or neglect of a bidder to receive or examine any of the Contract Documents shall in no way relieve the bidder of any obligation with respect to its bid or to the Contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any Contract Documents.

REPORT OF ERRORS AND OMISSIONS

Bidder shall review architectural and/or engineering plans and specifications, if any, prior to submission of the bid, and report any errors and omissions noted by the bidder to the Director of Public Works. The review by the Contractor shall be confined to the Contractor's capacity as a contractor, and not as a licensed design professional.

INTERPRETATION OF CONTRACT DOCUMENTS

No oral representation or interpretations will be made to any bidders as to the meaning of the Contract Documents. Requests for interpretation shall be made in writing and delivered to the Director of Public Works at least ten (10) working days before the time announced for opening the bids. Interpretations, where necessary, will be made in the form of an addendum to the Contract Documents and, when issued, will be sent as promptly as is practical to all parties to whom the bid documents have been issued. All such addenda shall become part of the Contract.

Requests for information before or after the award of contract shall be directed to:

Director of Public Works
13777 Fruitvale Avenue, CA 95070
Phone and fax (408) 868-1239

It shall also be the bidder's responsibility to call to the attention of Director of Public Works any missing pages in the Contract Documents, including the addenda. These items shall be brought to the attention of Director of Public Works in writing, at least one week prior to the bid opening date.

BIDS

Bids shall be made on the blank forms prepared by City, which may be removed from the bound Contract Documents. All bids shall include, in the space provided, all information requested, shall be signed by the bidder or an authorized representative thereof, and shall include the bidder's business address.

Bidders must prepare and submit all required documents.

Bids must be accompanied by security in accordance with California Public Contract Code Sections 20170 et seq.

If the bid is made by an individual, his or her name, signature, and business address shall be shown.

If the bid is made by a firm or partnership, the name and business address of the firm or partnership and the signature of at least one of the general partners shall be shown.

If the bid is made by a corporation, the bid shall show the name of the corporation and the state(s) in which the corporation is incorporated; the name and business address of the corporation's local agent; and the signature of at least one officer authorized to sign on behalf of the corporation. Additionally, the bid shall include a document empowering the signatory or signatories to execute the bid and to bind the corporation.

If the bid is made by a joint venture, the bid shall be signed by at least one of the joint venture firms in a format meeting with the requirements outlined above. Additionally, the bid shall include a document empowering the signatory or signatories to execute the bid and to bind the joint venture.

Every contractor, other than a joint venture, who submits a bid, must at the time the bid is submitted have a California Contractor's License in good standing. The license shall be in the class or classes specified in the Contract Documents. Any bid from an unlicensed contractor, other than those persons exempt under California Business & Professions Code Section 7028.15, shall be non-responsive and shall be rejected. Section 7028.15 makes it a misdemeanor for any person without a valid contractor's license (with specified exceptions) to submit a bid to act as a contractor to a public agency. The penalties on a bidder violating these provisions are severe.

Each bid shall be enclosed in a sealed envelope, labeled and delivered to the Director of Public Works at the address above. Bidders are warned against making erasures or alterations of any kind, without initialing each and every such change. Bids that contain uninitialed erasures, alterations or irregularities of any kind, or omissions, may be rejected. No oral, telegraphic, or telephone (including facsimile) bids or modifications will be considered.

Each bidder shall submit with its bid a statement setting forth its experience and qualifications on the forms included in the Contract and Bidding Documents.

Telephones will not be available to bidders for the preparation of the bids or for calling in bid results. Bid forms received after the designated time will not be accepted. Bidders and their authorized agents are invited to attend the bid opening.

No bidder may withdraw its bid for a period of sixty (60) days after the date set for the opening of bids.

City reserves the right to reject any or all bids; to make any awards or any rejections in what it alone considers to be in the best interest of City, and to waive any informalities or irregularities in the bids.

ADDENDA

Each bid shall include specific acknowledgment (in the space provided) of the receipt of all addenda issued during the bidding period. A bidder's failure to acknowledge all addenda may result in the bid being rejected as not responsive.

BID PRICES

Bid prices shall include everything necessary for the completion of construction and fulfillment of the contract, including but not limited to furnishing all transportation, materials, equipment, tools, excavation, utilities, sheeting, shoring, bracing and supports, plant and other facilities, and all management, superintendence, permits, labor and services, except as may be provided otherwise in the Contract Documents.

In the event that the product of a unit price and an estimated quantity does not equal the extended amount quoted, the unit price shall govern and the correct product of the unit price and the estimated quantity shall be deemed to be the amount bid. If the sum of the individual items does not equal the total base price, the individual item totals shall govern and the corrected sum shall be deemed to be the total base bid.

Where there is a conflict between words and figures, the words shall govern and the figures shall be disregarded.

TAXES

Bid prices shall include all applicable federal, state, and local taxes.

EXPERIENCE OF BIDDERS

At the time of bidding, and throughout the period of the contract, each bidder shall be licensed under the provisions of the California Business and Professions Code to do the type of work contemplated for the project. The license classification shall be a Class A (General Engineering Contractor) or Class B (General Building Contractor) AND Class C10 (Electrical Contractor)
It is the intention of City to award a contract, if at all, to the lowest responsive responsible bidder who demonstrates the attributes of trustworthiness, as well as quality, fitness (including financial qualifications), capacity and experience to enable it to prosecute the work successfully and properly, and to complete the work within the time period named in the Contract Documents.

To determine the degree of responsibility to be credited to the bidder, City will weigh any evidence that the bidder has performed satisfactorily other contracts of

like nature and magnitude, and comparable difficulty and rates of progress, to the Work. City shall have sole discretion to determine what contracts are of like nature and magnitude, and comparable difficulty and rates of progress. City may reject bids from Contractors who cannot satisfactorily prove the experience and qualifications outlined in paragraph 10 hereof.

LISTS OF SUBCONTRACTORS

On the forms provided, each bidder shall list the name and address of each subcontractor to whom the bidder proposes to sublet portions of the work in excess of one-half of one percent of the total amount of the bid or $10,000, whichever is greater. For the purpose of this paragraph, a subcontractor is defined as anyone who contracts with the Contractor to furnish materials and labor or labor only, and/or one who specially fabricates and/or installs a portion of the work or improvement according to detailed drawings contained in the Contract Documents. All listings and subsequent substitutions, if any, shall be done in conformance with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100 et seq.

BID GUARANTY

The bid shall be accompanied by a bid guaranty bond duly completed by a corporate surety authorized to conduct business in the State of California payable to the City of Saratoga in the sum of at least ten percent (10%) of the total amount of the bid. The bond shall be on the form included in the Contract Documents. Alternatively, a certified or cashier's check, payable to the City of Saratoga, in the sum of at least ten percent (10%) of the total amount of the bid may be substituted for the bid guaranty bond. The amount payable to the City of Saratoga under the bid guaranty bond, or the certified or cashier's check, as the case may be, shall be forfeited to City as liquidated damages in the case of the failure or neglect of the successful bidder to furnish, execute, and deliver to City the required performance and payment bonds and evidences of insurance, and/or to enter into, execute, and deliver to City the Agreement on the form provided herewith, within ten (10) days after being notified in writing by City that the award has been made.

MODIFICATION OF BID

Modification of a bid already received will be considered only if the modification is received prior to the deadline for receiving bids. All modifications shall be made in writing, executed, and submitted in the same form and manner as the original bid.

POSTPONEMENT OF OPENING

City reserves the right to postpone the date and time for receiving and/or opening of bids at any time prior to the date and time established in the Notice Inviting Bids. Pursuant to Public Contract Code Section 4104.5, the City shall extend the

date and time for closing of submission of bids (the "bid deadline") by no less than seventy-two (72) hours in the event that CITY issues any material changes, additions, or deletions to the bidding documents later than seventy-two (72) hours prior to the bid deadline.

NON COLLUSION AFFIDAVIT

California Public Contract Code Section 7106 requires that each bidder execute a Noncollusion Affidavit on all public works contracts. Bidder shall execute the Noncollusion Affidavit included with the Contract Documents and submit it to City with the bid.

DISQUALIFICATION OF BIDDER

If there is a reason to believe that collusion exists among any of the bidders, none of the bids of the participants in such collusion will be considered, and City may choose to reject all bids received.

REJECTION OF BIDS

City reserves the right to reject any bids which are incomplete, obscure, or irregular; any bids which omit a bid on any one or more items for which bids are required; any bids which omit unit prices if unit prices are required; any bids in which unit prices are unbalanced in the opinion of City; any bids accompanied by insufficient or irregular bid guaranty; and any bids from bidders who has been delinquent or unfaithful in any former contract with City. City reserves the right to reject defective bids or to waive technical defects, as the interests of City may require.

RELIEF OF BIDDERS

Attention is directed to the provisions of California Public Contract Code Section 5100, et seq., concerning relief of bidders, and in particular to the requirement therein that if a bidder claims a mistake was made in its bid, the bidder shall give City written notice of the alleged mistake within five (5) calendar days after the opening of the bids, specifying in the notice, in detail, how the mistake occurred.

COMPLETING AND SIGNING FORMS

The Bidder’s attention is directed to the forms included in the Contract Documents, which must be completed and signed. FAILURE TO PROPERLY COMPLETE AND SIGN ANY FORMS MAY BE CAUSE FOR REJECTION OF A BID.

DEBARRED CONTRACTORS AND SUBCONTRACTORS

No contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works contract under California Labor Code Sections 1777.1 or 1777.7 can bid on, be awarded or perform work as a subcontractor on the Project. The

Contractor is prohibited from letting work on the Project to a subcontractor who is ineligible to perform work on a public works project under these sections of the Labor Code.

PRIOR APPROVAL OF SUBSTITUTIONS ("APPROVED EQUALS")

Bidders wishing to obtain prior approval of a substitution for a specified material or system (an "approved equal") shall submit all required documentation in compliance with procedures established in the Contract Documents. Any request for an approved equal must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.

Prior approval requests must be received by City, in writing, at least seven (7) business days prior to bid deadline. If City determines the requested material or system is equal to that specified, City will notify the Bidders prior to time for submitting bids. City's failure to notify the Bidders of an approved equal shall be deemed a rejection of the requested substitution.

PREVAILING WAGE AND APPRENTICESHIP

In accordance with California Labor Code Section 1771, all contractors and subcontractors on this public work project shall pay not less than current prevailing wage rates as determined by the California Department of Industrial Relations ("DIR"). All contractors and subcontractors on this public work project shall comply with the requirements of California Labor Code Sections 1777.5 and 1777.6 in the employment of apprentices.

Questions regarding general prevailing wage rates should be directed to:

Department of Industrial Relations
Division of Labor Statistics and Research
P.O. Box 420603
San Francisco, CA 94142-0603
Phone: (415) 703-4774

Questions pertaining to apprenticeship crafts should be directed to:

Department of Industrial Relations
Division of Apprenticeship Standards
P.O. Box 420603
San Francisco, CA 94142-0603
Phone: (415) 703-4920

Information is also available at the Department of Industrial Relations' website: http://www.dir.ca.gov

Any contractor who is awarded a public works contract is not relieved of the obligation to pay prevailing wage rates for any craft or classification not listed in the General Determinations or in any Special Determination. If a contractor intends to use a craft or classification not listed in the General Determinations or existing Special Determinations, he or she must notify CITY no later than forty-five (45) days before the bid deadline and request a Special Determination. If no determination has been made at the time the contract is awarded, the contractor shall pay the prevailing wage rate of the craft or classification most closely related to the craft or classification used.

All prevailing wage rates are subject to modification pursuant to Important Notices issued by the DIR's Division of Labor Statistics and Research and recent union contract negotiations.

BID PROTEST PROCEDURES

These procedures apply to all procurement actions, whether by sealed bid, request for bid or sole source, and regardless of the stage of the procurement process at which the protest is filed.

Any protest relating to the form or content of the bidding or contract documents must be submitted in writing to Public Works Director at 13777 Fruitvale Avenue, Saratoga, CA 95070 no later than ten (10) working days before the bid deadline. Any person who submits a bid shall be deemed to have waived any protest to the form or content of the proposal documents.

Any protest relating to any particular proposal or the award of the contract must be submitted in writing to Public Works Director. The protest must be received no later than ten (10) working days after the basis of protest is known or should have been known, whichever is earlier.

The initial protest document shall contain a complete statement of the basis for the protest.

The protest shall refer to the specific portion(s) of the proposal documents which forms the basis for the protest.

The protest shall include the name, business address and telephone number of the person representing the protesting party.

The party filing the protest shall concurrently transmit a copy of the initial protest document and any attached documentation to all other parties who have a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest. The documents shall be transmitted by fax or overnight mail.

The procedure and time limits set forth in this section are mandatory and are the sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or instituting legal proceedings

GENERAL CONDITIONS

Saratoga Library Solar Project

SECTION GC-1 DEFINITIONS AND TERMS

Whenever in the Contract Documents the following terms are used, the intent and meaning shall be interpreted as follows (unless noted otherwise):

Agreement – the written instruments comprising the complete and integrated contract between the City of Saratoga and the Contractor.

Business day – see "working day" below

Calendar day – a period of twenty-four (24) hours measured from midnight to the next midnight. If not otherwise specified in the Agreement, days shall be presumed to be calendar days.

Caltrans Standard Specifications - Standard Specifications for Construction of Local Streets and Roads issued by the State of California, Department of Transportation, 2006 edition. Any reference therein to a State agency or officer shall be interpreted as if the corresponding City of Saratoga office or officer acting under this contract were so specified. All metric measurements or quantities in the Caltrans Standard Specifications shall be disregarded, and equivalent United States measures used.

Caltrans Standard Plans - Standard Plans for Construction of Local Streets and Roads issued by the State of California, Department of Transportation, current edition. All metric measurements or quantities in the Caltrans Standard Plans shall be disregarded, and equivalent United States measures used.

Contractor – the individual or entity with whom City has entered into the Agreement.

Council - The City of Saratoga City Council, the governing body of the City of Saratoga.

County – Santa Clara County, California.

City – the City of Saratoga.

Engineer – The Director of Public Works of the City of Saratoga, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

Laboratory - The designated laboratory authorized by the City of Saratoga to test materials and work involved in the contract.

Working day – a period comprising the normal working hours of the day and further defined in Section 8-1.06 ("Time of Completion") of the Caltrans Standard Specifications.

Other terms appearing in the Contract Documents shall have the intent and meaning specified in Section 1 ("Definitions and Terms") of the Caltrans Standard Specifications.

SECTION GC-2 BID REQUIREMENTS AND CONDITIONS

A. APPROXIMATE QUANTITY ESTIMATE

The quantities given in the Notice Inviting Bids and in the bid and contract forms are approximate only, being given as a basis for the comparison of bids, and CITY does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the Work, or to omit portions of the Work, as may be deemed necessary or advisable by the Director of Public Works.

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

The bidder shall examine carefully the site of work contemplated and all Contract Documents, including all bid and contract forms incorporated by reference therein. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the 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 bid, plans, specifications, and the contract. If, during the course of its examination, a bidder finds facts or conditions which appear to be in conflict with the letter or spirit of the project plans and specifications, the bidder shall contact CITY for additional information and explanation before submitting its bid. Any request for information must be submitted at least ten (10) working days before the time announced for opening the bids, if any.

C. QUESTIONS DURING BIDDING

Any questions regarding the Contract Documents or bid forms shall be directed to the person listed in the Information For Bidders. All questions must be submitted at least ten (10) working days before the original bid deadline.

D. ADDENDA

When CITY deems it necessary, addenda may be issued to the Contract Documents to amend, clarify or correct matter contained therein. Such addenda shall constitute a part of the Contract Documents and shall be equally binding with them. Addenda shall be forwarded to all prospective bidders when such addenda are issued prior to receipt of bids. Bidder must acknowledge all addenda on the bid form. Failure to acknowledge all addenda issued will render the bid nonresponsive.

E. BID FORM

All bids must be submitted upon blank forms provided in the Contract Documents. Bids shall include all applicable taxes that the Contractor is required to pay. All bids must give

the prices proposed and must be signed by the bidder and include bidder's business address. If the bid is made by an individual, his name and business address must be shown. If made by a firm or partnership, the name and business address of each member of the firm or partnership must be shown. If made by a corporation, the bid must show the name of the state(s) in which the bidder is incorporated and the names, titles, and business addresses of the corporation's president, secretary, and treasurer. All bids shall be submitted as directed in the Notice Inviting Bids under sealed cover plainly marked as a bid, and identifying the project to which the bid relates and the date of the bid opening therefor. Bids which are not properly marked may be disregarded.

F. PUBLIC OPENING OF BIDS

Bids will be opened and read publicly at the time and place indicated in Notice Inviting Bids. Bidders or their authorized agent are invited to be present.

SECTION GC-3 AWARD AND EXECUTION OF CONTRACT

A. AWARD OF CONTRACT

CITY reserves the right to reject any and all bids. The contract will be awarded, if at all, to the lowest responsive responsible bidder whose bid complies with all the requirements set forth in the Notice Inviting Bids and Information to Bidders and all documents referenced therein.

In the event that bids are required to include prices for items that may be added to or deducted from the scope of the work of the contract for which the bid is being submitted, the lowest bid shall be the lowest bid price on the base contract those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price. CITY reserves the right to add to or deduct from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

The contract will be awarded, if at all, within 60 calendar days after the opening of the bids.

The Work will not start until CITY has successfully acquired all necessary rights of way, easements and permits to begin work on this project.

B. CONTRACT BONDS

The successful bidder shall furnish two separate contract bonds. Each of the bonds shall be executed in an amount equal to at least 100% of the Contract Price. One bond shall guaranty the faithful performance of the contract by the Contractor; and the other bond shall secure payment of the claims of laborers, mechanics, and material suppliers employed under the contract and shall contain all provisions required by law to be included in such bond forms, including the requirements of Civil Code Sections 3247 - 3252. No alteration, extension of time, extra and additional work, or other change authorized by the Contract Documents will affect the obligations of the surety or sureties on the payment or performance bonds, and no notice to the surety or sureties shall be required.

Any bond required herein shall be issued by a corporate surety admitted to transact surety business in the State of California and holding a valid Certificate of Authority to transact Surety Insurance in the State of California.

C. EXECUTION OF THE CONTRACT

The Contract shall be signed by the successful bidder and returned, together with the Contract bonds required by Section GC-3 (B) and insurance certificate required by Section GC-7 (S) of these General Conditions, after the bidder has received notice that the Contract has been awarded. No bid shall be considered binding upon the City of Saratoga until the award of the contract by the Council.

D. NOTICE TO PROCEED

A separate Notice to Proceed will be issued to the Contractor for this work. Within ten (10) working days from the Notice to Proceed or date specified in the Notice to Proceed, the Contractor shall commence work. Working days will be charged to the Contractor after the ten-day period has elapsed.

E. FAILURE TO EXECUTE CONTRACT

Failure to execute the Agreement and file acceptable performance and payment bonds and insurance as provided herein within fifteen (15) calendar days after the bidder has received notice that the contract for the Work has been awarded to him, shall be just cause for the annulment of the award and the forfeiture of the bid guaranty. Upon any such failure by the successful bidder, the contract for the work may be awarded to the second lowest responsible bidder. If the second lowest responsible bidder fails to execute the Agreement and file acceptable bonds and insurance as provided herein within fifteen (15) calendar days after such bidder has received notice that the contract for the Work has been awarded to him, the contract for the Work may be awarded to the third lowest responsible bidder. Failure of the second or of the third lowest responsible bidder to whom a contract is so awarded to execute the Agreement and file acceptable bonds and insurance as provided herein within fifteen (15) calendar days after such bidder has received notice that the contract for the Work has been awarded to him shall be just cause for the annulment of the award and the forfeiture of the bid guaranty of each such bidder.

F. RETURN OF BID GUARANTEES

CITY will retain all bid guarantees until the Agreement for the Work has been fully executed and CITY has received the bonds and evidence of insurance required to be furnished, or CITY has acted to reject all bids. CITY will return the bid guarantees of unsuccessful bidders, other than those forfeited.

SECTION GC-4 SCOPE OF WORK

A. INTENT OF PLANS AND SPECIFICATIONS

The intent of the Contract Documents is to prescribe the details for the construction and completion of the work the Contractor undertakes to perform.

Where the plans or specifications describe portions of the work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, material, tools, equipment, flaggers, and incidentals, and do all the work involved in executing the contract in a satisfactory and workmanlike manner.

B. STANDARD SPECIFICATIONS AND SPECIAL CONDITIONS

All work embraced herein shall be constructed in strict accordance with the applicable codes, plans and the Caltrans Standard Specifications, where applicable. All work will be done under the inspection of City and the Director of Public Works and any other public agency with jurisdiction over the Project and shall be the responsibility of the Contractor.

The work embraced herein shall be done in accordance with specifications approved by CITY if such work, material or equipment is not specifically detailed in the Contract Documents, Special Conditions, or accompanying plans.

The parts of the Contract Documents are intended to be complementary.

In case of conflict between Sections 1 through 9 of the Caltrans Standard Specifications and the General Conditions or Special Conditions of this Agreement, the General Conditions or Special Conditions shall control. In case of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In case of conflict between the Caltrans Standard Specifications and the other Contract Documents, the provisions of paragraph GC-5.D Coordination And Interpretation Of Plans, Standard Specifications, and Special Conditions shall apply.

C. FINAL CLEAN-UP

Before acceptance and final payment, the Contractor shall clean the streets, roads, structures, and all ground occupied by him in connection with the Work, of all rubbish, excess materials, temporary structures, and equipment. All parts of the Work shall be left in a neat and presentable condition. Any damage to property, missing signs, mailboxes, etc. must be repaired/replaced to the satisfaction of CITY. Full compensation for final clean up shall be deemed included in the prices paid for the various contract items of work, and no separate payment will be made therefor.

D. CHANGES

CITY reserves the right to make such alterations, deviations, additions to or omissions from the Contract Documents, including the right to increase or decrease the quantity of any item or portion of the Work or to omit any item or portion of the Work, as may be deemed by the Director of Public Works to be necessary or advisable and to require such extra work as may be determined by the Director of Public Works to be necessary for the proper completion or construction of the whole work. Changes in quantities shall be in accordance with the provisions of Section 4-1.03B ("Increased or Decreased Quantities") of the Caltrans Standard Specifications.

Any such changes will be set forth in a contract change order which will specify, in addition to the work to be done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by CITY in writing.

All changes in the work shall be made as provided in the Contract Documents. Notice is hereby given that under certain circumstances, changes may require the approval of the Council, and may further require notice to affected property owners and a public hearing.

E. SALVAGE FOR THE CITY

The Contractor shall remove and preserve carefully any materials designated to be salvaged for the City and shall arrange for the delivery of those materials to the City as directed by the Director of Public Works. The Contractor shall be liable for any damage or destruction of materials designated for salvage.

F. SEVERABILITY CLAUSE

If any provision or any part of any provision of these Contract Documents is, for any reason, held to be invalid, unenforceable or contrary to any public policy, law, statute, regulation or ordinance, then the remainder of these Contract Documents shall not be affected thereby and shall remain valid and fully enforceable.

G. EXTRA WORK

New and unforeseen work will be classed as extra work when such work cannot be covered by any of the various items or combination of items for which there is a bid price. The Contractor shall do no extra work except upon written order from the Director of Public Works. Compensation for authorized extra work will be paid as previously agreed upon in writing, or by force account as provided in Section 9-1.03 ("Force Account Payment") of the Caltrans Standard Specifications.

SECTION GC-5 CONTROL OF WORK

A. AUTHORITY OF DIRECTOR OF PUBLIC WORKS

The Director of Public Works shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner or performance and loss of progress of the work; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract on the part of the Contractor; and all questions as to compensation. The Director of Public Work's decision shall be final and shall have authority to enforce and make effective such decisions and orders which the Contractor shall carry out promptly.

B. PLANS AND WORKING DRAWINGS

All authorized alterations affecting the requirements and information given on the approved plans shall be in writing. No changes shall be made to any plan or drawing without approval of the Director of Public Works.

The Plans furnished consist of general drawings and show such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the contract plans shall be in writing.

The Plans shall be supplemented by such working drawings prepared by the Contractor as are necessary to perform the Work adequately. No change shall be made by the Contractor to any working drawing after it has been approved by the Director of Public Works.

It is expressly understood, however, that approval of the Contractor's working drawings shall not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreement of dimensions and details. Contractor shall be responsible for agreement and conformity of his working drawings with the Contract Documents.

Full compensation for furnishing all working drawings shall be deemed included in the prices paid for the contract items of work to which such drawings relate and no separate payment will be made therefor.

C. CONFORMITY WITH CONTRACT DOCUMENTS AND ALLOWABLE DEVIATIONS

Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, in the Contract Documents. Although measurement, sampling and testing may be considered evidence as to such conformity, the Director of Public Works shall be the sole judge as to whether the work or materials deviate from the plans and specifications, and his decision as to any allowable deviations therefrom shall be final. Deviations from the approved plans, as may be required by the exigencies of construction, will be determined in all cases by the Director of Public Works and authorized in writing.

D. COORDINATION AND INTERPRETATION OF PLANS, STANDARD SPECIFICATIONS, AND SPECIAL CONDITIONS

The Caltrans Standard Specifications, the Santa Clara County Standard Plans and Specifications (if any), any Special Conditions, these General Conditions, contract change orders, and all supplementary documents are essential parts of the Contract Documents, and a requirement occurring in one is binding as though occurring in all. They are intended to be cooperative, to describe, and to provide for a complete work. In the event of a conflict, the most stringent shall govern.

In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct. Detail drawings shall prevail over general drawings.

E. ORDER OF WORK

When required by the Special Conditions or Plans, the Contractor shall follow the sequence of operations as set forth therein. Full compensation for conforming with such requirements will be deemed included in the prices paid for the various contract items of work and no separate payment will be made therefor.

F. SUPERINTENDENCE

The Contractor shall provide competent supervision of the Work as approved by the Director of Public Works. The Contractor or designated representative shall be present at the site at all times while work is actually in progress. Before starting work, the Contractor shall designate in writing, a representative who shall have the authority to represent and act for the Contractor regarding any written or verbal directions, or requests of the Director of Public Works. Directions or requests delivered to the representative shall have the same force and effect as if delivered to the Contractor. The authorized representative shall be an employee of the Contractor's organization and shall be shown on the Contractor's payroll

The Contractor will not designate a subcontractor as the authorized representative.

Whenever the Contractor or its representative is not present on any particular part of the work where the Director of Public Works desires to give direction, the Director of Public Works will give orders which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work for which the order is given.

Failure of the Contractor or its representative to be present at the job site at all times when work is in progress will be deemed failure on the part of the Contractor to perform a provision of the Contract. If the Contractor or its representative is not present at the job site, the Director of Public Works may, in accordance with Section 8-1.05 ("Temporary Suspension of Work") of the Caltrans Standard Specifications, suspend all work until satisfactory arrangements have been made to have a designated representative on the site at all times when work is in progress. No additional compensation or additional working days will be allowed for such suspension. All working days lost due to such suspension will be charged to the Contractor.

During periods when work is suspended, arrangements acceptable to the Director of Public Works shall be made for any emergency work that is required.

G. LINES AND GRADES

Unless otherwise stated, stakes or marks will be set by the Contractor, as the Director of Public Works determines to be necessary to establish the lines and grades required for the completion of the Work.

When the Contractor requires stakes or marks outside the scope of this project, the Contractor shall notify the Director of Public Works of his requirements in writing at least three (3) calendar days (72 hours) in advance of starting operations that require such stakes or marks. The Contractor shall coordinate his work such that each staking request will have a minimum of four (4) hours of field staking time. If the Contractor submits a request having less than the minimum four (4) hours of field staking time, the Contractor will be billed the Director of Public Work's time and cost for the difference between the four (4) hour minimum and the actual staking time.

The Contractor shall ensure that the area to receive stakes shall be free of all obstructions, equipment, stockpiles, etc. If the area to receive stakes is not ready for staking when City's

representative arrives on the site, the original 72 hour advance time will become void and City's representative will have 72 hours from the time the area is made ready for stakes to place the stakes and to prepare cut sheets.

Stakes and marks set by the Director of Public Works shall be carefully protected from vandalism and preserved by the Contractor. In case such stakes and marks are lost, destroyed, or damaged, the Contractor must notify the Director of Public Works in writing of his request for the stakes to be reset. Upon receipt of the request, the Director of Public Works will replace the stakes within three (3) working days. The Contractor will be charged for the cost of necessary replacement or restoration of stakes and marks which in the judgment of the Director of Public Works were carelessly lost or willfully destroyed or damaged by the Contractor's operations. Restake charges shall include any recalculation, checking, and administrative charges CITY incurs. These charges will be deducted from any monies due or to become due the Contractor.

H. INSPECTION

The Director of Public Works shall at all times have access to the Work during its construction and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of the Contract Documents. All work done and all materials furnished shall be subject to the Engineer's inspection.

The inspection of the work or materials shall not relieve the Contractor of any of its obligations to perform the Work as prescribed. Work and materials not meeting such requirements shall be made good; unsuitable work or materials may be rejected, notwithstanding that such work or materials may have been previously inspected by the Director of Public Works or that payment therefor has been included in a progress estimate.

I. REMOVAL OF REJECTED AND UNAUTHORIZED WORK

The Contractor shall remedy or remove and replace at its own expense and in an acceptable manner all work that has been rejected. CITY will not pay for such removal, replacement, or remedial work.

Any work done beyond the lines and grades shown on the plans or established by the Director of Public Works, or any extra work done without written authority, will be deemed unauthorized work for which CITY will not pay. Upon order of the Director of Public Works, the Contractor shall remedy or remove and replace unauthorized work at the Contractor's expense.

Upon failure of the Contractor to comply promptly with any order of the Director of Public Works made under this section, the Director of Public Works may cause rejected or unauthorized work to be remedied, removed, or replaced, and to deduct the costs from any monies due or to become due the Contractor.

J. CHARACTER OF WORKERS

If any subcontractor or person employed by the Contractor appears to CITY to be incompetent or to act in a disorderly or improper manner, he or she shall be discharged immediately on the request of CITY, and such person shall not again be employed on the Work.

K. FINAL INSPECTION

When the work has been completed, CITY and the Director of Public Works, or Director of Public Work's designee, will make the final inspection. The Contractor shall request the final inspection in writing.

SECTION GC-6 CONTROL OF MATERIALS

A. GENERAL

The control of the materials used in the work, including but not limited to the sources, handling, testing, and rejections, shall conform to Section 6 of the Caltrans Standard Specifications.

B. SAMPLES AND TESTS

The source of supply of each material shall be approved by the Director of Public Works before delivery begins and before the material is used in the work.

Upon request of the Director of Public Works or as specified in these documents, representative material samples of the prescribed character and quality shall be submitted by the Contractor for testing or examination. No material shall be used without approval of the Director of Public Works.

All tests of materials furnished by the Contractor shall be made in accordance with commonly recognized standards of national organizations, and such special methods and tests as are prescribed in the Caltrans Standard Specifications, and the Special Conditions. The cost of re-testing material or workmanship that fails to pass the first test shall be borne by the Contractor. Contractor shall submit all test results to the Director of Public Works within five (5) calendar days of the testing at no charge to CITY.

Full compensation for conforming with the requirements of this section shall be deemed included in the prices paid for the various contract items of work and materials, and no separate payment will be made therefor.

C. DEFECTIVE MATERIALS

All materials that the Director of Public Works determines do not conform to the requirements of the Contract Documents will be rejected, whether in place or not. They shall be removed immediately from the work site, unless otherwise permitted by the Director of Public Works. No rejected material shall be used in the Work, unless the defects are corrected and the Director of Public Works gives written approval.

Upon failure of the Contractor to comply promptly with any order of the Director of Public Works made pursuant to this section, the Director of Public Works may cause the removal and/or replacement of rejected material and may deduct the costs thereof from any monies due or to become due the Contractor.

D. CHANGES TO SPECIFICATIONS/APPROVED EQUALS

Changes to the specifications will be made by written addendum executed by the **Public Works Director.**

Requests for approved equals or for clarification of specifications and protests of specifications must be received by CITY, in writing, by the time specified in the Instructions to Bidders prior to bid deadline or, if made after the contract is awarded, no more than fifteen days after the facts giving rise to the request came to the attention of the Contractor. Any request for an approved equal or protest of the specifications must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.

If CITY determines the requested material or system is equal to that specified, CITY will notify the Bidders prior to bid deadline or Contractor within thirty calendar days after receiving the request. City's failure to notify the Bidders or the Contractor of an approved equal shall be deemed a rejection of the requested substitution.

Wherever brand, manufacturer or product names are indicated in the specifications, they are included ONLY for the purpose of establishing identification and a general description of the item. Wherever such names appear, the term "or approved equal" should be understood to follow.

It should be understood that specifying a brand name, components and/or equipment in this specification shall not relieve the supplier from its responsibility to produce the product in accordance with the performance warranty and contractual requirements. The supplier is responsible for notifying CITY of any inappropriate brand name, component and/or equipment that may be called for in the specifications and to propose a suitable substitute for consideration.

D. WARRANTY OF TITLE.

Contractor warrants to CITY and its successors and assigns that the title to the materials, supplies or equipment covered by the Contract, when delivered to CITY or to its successors or assigns, is free from all liens and encumbrances.

E. WARRANTY OF FITNESS.

Contractor warrants that all materials, supplies and products furnished meet the requirements and conditions of the Contract Documents and are fit for the purpose intended.

F. WARRANTY OF MERCHANTABILITY.

Contractor warrants that the goods are merchantable in accordance California Commercial Code Section 2314. In accepting this and other warranties and the materials or supplies to be manufactured or assembled pursuant to the Contract Documents, CITY does not waive any warranty, either express or implied, in California Commercial Code Sections 2312 through 2315, inclusive, or any liability of the manufacturer as determined by any decision of a court of the State of California or of the United States.

SECTION GC-7 LEGAL RELATIONS AND RESPONSIBILITY

A. GENERAL

In connection with laws to be observed and responsibility of the Contractor, attention is directed to Section 7 ("Legal Relations and Responsibility") of the Caltrans Standard Specifications and to the laws applicable to this contract and to the Work that are referenced therein. Full compensation for conforming to the provisions of Section 7-1.08 ("Public Convenience") and Section 7-1.09("Public Safety") shall be deemed included in the prices paid for the various contract items of work, and no separate payment will be made therefor.

B. LAWS TO BE OBSERVED

The Contractor shall keep itself fully informed of all existing and future state and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

The Contractor shall at all times observe and comply with, and shall cause all his agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders, and decrees applicable to this contract or to the Work.

The Contractor shall protect and indemnify CITY, and all officers and employees thereof connected with the work, against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by City's representative or its employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any such law, ordinance, regulation, order, or decree, the Contractor shall forthwith report the same to the Director of Public Works in writing.

C. LABOR

In connection with laws to be observed and responsibility of the Contractor, attention is directed to Section 7 ("Legal Relations and Responsibility") of the Standard Specifications and to the laws applicable to this contract and to the Work that are referenced therein. Attention is particularly directed to the subsections pertaining to Hours of Labor, Alien

Labor, Labor Discrimination, Prevailing Wages, Apprentices, and the Fair Labor Standards Act.

This is a public works contract within the meaning of Part 7 of Division 2 of the California Labor Code (Sections 1720 et seq.), and the contractor and any subcontractor under him shall pay not less than the specified prevailing wage rates to all workers employed. Pursuant to the provisions of Section 1773 of the California Labor Code, the CITY has obtained the general prevailing rate of wages and employer payments for health and welfare, vacation, pension and similar purposes in the City of Saratoga, a copy of which is on file 13777 Fruitvale Avenue, Saratoga, California at the office of the Public Works Director, and shall be made available for viewing to any interested party upon request.

Attention is directed to the provisions in of the Labor Code Sections 1777.5 and 1777.6 concerning the employment of apprentices by the Contractor or any subcontractor under the Contractor. It shall be the responsibility of the Contractor to comply with and to insure that all subcontractors comply with the requirements of said sections in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Pursuant to the requirements of Division 4 of the Labor Code, the Contractor will be required to secure the payment of worker’s compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code.

Prior to commencement of work, the Contractor shall sign and file with the Director of Public Works a certification in the following form:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker’s compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract."

Full compensation for conforming to the requirements of this section shall be deemed included in the prices paid for the various contract items of work, and no separate payment will be made therefor.

All penalties set forth in Section 7 ("Legal Relations and Responsibilities") of the Caltrans Standard Specifications shall be payable to the City of Saratoga.

D. CONTRACTOR'S LICENSING LAWS

Attention is directed to the California Business and Professions Code Sections 7000 et seq. concerning the licensing of contractors. All bidders and subcontractors shall be licensed in accordance with the laws of this State and any bidder or subcontractor not so licensed is subject to penalties imposed by such laws.

E. CHILD AND FAMILY SUPPORT OBLIGATIONS

The contractor shall fully comply with all state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

F. DOMESTIC MATERIALS

Only such unmanufactured materials as have been produced in the United States, and only such manufactured materials as have been manufactured in the United States, substantially all from materials produced in the United States, shall be used in the performance of the contract, in accordance with the provisions of California Government Code Sections 4300 et seq.

Pursuant to California Government Code Section 4304, any person who fails to comply with this section of the contract shall not be awarded any contract for the construction, alteration or repair of public works or for the purchase of materials for public use for a period of three (3) years from the date of the violation.

G. PAYMENT OF TAXES

The contract prices paid for the Work shall include full compensation for all taxes the Contractor is required to pay, whether imposed by federal, state or local government, including, without being limited to, federal excise tax. Taxes shall be deemed included in the prices paid for the various contract items of work, and no separate payment will be made therefor.

H. PERMITS AND LICENSES

The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Any construction permits required by CITY for performing any work on this project will be issued by CITY at no charge to the Contractor. The Contractor and all subcontractors shall pay all City business license fees.

I. PATENTS

The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the Work. In addition to the obligations set forth in paragraph N ("Responsibility for Damage") below, the Contractor shall indemnify, defend, and hold CITY, its elected and appointed officials, and its employees harmless against any claim arising from Contractor’s work under this Agreement in which a violation of intellectual property rights, including but not limited to copyright or patent infringement, is alleged.

J. SAFETY

The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property on or near the Project or

adjacent to the work site during the performance of the Work. This requirement shall apply continuously and not be limited to normal working hours.

The duty of the Director of Public Works to conduct review of the Work does not include review or approval of the adequacy of the Contractor's safety program, safety supervisor, or any safety measures taken in, on, or near the job site.

Safety provisions shall conform to Cal-OSHA Safety Orders, and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from the obligation to comply with such provisions or from the penalties set forth therein.

The Contractor shall develop and maintain for the duration of this contract a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint a qualified employee to supervise and enforce compliance with the safety program. Information regarding the safety program shall be posted at the project site.

K. PUBLIC CONVENIENCE AND SAFETY

Contractor shall submit a traffic control plan to the Director of Public Works for approval prior to start of work.

The Contractor's attention is directed to Section 7-1.08 ("Public Convenience") and 7-1.09 ("Public Safety") of the Caltrans Standard Specifications. Full compensation for complying with the provisions of such subsections shall be deemed included in the prices paid for the various contract items of work, and no separate payment will be made therefor.

All signs required by the Director of Public Works shall be furnished and installed by the Contractor. The cost of furnishing, installing, maintaining, and removing such signs shall be deemed included in the prices paid for the various contract items of work, and no separate payment will be made therefor.

The Contractor shall notify the City of Saratoga Fire and Police Departments in writing at least 2 working days before closing any street or otherwise hindering access by emergency vehicles to any area.

L. FLAGGING COSTS

The costs of furnishing all flagmen and guards under the provisions of this section and Sections 7-1.08 ("Public Convenience"), 7-1.09 ("Public Safety"), and 12-2.02 ("Flagging Costs") of the Caltrans Standard Specifications will be borne by the Contractor and shall be considered included in the prices paid for the various contract items of work; no separate payment will be made therefor.

M. PRESERVATION OF PROPERTY

Attention is directed to Section 7-1.12 ("Indemnification and Insurance") and to Section 8-1.10, ("Utility and Non-Highway Facilities") of the Caltrans Standard Specifications. Contractor shall exercise due care to avoid injury to existing highway improvements or facilities, utility facilities, adjacent property, and roadside trees and shrubbery that are not to be removed.

Roadside trees and shrubbery; pole lines, fences; mailboxes; signs; markers and monuments; buildings and structures; conduits; pipe lines under or above ground ; sewer and water lines ; all highway facilities ; and any other improvements or facilities within or adjacent to the work, other than those to be removed in accordance with the plans, shall be protected from injury or damage. If ordered by the Director of Public Works, the Contractor shall provide and install suitable safeguards, approved by the Director of Public Works, to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operation, they 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 contract, if any such objects are a part of the work being performed under the contract. The Director of Public Works may make or cause to be made such temporary repairs as are necessary to restore to service any damaged highway or other facility. The cost of such repairs shall be borne by the Contractor and may be deducted from any monies due or to become due to the Contractor under the contract.

It shall be the Contractor's responsibility to ascertain the existence of any underground improvements or facilities that may be subject to damage in the course of performing the Work. A minimum of forty-eight (48) hours, or two working days, prior to beginning of construction, the Contractor shall notify Underground Services Alert (USA), telephone 1-800-642-2444, to have existing facilities marked in the field.

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 shall be deemed included in the prices paid for the various contract items of work and no separate payment will be made therefor.

N. PRE CONSTRUCTION SURVEY

The Contractor shall, if required by CITY, provide pre-construction color photographs, 35mm or larger film size, of the work site including surrounding areas as stated above. Each photograph shall be marked to indicate the date, name of work, and the location where the photograph was taken. Photographs shall be taken at intervals as directed by the Director of Public Works or his designee.

Prints shall be submitted in a three-ring photo album binder with clear plastic-covered fillers, four photos each side, grouped according to street, lateral, or line, and in sequence. Each group of prints shall be identified by a label that projects beyond the edge of filler and is easily recognized. Negatives may be placed within the filler sleeves or submitted separately.

Approximately twenty-five (25) photographs shall be submitted to the Director of Public Works for the Director of Public Work's approval. This approval shall be obtained before proceeding with the remaining photographs. Video may also be required if specified in the technical specifications.

The photographs and/or video tapes shall be submitted to the Director of Public Works either prior to or with the first progress payment request. The progress payment request will not be considered for payment until the Director of Public Works accepts this deliverable.

Full compensation for furnishing all pre-construction survey photos and/or videos shall be deemed included in the prices paid for the various contract items of work and no separate payment will be made therefor.

O. RESPONSIBILITY FOR DAMAGE

The City of Saratoga and all officers and employees thereof connected with the Work, including but not limited to the City Council, shall not be answerable or accountable in any manner for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person; or for damage to property from any cause except losses due to sole or active negligence of the City of Saratoga's officers or employees.

All loss or damage arising from any unforeseen obstruction or difficulties, either natural or artificial, which may be encountered in the execution of the work, or the furnishing of the supplies, materials, or equipment, or from any action of the elements prior to final written acceptance of the work, or of the supplies, materials or equipment, or from any act or omission not authorized by the Contract Documents on the part of the Contractor or any agent or person employed by it, shall be sustained and borne solely by the Contractor.

Notwithstanding any other provision of the Contract Documents, Contractor shall, to the fullest extent allowed by law, defend, indemnify and hold harmless the City of Saratoga, its elected and appointed officials, and its employees from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees and other defense costs, resulting from injury to or death sustained by any person (including Contractor's employees), or damage to property of any kind, or any other injury or damage whatsoever arising out of or in any way connected with the performance of the Contract, including any of the same resulting from the alleged or actual negligent acts or omissions of City's officers, agents, contractors or employees; except that said indemnity shall not be applicable to injury, death or damage to property arising from the sole or active negligence or willful misconduct of CITY, its officers, agents, or employees who are directly responsible to CITY. This indemnification shall extend to claims asserted after termination of this Contract for whatever reason.

Without limiting the generality of the foregoing indemnity, such indemnity obligation expressly extends to and includes any and all claims, demands, losses, damages, costs, expenses, fines, penalties, judgments or liability occasioned as a result of:

a) Damages to adjacent property caused by the conduct of the Work;
b) The violation by the Contractor, the Contractor's agents, employees, or independent contractors or subcontractors, of any provisions of federal, state or local law, including applicable administrative regulations such as, without limitation, discharge permit requirements;
c) Injury to or death of any person, or any property damage to property owned by any person while on or about the site or as a result of the Work, whether such persons are on or about the site by right or not, whenever the Work is alleged to have been a contributing cause in any degree whatsoever.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the contract as shall be considered necessary by CITY, may be retained by CITY until disposition has been made of such suits or claims for damage.

P. COOPERATION

Should construction be under way by CITY, other agencies or other contractors within or adjacent to the limits of the Work, or should work of any other nature be under way by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be avoided.

CITY reserves the right to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

Q. CONTRACTOR'S RESPONSIBILITY FOR WORK AND MATERIALS

Until the final acceptance of the contract, the Contractor shall have the charge and care of the Work and of the materials to be used therein, including materials for which partial payment has been received. CITY shall not be held responsible for the care or protection of any material or parts of the Work prior to final acceptance, except as expressly provided in the Special Conditions.

R. ACCEPTANCE OF CONTRACT

Upon completion of the Project CITY will conduct such tests as may be required to determine to its own satisfaction that the Project is in conformance with the terms, conditions and requirements of the Contract Documents. After final inspection, CITY shall determine whether or not to accept the Project and will notify the Contractor in writing within fifteen (15) days thereof. In the event of non-acceptance, CITY shall inform the Contractor in writing of the deficiencies found.

When the Director of Public Works has made the final inspection and determines that the contract has been completed in all respects in accordance with the plans and

specifications, the Director of Public Works may recommend that the Council formally accept the contract. Immediately upon and after such acceptance by the Council, the Contractor will not be required to perform any further work, except completion or correction of such items as the Director of Public Works may direct, and the Contractor shall be relieved of his responsibility for injury to persons or property or damage to the Work that occurs after the formal acceptance by the Council.

The formal acceptance by the Council does not relieve the Contractor of the one (1) year maintenance responsibility.

S. PERSONAL LIABILITY

Neither the Council, nor any other officer or authorized employee of the City of Saratoga, nor any officer or employee of any state, county, or local agency shall be personally responsible for any liability arising under or by virtue of the contract.

T. INSURANCE

Within ten (10) days after award of the Contract, the Contractor shall promptly obtain, at its own expense, all the insurance described in this section, and submit coverage verification for review and approval by CITY. This insurance shall be in addition to any other form of insurance or bonds required under the terms of the contract.

The Notice to Proceed with the Work will not be issued, and the Contractor shall not commence work, until such insurance has been approved by CITY. Such insurance shall remain in full force and effect at all times during the prosecution of the Work and until the final completion and acceptance thereof. In addition, the Commercial General Liability Insurance shall be maintained for a minimum of five (5) years after final completion and acceptance of the Work. The Notice to Proceed does not relieve the Contractor of the duty to obtain such insurance as required herein.

The Contractor shall not allow any subcontractors to commence work until all insurance required of the subcontractor has been obtained and verified by the Contractor and submitted to CITY. Subcontractors shall furnish original certificates and endorsements as verification of insurance coverage. The liability insurance limits specified herein shall apply to all subcontractors listed in Contractor’s bid. The Contractor shall designate appropriate insurance limits for all other subcontractors.

Companies writing the insurance under this article shall be authorized to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII.

Contractor shall include all costs for all insurance in its bid.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from its operations under this Contract. Coverage required hereunder shall operate as Primary Insurance.

The Contractor shall procure, pay for, and maintain throughout the duration of this Contract the following insurance coverage:

Commercial General and Automobile Liability Insurance - This insurance shall protect the Contractor from claims for bodily injury and property damage which may arise because of the nature of the work or from operations under this Contract. The coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 0001), ISO Form G0009 11 88 Owners and Contractors Protective Liability Coverage – Coverage for Operations of Designated Contractor) and Insurance Services Office Form Number CA 0001 covering Automobile Liability, code 1 (any auto).

Claims-made policies will not be accepted.

a. Additional Insureds – The Commercial General Liability ("CGL") policy of insurance shall be endorsed to name as additional insureds the City of Saratoga, all of its elected and appointed officials, directors, officers, employees, agents and servants, using ISO Form CG201185. This policy shall provide coverage to each of the additional insureds with respect to the Work. Both bodily injury and property damage insurance must be on an occurrence basis. The policy shall be endorsed to provide primary coverage to the full limit of liability stated in the declarations. If the additional insureds have any other insurance or self-insurance against the loss covered by this policy, that other insurance shall be excess insurance and not contribute with contractor's policy.

b. Amount of Coverage - The bodily injury and property damage liability of the CGL insurance shall provide coverage in the following limits of liability: $1,000,000 per occurrence with an annual general aggregate limit of not less than $2,000,000, and $2,000,000 products and completed operations aggregate, combined single limit. The Automobile Liability insurance policy shall provide minimum limits of $1,000,000 per accident for bodily injury and property damage.

c. Subcontractors - The CGL insurance shall not require the Contractor to have its subcontractors named as insureds in the Contractor's policy, but the insurance shall protect the Contractor from contingent liability which may arise from operations of its subcontractors.

d. Included Coverage - The CGL insurance shall also include all of the following coverages:
Premises – Operations;
Owner's/Independent Contractors and Contractor's Protective;
Products - Completed Operations;
Personal Injury - (False Arrest, Libel, Wrongful Eviction, etc.);
Blanket Contractual Liability, including the indemnity agreement in this contract;
Separation of Insureds / Cross-Liability Provisions;
Duty to Defend All Insureds;

Deletion of any limitation on Coverage for Bodily Injury or Property Damage Arising Out of Subsidence or Soil or Earth Movement;
A provision that the annual general aggregate and the products and completed operations annual aggregate shall apply separately to the Project;
Pollution Legal Liability Endorsement;
XCU - Explosion, Collapse, Underground Damage. (XCU may be deleted with City's prior written approval when not applicable to operations performed by the Contractor or its sub-contractors.)

e. Umbrella Policy or Follow-Form Excess Liability Policy - At the option of the Contractor, primary limits may be less than required, with an Umbrella Policy or Follow-Form Excess Liability Policy providing the additional limits needed. This form of insurance will be acceptable provided that the Primary and Umbrella/Excess Policies both provide the insurance coverages herein required, including all additional insured requirements. The umbrella/excess insurance shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying CGL insurance.

f. The certificate of insurance shall guaranty that the policy will not be amended, altered, modified, or canceled without at least thirty (30) days notice mailed by registered mail to the Administrative Services Director, City of Saratoga; 13777 Fruitvale Ave.; Saratoga, California 95070.

g. In accordance with Insurance Code Section 11580.04, coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where any agreement to indemnify the additional insured would be invalid under Civil Code Section 2782(b).

Workers' Compensation Insurance – California Labor Code Sections 3700 et seq. require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code. The Contractor shall comply and shall ensure that all subcontractors comply with such provisions. In addition, the Contractor shall have and maintain Employers' Liability insurance with limits of $1,000,000 per accident for bodily injury or disease before commencing the performance of the Work.

Before the Notice to Proceed is issued, the Contractor shall submit written evidence that the Contractor has obtained for the period of the Contract full Workers' Compensation Insurance coverage for all persons whom it employs or may employ in carrying out the Work. This insurance shall be in accordance with the requirements of the most current and applicable State Workers' Compensation Insurance Laws.

Builder's Risk Insurance - The Contractor shall purchase and maintain "All Risk or Special Form" Builder's Risk Insurance on a replacement cost basis in an amount equal to the full replacement cost of the Work on a completed value basis, including coverage for 'soft costs' such as design, engineering, and construction management fees. The builder's risk insurance shall cover all risks of loss, including but not limited to fire; lightning; windstorm;

hail, explosion; riot; riot attending a strike; civil commotion; smoke damage; damage by aircraft or vehicles; vandalism and malicious mischief; theft; collapse; flood; and earthquake. This insurance shall name the City of Saratoga, its elected and appointed officials, employees, agents and servants and the Contractor as insureds, as their interests may appear, and shall include coverage including, but not limited to all damages or loss to the Work; to appurtenances; to materials and equipment to be used on the Project while the same are in transit or stored on or off the project site; and/or to construction plant and temporary structures. This insurance is required only if listed as a separate bid item in the bid schedule.

Coverage for acts of God, as defined in Public Contract Code Section 7105, in excess of five percent of the Contract amount is subject to separate coverage and is required only if listed as a separate bid item in the bid schedule.

Builder's Risk Insurance policies shall contain the following provisions:

(1) CITY shall be named as loss payee.

(2) The insurer shall waive all rights of subrogation against CITY.

Builder's Risk Insurance may have a deductible clause not to exceed the following limits:

(1) If, pursuant to Public Contract Code Section 7105, CITY requires coverage for any damage to the work caused by an act of God, and has set forth the amount of the work to be covered and the insurance premium for such coverage as a separate bid item, the deductible for such coverage shall not exceed five percent (5%) of the value of the Work at risk at the time of the loss.

(2) All other perils: $5,000.

The Contractor shall be responsible for paying any and all deductible costs.

The policy shall provide CITY the right to occupy the premises without termination of the policy until acceptance of the project.

Proof of Coverage - Before the Notice to Proceed is issued, the Contractor shall furnish CITY with certificate(s) evidencing issuance of all required insurance and copies of the policy declaration or information page(s) and endorsements. The certificate(s) and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on amended ACORD forms and ISO endorsement forms or equivalent endorsement forms acceptable to CITY. The certificate(s), policy declaration or information page(s), and endorsements are to be received and approved by CITY before work commences. Endorsements are not required for Workers Compensation or Builder's Risk Insurances. Such certificates of insurance shall provide that the insurance policy shall not be cancelable, nonrenewable, or otherwise be subject to material modification, except with thirty (30) days' prior written notice to CITY.

Contractor shall also provide certificate(s) evidencing renewals of all insurance required herein, at least ten (10) days prior to the expiration date of any such insurance.

Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY and other additional insureds or the Contractor shall procure a bond guaranteeing payment of losses, related investigations, claim administration, and defense expenses.

If the Contractor fails to comply strictly with all requirements of this section or if CITY receives any notice that any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provisions of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

U. ABANDONMENT OR DELAY OF WORK

CITY reserves the right to terminate the Contractor's control of the Work in accordance with Section 8-1.08 ("Termination of Control") of the Caltrans Standard Specifications.

CITY reserves the right to terminate the contract in accordance with Section 8-1.11 ("Termination of Contract") of the Caltrans Standard Specifications.

CITY also reserves the right to terminate the Contract for any of the following reasons:

- The Contractor is insolvent or has made a general assignment for the benefit of creditors, or a receiver has been appointed on account of the insolvency of the Contractor.
- The Contractor or any of its subcontractors violate any of the material provisions of the Agreement or fail to perform the Work within the time specified in the Contract Documents.
- The Contractor or any of its subcontractors should fail to make prompt payment to subcontractors or to suppliers for material or for labor.
- The Contractor or a subcontractor persistently disregards laws, ordinances, or the instructions of CITY or the Director of Public Works.
- The Contractor fails to abide by a proper stop work notice or fails to correct rejected work or materials.
- The Contractor fails to provide and keep in full force and effect all required insurance or fails to cause all subcontractors to so comply.
- The Contractor fails to supply a sufficient number of properly skilled workers or proper materials, or fails to diligently prosecute the Work.
- The Contractor commits any substantial violation of the Contract that constitutes a material breach of the Contract.

CITY may, without prejudice to any other right or remedy, give written notice to the Contractor of its intention to terminate the contract.

If, within seven (7) days of the delivery of such notice, the Contractor does not cease such violation or otherwise make satisfactory arrangements for a correction thereof, which arrangements are set forth in a written agreement signed by the Contractor and CITY, the Contractor's right to complete the Work shall cease and terminate.

If CITY terminates the Contractor's control for failure to correct the violation, it shall immediately give written notice of termination to the Contractor.

If CITY takes over the Work, it may prosecute the same to completion by contract or by any other method it deems advisable, for the account and at the expense of the Contractor. The Contractor shall be liable to CITY for any excess costs, including management, supervision, and design support, occasioned thereby. In such event, CITY may, without liability, take possession of and utilize in completing the Work, the Contractor's materials and equipment to be incorporated into the Work, whether stored at the project site or elsewhere. Whenever the Contractor's right to proceed is terminated, the Contractor shall not be entitled to receive any further payment until the Work is finished.

If CITY terminates the Contract for cause, CITY may retain out of any funds due or to become due the Contractor the amount of the cost of completing the Work and any expense incidental to reletting the contract or performing the Work. CITY may also hold the Contractor and the Contractor's sureties responsible for such cost and expense, and for any damages resulting from the abandonment or failure. The Contractor shall not receive any further payment until the Work is complete.

V. ASSIGNMENT OF ANTI-TRUST CLAIMS

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

W. <u>CONTRACTOR'S BOOKS AND RECORDS.</u>

A. Contractor and its subcontractors shall establish and maintain records pertaining to this contract. Contractor's and subcontractors' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this contract, including properly executed payrolls, time records, invoices and vouchers.

B. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor to this Agreement.

C. Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

D. Any records, data or documents required to be maintained pursuant to this Agreement shall be made available for inspection, copying or audit, at any time during regular business hours, upon written request by CITY or a designated representative for the purpose of auditing and verifying statements, performance, invoices, or bills submitted by Contractor pursuant to this contract and shall provide such assistance as may be reasonably required in the course of such inspection. Copies of such documents shall be provided to CITY for inspection at City's facility when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in the Agreement.

E. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, CITY may, by written request, require that custody of the records be given to CITY and that the records and documents be maintained at City's facility. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

F. Pursuant to California Government Code Section 8546.7, the parties to this Contract shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the contract. The examination and audit shall be confined to those matters connected with the performance of this contract including, but not limited to, the cost of administering the contract.

SECTION GC-8 PROSECUTION AND PROGRESS

A. GENERAL

The prosecution and progress of the work shall conform to Section 8 of the Caltrans Standard Specifications and the Special Conditions.

B. SUBLETTING AND ASSIGNMENT

Attention is directed to Section 8-1.01 ("Subcontracting") of the Caltrans Standard Specifications which provides that the Contractor shall give personal attention to the performance of the Contract and shall keep the Work under its control.

No subcontractors will be recognized as such, and all persons engaged in the work of construction will be deemed employees of the Contractor. The Contractor will be held responsible for all subcontractors' work, which shall be subject to the provisions of the Contract and specifications.

When a portion of the work that has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to CITY, the subcontractor shall be removed immediately on the requisition of CITY and shall not again be employed on the work.

Attention is directed to Section 8-1.02 ("Assignment") of the Standard Specifications. The performance of the Contract may not be assigned except upon written consent of CITY.

C. COMMENCEMENT OF WORK, PROGRESS, AND TIME FOR COMPLETION

The Contractor shall begin work within ten (10) working days after the date specified on the Notice to Proceed and shall diligently prosecute the same to completion within the time set forth in these Contract Documents.

D. HOURS OF WORK, HOLIDAYS, AND OVERTIME.

The Contractor shall perform all work during the working hours of 7:00 a.m. to 3:30 p.m., Monday through Friday (unless otherwise noted below). If the Contractor wishes to work during any other hours or on weekends, the Contractor must obtain written permission from CITY. The request must be received at least two (2) working days in advance of any work.

No work will be allowed on CITY holidays except in an emergency. A listing of CITY holidays is available from the City Clerk's Office 13777 Fruitvale Avenue, Saratoga, California, 95070.

If Contractor requests overtime work in which CITY will incur costs, CITY reserves the right to bill the Contractor at time and one half to cover the costs incurred.

E. TEMPORARY SUSPENSION OF WORK

In accordance with Section 8-1.05 ("Temporary Suspension of Work") in the Caltrans Standard Specifications, the Director of Public Works or his designee shall have the authority to suspend the Work wholly or in part, for such a period as the Director of Public Works may deem necessary.

F. TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within the time set forth in the Special Conditions. The Contractor's attention is directed to Section 8-1.07 ("Liquidated Damages") of the Caltrans Standard Specifications which shall apply here. In addition to the foregoing liquidated damages, CONTRACTOR shall pay any fines, penalties or other monetary sanctions levied by any authority having jurisdiction over the Project on account of delays in completing the WORK not solely attributable to CITY, including but not limited to violations of discharge permit limits or other discharge restrictions.

The parties to the Contract agree that in case all the work called for under the Contract is not completed before or upon the expiration of the time limit as set forth in this Agreement damage will be sustained by the CITY. The parties further agree that it is and will be impracticable to determine the actual damage that the CITY will sustain in the event of and by reason of such delay. It is therefore agreed that the Contractor will pay to the CITY the sum stated in the Notice Inviting Bids for each and every calendar day's delay beyond the time prescribed to complete the work. The Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the CITY may deduct the amount thereof from any monies due or that may become due the Contractor under the Agreement.

It is further agreed that if the work called for under the Contract is not finished and completed in all parts and requirements within the time specified, CITY shall have the right to extend the time for completion. CITY is under no obligation to extend the time for completion. If CITY decides to extend the time for completion, it shall further have the right to charge to the Contractor, his heirs, assigns or sureties, and to deduct from the final payment for the Work, all or any part, as it may deem proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract, and which accrue during the period of such extension, except that the cost of final surveys and preparation of final estimate shall not be included in such charges.

The Contractor will not be assessed liquidated damages or the cost of engineering and inspection during a delay in the completion of the Work caused by acts of God (as defined in Public Contract Code Section 7105) or of the public enemy; fire; floods; epidemics; quarantine restrictions; strikes; freight embargoes; unusually severe weather; and/or delays of subcontractors due to such causes, provided that the Contractor within fifteen (15) days from the beginning of any such delay notifies the Director of Public Works in writing of the causes of delay. The Director of Public Works shall ascertain the facts and the extent of delay, and the Director of Public Work’s findings thereon shall be final and conclusive.

Except for the additional compensation provided for in Section 8-1.09 ("Right of Way Delays") of the Caltrans Standard Specifications, and except as provided in Public Contract Code Section 7102, the Contractor shall have no claim for damage or compensation for any delay or hindrance.

It is the intention of the above provisions that the Contractor shall not be relieved of liability for liquidated damages or engineering and inspection charges for any period of delay in completion of the work in excess of that expressly provided for in Section 8-1.07 of the Caltrans Standard Specifications.

G. LIMITS OF WORK

The "limits of work" are shown on the plans (where applicable). The Contractor shall make its own arrangements, and pay all expenses for additional area required outside of the limits of work unless provided in the Special Conditions.

H. UTILITY FACILITIES

The Contractor shall protect from damage any utility facilities that are to remain in place, be installed, relocated, or otherwise rearranged.

If the Contractor while performing the Work discovers utility facilities not identified in the Contract Documents with reasonable accuracy, the Contractor shall immediately notify CITY and the utility owner. CITY shall arrange the removal, relocation, or protection of existing main or trunk line utility facilities located at the site of the Work but not identified in the Contract.

If the Contractor is required to locate, repair damage not due to the Contractor's failure to exercise reasonable care, and remove or relocate existing main or trunk line utility facilities, it shall be compensated under Section 9-1.03 ("Force Account Payment") of the Caltrans Standard Provisions, including payment for equipment on the Project necessarily idled during such work.

Contractor will not be entitled to damages or additional payment for delays caused solely by the failure of CITY, or the owner of the utility, to provide for removal or relocation of existing main or trunk line utility facilities not identified in the Contract Documents, except for equipment necessarily idled during such work.

Contractor will not be assessed liquidated damages for delay in completing the work solely attributable to the failure of CITY, or the owner of the utility, to provide for removal or relocation of existing main or trunk line utility facilities not indicated in the Contract Documents.

The right is reserved by CITY and by the owners of facilities or their authorized agents to enter the job for the purpose of making such changes as 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 such work and shall conduct its operations in such a manner as to avoid any delay or hindrance to the work being performed by such other forces.

Attention is directed to the possible existence of underground facilities not known to CITY, or in a location different from that which is shown on the plans or in the Special Conditions. The Contractor shall take all steps reasonably necessary to ascertain the exact location of all underground facilities prior to doing work that may damage such facilities or interfere with their service, including but not limited to calling USA to mark utilities. See GC-7(L).

I. COMPENSATION

Full compensation for conforming to the requirements of this section shall be deemed included in the prices paid for the various contract items of work, and no separate payment will be made therefor, except that this provision does not constitute a waiver, alteration, or limitation of the applicability of California Public Contracts Code Section 7102.

SECTION GC-9 MEASUREMENT AND PAYMENT

A. GENERAL

Attention is directed to Section 9 ("Measurement and Payment") of the Caltrans Standard Specifications which includes procedures for determination of payments, compensation for extra work by force account, partial payments, and final payments.

B. SCOPE OF PAYMENT

The Contractor shall accept the compensation provided in the Contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work contemplated and embraced under the contract; for loss or damage arising from the nature of the work, from the action of the elements, or from any unforeseen difficulties that may be encountered during the prosecution of the work until the acceptance by CITY; for all risks of every description connected with the prosecution of the work; for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in the contract; and for completing the work according to the plans and specifications.

In accordance with Public Contract Code Section 9203, for any public work contract with a total cost greater than five thousand dollars ($5,000) progress payments shall not be made in excess of ninety-five percent (95%) of actual Work completed plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, CITY, and unused.

In all contracts with subcontractors, the contractor shall comply with Public Contract Code Section 7200 regarding the percentage of retention proceeds withheld.

Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

Contractor shall submit certified payroll reports with each payment request.

CITY shall review each payment request and tender payment in accordance with Public Contract Code Section 20104.50.

No compensation will be made in any case for loss of anticipated profits. Contractor shall include with each estimate for payment a “Conditional Waiver and Waiver and Release Upon Progress Payment” form as prescribed in Civil Code Section 3262 signed by all subcontractors, material suppliers, equipment lessors and other parties covering labor, materials, equipment or services included in the pay estimate. Within thirty (30) days of the date CITY makes payment to the Contractor on an estimate for payment, the Contractor shall obtain and submit to Owner “Unconditional Waiver and Release Upon Progress Payment” in the form prescribed in Civil Code Section 3262 from the same subcontractors, suppliers, equipment lessors and others. These forms are included at the end of the General Conditions Section, following subsection GC-13.

C. EXTRA AND FORCE ACCOUNT WORK

Extra work as herein before defined, when ordered and accepted, shall be paid for under a written work order in accordance with the terms therein provided, and as provided in Section GC-4 (F) of the General Conditions. Payment for extra work will be made at the unit price or lump sum previously agreed upon in writing or by force account as provided in Section 9-1.03 ("Force Account Payment") of the Caltrans Standard Specifications.

D. STOP NOTICES

CITY, by and through appropriate City of Saratoga office or officers, may at its option and at any time retain out of any amounts due the Contractor, sums sufficient to cover claims stated in stop notices filed pursuant to Civil Code Sections 3179 et seq. and to provide for the cost of any litigation thereunder.

E. PAYMENT

Upon final approval and acceptance of the work by CITY, Contractor shall be paid all sums of money in accordance with the terms and conditions as outlined in the Contractor's submittal of City's Bid Form.

No such estimate or payment shall be construed to be an acceptance of any defective work or improper materials.

F. SUBSTITUTION OF SECURITIES FOR WITHHELD AMOUNTS

Pursuant to Public Contract Code Section 22300, the Contractor may substitute securities for any monies retained to ensure performance. At the request and expense of the Contractor, securities equivalent to the amount retained shall be deposited with CITY, or with a state or federally chartered bank in California as the escrow agent, and CITY shall then pay such monies to the Contractor. Alternatively, the Contractor may request that CITY make payment directly to the escrow holder, to be invested at the Contractor's expense and direction.

Eligible securities shall include those listed in Government Code Section 16430, or bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and CITY. The Contractor shall be the beneficial owner of any securities substituted for monies, and shall receive any interest on such securities.

Any escrow agreement shall be substantially similar in form to the form of escrow agreement included in Public Contract Code Section 22300(f).

G. FINALIZING PROGRESS PAYMENT

CITY shall, after the completion of all Work required under the Contract, make a final estimate of the amount of work done, and the value of such work, and CITY shall pay ninety-five percent (95%) of the entire sum so found to be due after deducting therefrom all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the Contract Documents.

H. FINAL PAYMENT

The 5% retained by CITY after each progress payment is made shall be due and payable to the Contractor after the expiration of thirty-five (35) days from the date of recordation of the Notice of Completion following acceptance of the Work by CITY. It is expressly understood that said final payment or a portion thereof may not be paid to the Contractor if any stop notices are properly filed.

No certificate given or payments made under the Contract, except the final certificate or final payment, shall be conclusive evidence of the performance of the Contract, either wholly or in part, against any claim of CITY, and no payments shall be construed to be acceptance of any defective work or improper materials.

Payment by CITY of the final undisputed amount due under the Contract, including payment based upon adjustments for any work done in accordance with any alterations of the Contract Documents, shall be contingent upon the Contractor furnishing CITY with a release of all claims against CITY arising by virtue of the contract related to those amounts. In the event the Contractor has any such claims, such claims in stated amounts may be specifically excluded by the Contractor from the release, in which case the payment by CITY may be of only undisputed amounts.

I. REPAIR OR RECONSTRUCTION OF DEFECTIVE WORK

If, within a period of one (1) year after final acceptance of the work performed under this contract, any structure furnished, installed, constructed, and/or caused to be installed or constructed by the Contractor, or any of the work done under this contract, fails to fulfill any of the requirements of the Contract Documents, the Contractor shall without delay and without any cost to CITY, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Work. Should the Contractor fail to act promptly or in accordance with this requirement, or should the situation require that repairs or replacements be made before the Contractor can be notified, CITY may, at its option, make the necessary repairs or replacements or perform the necessary work and the Contractor shall pay to CITY the actual cost of such repairs plus 25%.

J. FISCAL AGENT PAYMENT

With certain exceptions, all monies for the progress payments and final payment under the contract will be sent to the Contractor. CITY will send, by first-class mail, warrants payable to the Contractor to the mailing address specified on the separate payment request certified and approved by CITY.

K. CLAIMS PROCEDURES

Attention is directed to the provisions in Section 9 ("Measurement and Payment") of the Caltrans Standard Specifications regarding notice of claims or potential claims, which shall apply to any and all claims, including requests for additional compensation and/or an adjustment in the time for performing the Work. Claims shall be resolved by arbitration as described in Section 9-1.10 of the Caltrans Standard Specifications.

SECTION GC-10 DUST CONTROL

The Contractor shall provide suitable means for dust control by applying either water or dust palliative for operations within the limits of the Work. Dust control work shall be performed in such manner to prevent dust at all times, including during non-working hours. Full compensation for providing dust control shall be deemed included in the prices paid for the various contract items of work, and no separate payment will be made therefor.

If dust control is not performed in a manner satisfactory to the Director of Public Works, then either (i) work shall be suspended until the dust control measures are sufficient or (ii) dust control may be performed by CITY, or its designee, and CITY will deduct all costs it incurs performing dust control plus twenty-five percent (25%) from amounts due or that become due to Contractor.

SECTION GC-11 RESERVED

SECTION GC-12 DIFFERING SITE CONDITIONS

The Contractor shall promptly, and before the following conditions are disturbed, notify CITY in writing of any:

a) Material that the Contractor believes may be hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;

b) Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or

c) Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

CITY shall promptly investigate the conditions. If it finds that such conditions do materially differ from conditions indicated in the Contract Documents or ordinarily encountered in work of this character, or do involve hazardous waste, and cause an increase or decrease in the Contractor's costs or the time needed to perform any part of the Work, CITY shall issue a change order under the provisions described in the Contract Documents. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in the Contract Documents. In the event a dispute arises between CITY and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's costs or the time needed to perform any part of the Work, Contractor shall not be excused from completing the Work as provided in the Contract Documents. The Contractor shall proceed with all work to be performed under the Contract Documents. The Contractor shall retain any and all rights provided either by the Contract Documents or by law that pertain to the resolution of disputes and protests.

SECTION GC-13 ARCHAEOLOGICAL EXAMINATION

If archaeological materials are uncovered during grading, trenching or other excavation, earthwork within 100 feet of these materials shall be stopped until a professional archaeologist certified by the Society of California Archaeology (SCA) and/or by the Society of Professional Archaeology (SOPA) has had an opportunity to evaluate the significance of the find and to suggest appropriate mitigation measures as necessary.

In the event the work of archaeological examination and related work delays the Contractor's work, he shall be entitled to an extension of time to complete the work equal to the number of working days the Work is thus delayed. However, the Contractor shall have no claim for compensation as a consequence of delay of the Work for the period of time required by CITY for such archaeological examination and related work.

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned of a check from _____ (Maker of Check) in the sum of $_____ (Amount of Check) payable to _____ (Payee or Payees of Check) and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of CITY located at _____ (Job Description) to the following extent. This release covers a progress payment for labor, services, equipment or material furnished to _____ (Your Customer) through _____ (Date) only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order that has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic’s lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

DATED: _____, 20

By _____

Its _____

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Upon receipt by the undersigned of a check from _____ in the sum of $_____ payable to _____.
and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of the City of Saratoga located at _____ (Job Description). This release covers the final payment to the undersigned for all labor, services, equipment or material furnished on the job, except for disputed claims for additional work in the amount of $ _____. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

DATED: _____

By _____

Its _____

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

The undersigned has been paid and has received a progress payment in the sum of $ _____ for labor, services, equipment or material furnished to _____ (Your Customer) on the job of City of Saratoga located at _____ (Job Description) and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to _____ (Your Customer) through _____ (Date) only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order that has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

DATED: _____

By _____

Its _____

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

The undersigned has been paid in full for all labor, services, equipment or material furnished to: _____ (Your Customer) on the job of the City of Saratoga located at _____ (Job Description) and does hereby waive and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of $_____.

DATED: _____

By _____

Its _____

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM

SPECIAL CONDITIONS

1. SPECIAL QUALIFICATIONS

Contractor is advised that in addition to the standard qualifications, the following additional specialty qualifications apply to this Contract:

2. SPECIALTY WARRANTIES

In addition to the standard Warranties for overall workmanship and landscaping work identified in Section 6 of the Contract for Construction, the following specialty warranties are required:

The contractor shall be responsible for damage to existing roof including roof leaks at the roof penetration points associated with installation of the solar panels and walkway support systems. All roof repairs associated with the Project within 5 years of the issuance of Notice of Completion shall be responsibility of the Contractor including labor, workmanship and parts.

3. AWARD

The award of the contract, if it is to be awarded, will be to the lowest responsive responsible bidder whose proposal complies with all the requirements of the bid documents. The low bid will be determined based upon:

The highest annual kilowatt hour production of the system for the fixed cost of $220,000.

The bidders shall use CSI (Standard Solar Initiative) Standard PV calculator available at http://www.csi-epbb.com/default.aspx to calculate the production.

4. ORDER of WORK

The Contractor shall provide for the orderly progression of work. The Contractor is advised of the following constraints or City requirements with respect to order of work:

The Library will continue to operate and be open to public during its regular hours of operation. Contractor shall order work to avoid disruption to existing activities as much as possible. The contractor shall protect all areas, outdoor and indoor, to prevent injuries and damage to property. The Contractor shall notify the City and the Library at least 48 hour in advance if any areas need to be closed to public. The Contractor shall be responsible for closing the restricted area in such manner that the restricted area is clearly marked and is not accessible to public.

5. LIMITS of WORK

Contractor is advised that the City will provide off-site areas for Contractor activities as follows: none.

6. TESTING AND INSPECTION

Contractor is advised that the following special testing/inspection requirements apply:

All inspections and testing as required by PG&E.
All inspections and testing as required by the City of Saratoga.
Library roof inspection as required by the Library Management.

7. SOUND CONTROL

Contractor shall implement the following sound control measures: limit construction noise as much as reasonably possible.

8. PERMITS AND LICENSES

The Contractor shall ensure all necessary permits and approvals for the Work have been obtained. City Building Permit (e.g. Electrical Permit) will be issued prior to work commencement. No fee will be charge for the City Building Permits.

In addition, the Contractor shall obtain all necessary permits, inspections and approvals from PG&E.

Contractor shall comply with all permit conditions in performing the Work.

Copies of the permits and permit conditions not issued by the City shall be provided to the City.

9. PUBLIC CONVENIENCE & SAFETY

Contractor shall not perform work on the following streets or in the following areas during the periods defined below: n/a

10. HOURS of WORK

Contractor is advised that operations may be performed outside the normal hours of work only as follows: none.

11. MITIGATION MEASURES

As part of the environmental review process, the City of Saratoga has agreed to the following mitigation measures, which measures are part of the Work: n/a

12. ADDITIONAL CONDITIONS NAD NOTES

- Contractor shall submit shop drawings showing solar panel support racking system and maintenance walkway no later than five (5) days after

the date the City issues a Notice to Proceed. The shop drawings will show in detail the racking system, maintenance walkway including all connections to existing roof, new blocking, if required per Structural Drawings. The connection to the roof must be water-proof. The City will review the shop drawings and provide comments, if needed. The contractor shall revise the drawings to the satisfaction of the City.

- Contractor shall select the portions of roof where the solar panels will be installed. Contactor shall incorporate all requirements as shown on the structural drawings attached to this Contract.

- Contractor shall submit shop drawings for Inverter(s) outside the library including the enclosure to match existing library wall in the vicinity. Submit the material sample and paint sample to the City for approval. Observe PG&E Greenbook clearance to existing structures. Provide a concrete pad and mounting frame for the inverters.

- Contractor shall work with PG&E and to obtain the CSI rebate (EPBB or PBI to be determined), and to schedule and pass service connection and solar PV interconnection inspections. The Contractor shall complete all required documents for PG&E rebate and inspections. This includes all communication with PG&E to accomplish this task.

- Contractor shall submit installation and maintenance manuals for Modules, Inverters, Combiner Panel, AC Disconnect switch to City and all required samples, product data, certificates, operations and maintenance instructions, and guarantees no later than five (5) days after the date the City issues a Notice to Proceed.

- Contractor shall ensure all necessary permits and approvals for the Work have been obtained. City Building Permit (e.g. Electrical Permit) will be issued prior to work commencement. No fee will be charge for the City Building Permits.

- Existing obstructions on the roof. All existing vents, antennas and skylights will remain. Contractor shall install solar panels and maintenance walkway support system in such way that they will not interfere with existing objects on the roof.

- Contractor is responsible for safety of all workers and subcontractors complying with all applicable rules and regulations.

- Protect existing facilities and personal property.

- Contractor will remove from the project site all debris resulting from performance of the Work no less often than daily or keep it in the enclosed area. If Contractor fails to do so, City may, after twenty-four (24) hours' notice to Contractor, clean up the site and deduct the cost from the Contract Price.

- The Contractor shall be responsible for unloading, hoisting and otherwise handling its own materials, supplies and equipment.

- The Contractor is responsible for researching and complying with all local codes, agencies and jurisdictions that regulate and govern the Work.

- Contractor shall set up, identify, coordinate, provide safe access, and obtain all inspections for its work, as required by any authorized agency or applicable code, prior to covering up work.

13. MILESTONES and SCHEDULES

A. Construction Progress Schedule.

The Contractor shall prepare and submit the Contractor's Initial Construction Schedule within ten (10) calendar days after the issuance of the Notice to Proceed. The Initial Construction Schedule shall be in a form acceptable to the Engineer, and shall be produced using Microsoft Projects or other software acceptable to CITY. Contractor shall provide the Initial Schedule in electronic format acceptable to City.

Activity durations shall be the total number of actual days required to perform the work including consideration of weather impacts. Area codes shall distinguish construction activities related to individual buildings or areas within buildings (i.e. locker rooms) and site work.

Contractor staff preparing schedules shall be qualified and experienced in the scheduling method specified and capable of fulfilling the scheduling requirements of this section for the duration of the contract.

The Engineer will meet with the Contractor to review and comment on the Contractor's Initial Schedule within five (5) days of its receipt. The Contractor will finalize and re-submit the schedule within five (5) days of the review meeting. Upon favorable review by the Director of Public Works, the Initial Schedule will become the project Baseline Contract Schedule. The Baseline Schedule shall not be revised without written approval of the City. CITY shall have the right to withhold progress payments from the Contractor at its discretion if the Contractor fails to finalize and obtain approval for the Baseline Contract Schedule within the prescribed period.

Failure of the Contractor to incorporate all elements of work required for the performance of the contract or any inaccuracy in the Baseline Contract Schedule shall not excuse the Contractor from performing all work required for a completed project within the specified contract time period, notwithstanding CITY's Representatives favorable review of the Baseline Contract Schedule.

B. Monthly Interval Updates.

The Contractor shall submit an up dated Schedule of the work at least once each month. The schedule shall be submitted no later than five (5) working days from the Notice to Proceed issuance date and shall be submitted both on paper and on disc. Schedule updates are an essential part of each progress payment application. CITY will not process progress payment applications without an updated schedule in the specified format.

The monthly schedule updates shall include:

The Contractor's estimated percentage complete (progress) for each activity in progress.

Actual start/finish dates for activities.

Identification of errors, if any, from the previous updated schedule.

The Schedule Update Reports shall consist of:

A bar chart showing the previous month's work and a three (3) month projection of upcoming work. The data included on the bar chart shall consist of the activity number, activity description, early start and finish date, original duration, remaining duration, percent complete, and total float.

A CPM tabular report sorted by responsibility, early start date that includes activity number, activity description, original duration, remaining duration, early and late start dates, early and late finish dates, total float, percent complete, activity budget cost, and activity earned cost.

The Schedule Reports shall consist of:

Time scaled network logic diagram(s) reflecting the activities, the interrelationships and logic ties between activities, activity duration and float. The diagram(s) shall be organized by Area. Diagrams shall be no smaller than "D" size (24" x 36") and no larger than "E" size (36" x 48").

A CPM tabular report sorted by responsibility, early start date that includes Activity number, activity description, original duration, remaining duration,

early and late start dates, early and late finish dates, total float, percent complete, activity budget cost, and activity earned cost.

Contractor shall submit with each schedule update an updated electronic version.

C. Short Interval Schedule

Short Interval Schedules (SIS) shall be submitted to the Engineer at every weekly site meeting. The Interval shall be three weeks and shall include the past week, the week submitted and the week thereafter. The SIS may be prepared by hand. The SIS shall be based on the Contract Schedule and shall be in bar chart form. The SIS shall be in sufficient detail to evaluate the Contractor's performance in the preceding week and planned progress in upcoming weeks vis a vis the Contract Schedule and Updates thereof.

D. Float Time

Float or slack time is defined as the amount of time between the earliest start date and the latest start date or the earliest finish date and the latest finish date of a scheduled activity. Float or slack time is not for the exclusive use or benefit of either the Contractor or CITY. The Contractor acknowledges and agrees that actual delays affecting path of activities containing float will not have any effect upon the Contract completion date, provided that the actual delay does not exceed the float time associated with those activities.

E. Construction Schedule Revisions

If during the process of schedule updating it becomes apparent that the Construction Schedule no longer represents the actual prosecution and progress of the work, City may require the Contractor to submit a revised schedule at no additional cost to CITY. CITY shall have the right to withhold progress payments from the Contractor at its discretion, if the Contractor fails to submit a timely, detailed and workable schedule. Updating the construction schedule to reflect actual progress shall not be considered to be a revision of the Schedule.

If actual progress of the Work falls fourteen (14) days behind the most recent schedule update favorably reviewed by Engineer, Contractor shall prepare and submit a recovery schedule within five (5) working days of a written request to explain and display how Contractor intends to reschedule activities (including increasing working hours, shifts, days, or equipment) to regain compliance with the Construction Schedule.

F. Final CPM Schedule at Completion of Contract

At the completion of the contract and prior to the release of any bonds or final payment by CITY, the Contractor shall submit a final CPM schedule, showing the actual sequence and duration of activities.

G. Early Completion of Project

In the event the Contractor wishes to complete work earlier than the specified contract completion date, and CITY and Director of Public Works approve such earlier completion, the following conditions apply:

Approval by CITY of Contractor's proposed earlier completion date shall not change the contract completion date. Contractor shall not, under any circumstances, receive additional compensation from CITY for indirect, general, administrative or other forms of overhead costs, for the period between the time of earlier completion proposed by the Contractor and the official contract completion date.

H. Time Extension Requests

The monthly Updated construction schedules submitted by the Contractor shall not show a completion date later than the Contract Time, subject to any time extensions granted by CITY.

If the Contractor believes that it is entitled to an extension of the Contract Time due to a Change Order, delay/disruption or other event beyond its control, the Contractor, within ten (10) working days of the qualifying event(s), shall submit:

1. A Time Extension Request notification letter with a detailed narrative justifying the time extension requested;

2. Analysis of the delay impact, identifying all schedule activities that are affected by the subject occurrence;

3. A tabular report of the qualifying schedule the analysis is based on; and

4. A schedule analysis entitled "Time Extension Request Schedule" that incorporates the findings of the analysis of delay impact into the latest update of the project schedule.

Time extension request schedules shall be time scaled, utilizing a computer generated network analysis unless otherwise approved by the Director

of Public Works. The time extension request shall forecast the adjusted project completion date and impact to any intermediate milestones.

Contract time extensions shall be granted only to the extent the equitable time adjustments to the activity or activities affected by a change order or delay/disruption exceed the total float of a critical activity (or path) and extend the Contract Completion Date.

When Contractor does not submit a Time Extension Request within ten (10) working days, it is mutually agreed that the particular Change Order (including Proposed Change Order) or delay/disruption does not affect the construction schedule and hence no time extension is due to the Contractor.

CITY shall have no obligation to consider any time extension request if the Contractor does not comply with the requirements of the Contract Documents. CITY shall not be responsible or liable to the Contractor for any constructive acceleration due to failure of CITY to grant time extensions under the terms of this contract, should Contractor fail to comply with the time extension submission and justification requirements stated herein.

STATEMENT OF EXPERIENCE AND QUALIFICATIONS

CONTRACTOR'S EXPERIENCE AND QUALIFICATIONS

The following statements as to the experience and qualifications of the bidder are to be submitted with the Contract Bid, as a part thereof. The bidder warrants that the information provided is true and accurate.

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 Bid extends over a period of _____ years.

The bidder, as a contractor, has successfully completed at least two (2) projects of like magnitude, comparable difficulty and rates of progress to the work, including: (list two or more projects).

_____

_____

_____

_____

The bidder, as a contractor, has never failed to satisfactorily complete a contract awarded to the Contractor, except as follows: (name any and all exceptions and reasons therefor).

_____

_____

_____

_____

The bidder has satisfactorily completed the following contracts in the last three (3) years, for the owner indicated, and to whom reference is made (list five contracts). (Provide a contact person and telephone number for each project.)

CONTRACT	YEAR	TYPE OF WORK	AMOUNT	CONTACT

The names of all persons interested in the foregoing bids as principals are as follows: (NOTE: If Bidder or other interested person is a corporation, state the legal name of the corporation, along with the names of the president, secretary, treasurer, and manager thereof; if a general partnership, state true name of the firm, also the names of all individual partners composing the firm; if a limited partnership, the names of all general partners and limited partners; and if Bidder or other interested person is an individual, state first and last names in full.)

_____

_____

_____

_____

Contractor's License Number:

_____

License Renewal Date:

_____

BID FORM

Contract No. _____

CONTRACT BID
TO
CITY OF SARATOGA

FOR

Saratoga Library Solar Project

Name of Bidder _____ of

Business Address _____

Telephone (___) _____ and (___) _____

Facsimile (___) _____

TO THE CITY COUNCIL OF THE CITY OF SARATOGA:

Pursuant to and in compliance with your Notice Inviting Bids for **SARATOGA LIBRARY SOLAR PROJECT** and the other Contract Documents relating thereto, the undersigned Bidder, being fully familiar with the terms of the Contract Documents, the current general prevailing wage rates, local conditions affecting the performance of the Project, the character, quality, quantities and scope of the work, and the cost of the work at the place of performance, hereby proposes and agrees, within the time stipulated in the Contract Documents, to furnish to the City of Saratoga all of the transportation, materials, equipment, tools, excavation, sheeting, shoring, bracing, supports, plant and other facilities, labor, services, permits, utilities, and other items necessary to conduct and complete said work, all in strict conformity with the Contract Documents, including Addenda Nos. ___, ____, and ____ on file in the Department of Public Works, City of Saratoga, for the total price of **Two Hundred and Twenty Thousand dollars ($220,000)** and to provide the **annual AC kilowatt hour production of the system** of _____kiloWatt hour (_____kWh) .

The bidders shall use CSI (Standard Solar Initiative) Standard PV EPBB calculator available at http://www.csi-epbb.com/default.aspx to calculate the production. See more details in Specifications.

Pursuant to Labor Code Section 6705, if the work to be performed includes trenching or excavation more than five feet (5') in depth and the total contract price exceeds twenty-five thousand dollars ($25,000), the Contractor must submit and the Director of Public Works must approve in advance of excavation a

detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches.

Pursuant to Labor Code Section 6707, if the work to be performed includes trenching or excavation more than five feet (5') in depth, each bid must contain, set forth as a separate bid item, sheeting, shoring, and bracing or equivalent method for protecting workers.

Sheeting, shoring or bracing: _____ dollars ($_____)
(All such costs are included in the total price set forth above.)

Bidder acknowledges receipt of the following addendum or addenda during the bidding period and represents that the information contained in the addendum or addenda has been considered in the preparation of this bid proposal: Addendum _____.

NOTE: failure to acknowledge receipt of all addenda may be considered an irregularity in the bid proposal.

Bidder declares that the only persons or parties interested in this bid are those named herein, and that this bid is made without collusion with any person, firm or corporation. Bidder proposes and agrees, if the bid is accepted, that Bidder will execute a contract with CITY, in strict conformity to the Contract Documents, in the form set forth in the Contract Documents, and will perform the entire work for the prices set forth in the attached Bid Schedule, upon which the award of contract is made.

BONDS

BID BOND

KNOWN ALL PERSONS BY THESE PRESENTS that, _____hereinafter called the PRINCIPAL, and _____, a corporation duly organized under the laws of the State of having its principal place of business at _____ in the State of _____ and authorized to do business in the State of California, hereinafter call the SURETY, are held and firmly bound unto the City of Saratoga, hereinafter called the OBLIGEE, on order, in the sum of _____Dollars ($_____) (being at least ten percent (10%) of the total amount of PRINCIPAL 's bid) lawful money of the United States, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these present.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the PRINCIPAL has submitted its Bid for the project entitled **SARATOGA LIBRARY SOLAR PROJECT** to the OBLIGEE, said Bid, by reference thereto; being hereby made a part hereof.

NOW, THEREFORE, if said Bid is rejected or, in the alternative, if said Bid is accepted and the PRINCIPAL signs and delivers a Contract and furnishes a Performance Bond and Payment Bond, in the form and within the time required by the Bid and the Contract Documents, then this obligation shall become null and void, otherwise the same shall remain in full force and effect and upon default of the PRINCIPAL shall be forfeited to the OBLIGEE, it being expressly understood and agreed that the liability of the SURETY for any and all default of the PRINCIPAL shall be the amount of this obligation as herein stated, as liquidated damages. Such forfeiture and liquidated damages under this bond shall be without prejudice to the OBLIGEE’S right to pursue any excess actual damages from the PRINCIPAL for breach of contract or otherwise.

The SURETY, for value received, hereby agrees that the obligations of said SURETY and its bond shall not be impaired or affected by any extension of the time within which the OBLIGEE may accept such Bid, and the SURETY hereby waives notice of any such extension.

In the event suit is brought upon this bond by the OBLIGEE and judgment is recovered, the SURETY shall pay, in addition to the sum set forth above, all

costs incurred by the OBLIGEE in such suit, including reasonable attorney's fees and expert witness fees, to be fixed by the court.

Signed this _____ day of _____, 20__

_____
PRINCIPAL

BY _____

_____
SURETY

BY _____

Note: Signature of person executing for SURETY must be notarized and evidence of corporate authority attached.

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Saratoga, California (hereinafter referred to as "Owner") and _____, (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **SARATOGA LIBRARY SOLAR PROJECT** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish a bond for the faithful performance of all terms and conditions of the Construction Contract;

NOW, THEREFORE, Contractor, as principal, and _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Owner in the penal sum of _____ Dollars ($ _____), lawful money of the United States, for the payment of which sum well and truly to be made as provided in this Performance Bond.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If Contractor timely performs each and every obligation under the Construction Contract, Surety and Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. Surety's obligation under this Performance Bond shall arise after:

3.1 Owner has declared a Contractor Default and has notified Contractor and Surety at its address described in Paragraph 10 below that Owner has declared a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than seven days after receipt of such notice to discuss methods of performing the Construction Contract; and

3.2 Owner has agreed to pay the Balance of the Agreement Price, as calculated under the terms of the Construction Contract, to Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform

the Construction Contract in accordance with the terms of the Construction Contract with Owner.

4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:

4.1 Arrange for Contractor, with consent of Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated bids from qualified contractors acceptable to Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by Owner and the contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Agreement Price, as calculated under the terms of the Construction Contract, incurred by Owner resulting from Contractor's Default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new Contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment thereof to Owner; or

2. Deny liability in whole or in part and notify Owner citing specific reasons therefor.

5. If Surety does not proceed as provided in Paragraph 4 within twenty days from receipt of the notice described in paragraph 3.1 (whether or not a conference has been held pursuant to paragraph 3.1), or such longer period upon which Owner and Surety may agree in writing, Surety shall be deemed to be in default on this Bond. If the Surety proceeds as provided in Subparagraph 4.4, and Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.

6. After Owner has declared a Contractor Default, and if Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Construction Contract, and the responsibilities of Owner to Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount

of this Performance Bond, but subject to commitment by Owner of the Balance of the Agreement Price to mitigation of costs and damages on the Construction Contract, Surety is obligated without duplication for:

6.1 The responsibilities of Contractor for correction of defective work, materials and equipment and completion of the Construction Contract;

6.2 Additional legal, design professional, construction management and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of Contractor.

7. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Construction Contract, and the Balance of the Agreement Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators or successors.

8. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover its attorneys' fees, to be taxed as an item of costs.

10. Notice to Surety, Owner or Contractor shall be mailed or delivered to the address, or sent via facsimile to the facsimile number, shown on the signature page.

11. DEFINITIONS

11.1 Balance of the Agreement Price: The total amount payable by Owner to Contractor under the Construction Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Construction Contract.

11.2 Construction Contract: The agreement between the Owner and the Contractor identified on the first page of this bond, including all Contract Documents and changes thereto.

11.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

CONTRACTOR, as Principal	SURETY
By: _____	By: _____
Its:_____	Its: _____
Address: _____	Address: _____
_____	_____
_____	_____
_____	_____
FAX: _____	FAX: _____

Note: Signatures of those executing for Surety must be properly acknowledged. The bond must be accompanied by a power of attorney from the Surety authorizing its agent to bind it to this bond.

LABOR AND MATERIALS PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Saratoga, California (hereinafter referred to as "Owner") and _____ (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **SARATOGA LIBRARY SOLAR PROJECT** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish a bond to secure payment for all work, labor, materials, equipment or services furnished in connection with the Construction Contract;

NOW, THEREFORE, Contractor, as principal, and _____ _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Claimants, as defined herein, in the penal sum of _____ _____ Dollars ($), lawful money of the United States, for the payment of which sum well and truly to be made as provided in this Payment Bond.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner to pay for work, labor, materials, equipment, services, or other items furnished for use and actually used in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to Owner, this obligation shall be null and void if Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds Owner harmless from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for work, labor, materials, equipment, services or other items furnished for use in the performance of the Construction Contract, provided Owner has promptly notified Contractor and Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Contractor and Surety.

3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.

4. Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described below) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Payment Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, as required by and conforming with Civil Code Sections 3252 and 3091; and

.2 Not having been paid within thirty (30) days of sending the required notice, have sent a written notice to Surety (at the address described below) and sent a copy to the Owner, stating that a claim is being made under this Payment Bond and enclosing a copy of the previous written notice furnished to Contractor.

5. When the Claimant has satisfied the conditions of Paragraph 4, Surety shall promptly and at Surety's expense take the following actions:

5.1 Send an answer to the Claimant, with a copy to Owner, within 20 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

5.2 Pay or arrange for payment of any undisputed amounts.

6. Surety's total obligation shall not exceed the amount of this Payment Bond, and the amount of this Payment Bond shall be credited for any payments made in good faith by Surety.

7. Amounts owed by Owner to Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under the Performance Bond. By Contractor furnishing and Owner accepting this Payment Bond, they agree that all funds earned by Contractor in the performance of the Construction Contract are dedicated to satisfy obligations

of Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work or the satisfaction of Owner's claims, including liquidated damages, under the Construction Contract.

8. Surety shall not be liable to Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. Owner shall not be liable for payment of any costs or expenses of any Claimants under this Payment Bond, and shall have under this Payment Bond no obligation to make payments to, give notices on behalf of, or otherwise have any obligation to Claimants under this Payment Bond.

9. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

10. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover its attorneys' fees, to be taxed as costs.

11. Notice to Surety, Owner or Contractor shall be mailed or delivered to the address shown on the signature page.

12. This Payment Bond has been furnished to comply with Civil Code Sections 3247 through 3252. Any provision in this Payment Bond conflicting with those statutory requirements shall be deemed deleted and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Payment Bond shall be construed as a statutory bond and not as a common law bond.

13. Upon request by any person or entity appearing to be a potential beneficiary of this Payment Bond, the Contractor shall promptly furnish a copy of this Payment Bond or shall permit a copy to be made.

14. DEFINITIONS

14.1 Claimant: An individual or entity identified in California Civil Code Sections 3181 or 3248.

14.2 Construction Contract: The agreement between Owner and Contractor identified above, including all Contract Documents and changes thereto.

CONTRACTOR, as Principal	SURETY
By: _____	By: _____
Its:_____	Its: _____
Address: _____	Address: _____
_____	_____
_____	_____
_____	_____
FAX: _____	FAX: _____

Note:. Signatures of those executing for Surety must be properly acknowledged. The bond must be accompanied by a power of attorney from the Surety authorizing its agent to bind it to this bond.

CONTRACT FOR CONSTRUCTION

SARATOGA LIBRARY SOLAR PROJECT

THIS CONTRACT FOR CONSTRUCTION is made and entered into this _____ day of _____, 20__, by and between the City of Saratoga, a municipal corporation (herein called CITY) and _____, a California corporation, a partnership or an individual *(circle one)* located at _____, herein called Contractor.

RECITALS

A. WHEREAS, the City has caused to be prepared in the manner prescribed by law, plans, specifications and other contract documents for the public work of construction [insert project name and contract number] herein described and shown and has approved and adopted the Contract Documents, including the specifications and plans, and has caused to be published in the manner and for the time required by law a Notice Inviting Bids for the work described in the Contract Documents, and

B. WHEREAS, the Contractor in response to the City's Notice has submitted to the City a sealed bid proposal accompanied by a bid guaranty in an amount not less than ten percent (10%) of the amount bid for the construction of all of the proposed work in accordance with the terms of the Contract Documents, and

C. WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and declared the bids submitted and as a result has determined and declared the Contractor to be the lowest responsible bidder and has duly awarded to the Contractor a contract for all of the work and for the sum or sums named in the bid proposal and in this Contract.

Accordingly, CITY and Contractor agree as follows:

(1) **CONTRACT SUM:** CITY agrees to pay, and the Contractor agrees to accept, in full payment for the above work, the sum of _____ dollars ($_____) to be paid in accordance with the Contract Documents.

(2) **COMPLIANCE WITH LAW:** CITY is a public agency. All provisions of law applicable to public contracts are a part of this contract to the same extent as though set forth herein and will be complied with by the Contractor.

(3) **CONTRACT DOCUMENTS:** The following Contract Documents relating to this Contract for Construction are hereby made a part of and incorporated by reference into this Contract:

The Notice Inviting Bids

Information for Bidders

Statement of Experience and Qualifications Bid Form

Contract Proposal,

Faithful Performance Bond

Labor and Materials Payment Bond

Contractor's Certificate Regarding Worker's Compensation

Certificate of Insurance and Endorsements,

Affidavit Concerning Conflicts of Interest and Noncompetitive Practices

Fair Employment Practices Certificate

General Conditions, Special Conditions and Attachments thereto,

State of California Department of Transportation Standard Plans and Specifications, current year

Plans and Specifications as follows:

- Michael Mora, SOLectric Electrical, dated 02/26/2012
- Structural Sheets S.1 and S.2 prepared by TKJ Structural Engineering, dated 12/20/2011
- Saratoga Library Phase II Construction Documents, 196 sheets (provided on a CD).

and supplemental agreements, certifications, and endorsements applicable to this work, with all modifications incorporated in said documents prior to receipt of the Contract Proposals.

Any work called for in one contract document not mentioned in another is to be performed and executed the same as if mentioned in all Contract Documents.

This Agreement (including all documents referred to above and incorporated herein) represents the entire and integrated Agreement between CITY and Contractor for the Project and supersedes all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, as provided in the General Conditions.

(4) **PROHIBITED INTEREST.** Contractor represents that to the best of its knowledge no director, officer, or employee of CITY has any interest, contractual or non-contractual, financial or otherwise, in this transaction or in the business of Contractor. If any such interest comes to the knowledge of Contractor at any

time, a full and complete disclosure of all such information shall be made in writing to CITY, even if such interest would not be considered a conflict of interest under Article IV Division 4 (commencing with Section 1090) or Division 4.5 (commencing with Section 3600) of the Government Code of the State of California. No member, officer, or employee of CITY or of any of its member jurisdictions during his/her tenure of office, or for one year thereafter, shall have any interest, direct or indirect, in this Contract or the proceeds therefrom.

(5) **NOTICES.** Any notices to be given hereunder by either party to the other may be effected either by personal delivery, fax or mail. Mail shall be sent registered or certified, postage pre-paid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses set forth below, but each party may change its address by written notice in accordance with this paragraph. Notices delivered personally shall be effective immediately. Notices sent by mail shall be effective one (1) day after mailing. Notices sent by facsimile shall be effective upon transmission to the number set forth below.

CITY OF SARATOGA	CONTRACTOR
Public Works Director	_____
City of Saratoga	_____
13777 Fruitvale Ave.	_____
Saratoga, CA 95070	_____
(408) 868-1239	_____

(6) **Warranties**. The Contractor hereby warrants and guarantees for one (1) year from and after the date of completion of the services provided for in this Agreement that said materials and labor necessary for the **SARATOGA LIBRARY SOLAR PROJECT** shall operate as provided for in the Technical Specifications and Contract Documents. During the term of this warranty, Contractor shall provide all materials, parts and labor, at its own expense, which are necessary to repair and/or correct any and all defects, installation or operational failures in the equipment from any cause. Notwithstanding the foregoing, Contractor shall not be required to bear the expense of correction of any failure in the equipment that is caused solely by the negligence or willful misconduct of City. The warranties of each part or component supplied are in addition to the warranties required of Contractor in the Contract Documents.

(7) **Waiver.** No waiver of any breach of the terms, conditions or covenants of this contract shall be construed to be a waiver of any succeeding breach of the same or any other covenants, conditions or terms of this contract. The waiver by any party of a breach of this Contract shall not constitute a continuing waiver, or a waiver of any subsequent breach, either of the same of different provision of this Contract.

(8) **Time of the Essence.** Time is of the essence in this contract.

(9) **Controlling Law.** This contract and all matters relating to it shall be governed by the laws of the State of California.

(10) **Entire Agreement.** It is expressly agreed between CITY and Contractor that this contract, including the documents listed in paragraph 3 and incorporated herein, expresses the complete agreement between the parties and supersedes all prior oral or written negotiations, agreements and understandings between them regarding the subject matter hereof. This Agreement may be amended only by written agreement between the parties as provided in the Contract Documents.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR (4) YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN (10) YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

This Agreement is executed by CITY upon approval by the Council at its regular scheduled meeting of _____, and the Contractor has caused this Agreement to be duly executed.

CITY OF SARATOGA:

BY:

_____

Dave Anderson
City Manager

Date:

_____

ATTEST:

_____

_____

Date:

_____

APPROVED AS TO FORM:

_____

Richard Taylor
City Attorney

CONTRACTOR:
(Contractor Signatures must be Notarized)

BY:_____

PRINT NAME

_

_____

TITLE:

_____

Contractor's License No:

_____

License Expiry Date:

_____

Date:

_____

REQUIRED CERTIFICATIONS

Contract No. _____

Bidders Checklist

All forms must be properly signed and returned with Bid.

Statement of Experience and Qualifications

Bid Form

Bid Surety

Certificate Regarding Workers Compensation

Non Collusion Affidavit

Proposed Major Material Suppliers

Proposed Subcontractors

Affidavit Concerning Conflicts of Interest and Noncompetitive Practices

Fair Employment Practices Certificate

Contractor's Response Form

Certification Concerning Control of Employee of Contractor

CONTRACTOR'S CERTIFICATE REGARDING WORKER'S COMPENSATION

Contract with the CITY OF SARATOGA, for the construction of:

SARATOGA LIBRARY SOLAR PROJECT

Labor Code Section 3700 provides in relevant part:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers, duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees. "

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

Dated: _____, 20__

(Contractor)

By_____

_____
(Official Title)

(SEAL)

Note: Labor Code Section 1861, provides that the above certificate must be signed and filed by the Contractor with CITY prior to performing any work under this contract.

(Contractor Signatures must be Notarized)

NONCOLLUSION DECLARATION
TO BE EXECUTED
BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose. Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Signed: _____

Bidder's Name: _____

PROPOSED MAJOR MATERIAL SUPPLIERS

The bidder is required to furnish the following information on major materials and manufacturers. No changes will be allowed in materials or manufacturers without the prior approval of CITY.

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

_____Signature of Bidder

_____Date

PROPOSED SUBCONTRACTORS

Pursuant to the Subletting and Subcontracting Fair Practices Act (Public Contract Code Sections 4100 et seq.), the following list gives the name, business address, and portion of work (description of work to be done) for each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvements, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specifically fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of one percent of the prime contractor's total bid or ten thousand dollars ($10,000), whichever is greater. Additional supporting data may be attached to this page. Each page shall be sequentially numbered, headed "Proposed Subcontractors" and shall be signed.

NAME	BUSINESS ADDRESS	DESCRIPTION AND COST OF WORK	% OF WORK

After the award of contract, substitutions of the above-listed proposed subcontractors may only be made with the prior approval of CITY in accordance with Public Contract Code Section 4104.

Signature of Bidder _____

Date _____

AFFIDAVIT CONCERNING CONFLICTS OF INTEREST AND **NONCOMPETITIVE PRACTICES**

State of _____) **ss**

County of _____)

A. Conflict of Interest. That the Contractor by entering into this contract with CITY to perform or provide work, services or materials to CITY has thereby covenanted, and by this affidavit does again covenant and assure that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the services required to be performed under this contract and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees or representative hereafter acquires such a conflict of interest, it shall immediately disclose such interest to CITY and take action immediately to eliminate the conflict or to withdraw from this contract, as CITY may require.

B. Contingent Fees and Gratuities. That the Contractor, by entering into this Contract with CITY to perform or provide services or material for CITY has thereby covenanted, and by this affidavit does again covenant and assure:

1. That no person or selling agency except bona fide employees or designated agents or representative of the Contractor has been employed or retained to solicit or secure this contract with an agreement or understanding that a commission, percentage, brokerage or contingent fee would be paid; and

2. That no gratuities, in the form of entertainment, gifts or other, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of CITY or other governmental agency with a view toward securing this contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this contract.

3. That no contracts of communication or lobbying efforts were made by Contractor, its agents or officer with any member of the Council, any board or commission, or the staff of the City of Saratoga with regard to this process.

Company Name

By _____

Title _____

Subscribed and Sworn to before me

This _____ day of _____, 20___.

_____

Notary Public in and for State of _____

residing at _____

FAIR EMPLOYMENT PRACTICES CERTIFICATE

In connection with the performance of work under this contract, the Contractor agrees as follows:

1. The Contractor will not willfully discriminate against any employee or applicant for employment because of race, color, religious creed, ancestry, national origin, age, sex, sexual orientation, physical disability, mental disabilities, marital status, or medical condition as defined in Government Code Section 12926. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, sex, sexual orientation, physical disability, mental disability, marital status, or medical condition as defined in Government Code §12926. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Fair Employment Practices section.

2. The Contractor will send to each labor union or representative of worker with which it has a collective bargaining agreement or other contract or understanding, a notice, advising the said labor union or worker's representative of the Contractor's commitments under this section; and the Contractor shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3. The Contractor will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Fair Employment Practices Commission, CITY or any other appropriate agency of the State of California designated by CITY, for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this contract.

4. A finding of willful violation of the Fair Employment Practices section of this contract or of the Fair Employment Practices Act shall be regarded by CITY as a basis for determining the Contractor to be not a "responsible Contractor" as to future contracts for which such Contractor may submit bids, for revoking the Contractor's pre-qualification rating, if any, and for refusing to establish, re-establish or renew a pre-qualification rating for the Contractor.

CITY shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Contractor has violated the Fair Employment Practices Act and has issued an order under Government Code §12970 or obtained a court order under Government Code §12973.

Upon receipt of such written notice from the Fair Employment Practices Commission, CITY shall notify the Contractor that unless it demonstrates to the satisfaction of CITY within a stated period that the violation has been corrected, the Contractor's pre-qualification rating will be revoked at the expiration of such period.

5. The Contractor agrees that should CITY determine that the Contractor has not complied with the Fair Employment Practices section of this contract, then pursuant to Labor Code Sections 1735 and 1775, the Contractor shall, as a penalty to CITY, forfeit, for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the labor code for violation of prevailing wage rates. Such monies may be recovered from the Contractor. CITY may deduct any such damages from any monies due the Contractor.

6. Nothing contained in this Fair Employment Practices section shall be construed in any manner of fashion so as to prevent CITY from pursuing any other remedies that may be available at law.

7. Prior to award of the contract, the Contractor shall certify to CITY that it has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by CITY:

a. The Contractor shall provide evidence, as required by CITY, that it has notified all supervisors, foremen and other personnel officers, in writing, of the content of the anti-discrimination clause and their responsibilities under it.

b. The Contractor shall provide evidence, as required by CITY, that it has notified all sources of employee referral (including unions, employment agencies, advertisements, and the Department of Employment) of the content of the anti-discrimination clause.

c. The Contractor shall file a basic compliance report as required by CITY. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also spell out the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire.

d. Personally, or through its representatives, the Contractor shall, through negotiations with the unions with whom it has agreements, attempt to develop an agreement which will:

(1) Spell out responsibilities for nondiscrimination in hiring, referral, upgrading and training.

(2) Otherwise implement an affirmative anti-discrimination program in terms of the unions' specific areas of skill and geography, to the end that qualified

minority workers will be available and given an equal opportunity for employment.

e. The Contractor shall notify CITY of opposition to the anti-discrimination clause by individuals, firms or organizations during the period of its pre-qualification.

8. The Contractor will include the provisions of the foregoing Paragraphs 1 through 7 in every first-tier subcontract so that such provisions will be binding upon each subconsultant.

9. Statements and Payrolls. The Contractor shall maintain its records in conformance with the requirements in the Specifications and the following special provisions:

a. The submission by the Contractor of payrolls, or copies thereof, is not required. However, each Contractor and subconsultant shall preserve their weekly payroll records for a period of three (3) years from the date of completion of this contract.

b. The payroll records shall contain the name, address and social security number of each employee, his/her correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made, and actual wages paid.

c. The Contractor shall make its payroll records available at the project site for inspection by CITY and shall permit CITY to interview employees during working hours on the job.

The following certification is to be executed by every Contractor and enclosed and forwarded in a sealed envelope containing the bid. The person signing the certification shall state his/her address and official capacity.

FAIR EMPLOYMENT PRACTICE CERTIFICATION

The undersigned, in submitting a bid for performing the following work by contract, hereby certifies that the Contractor will meet the above standards of affirmative compliance with the Fair Employment Practices Act.

_____

(Type) PROPOSING COMPANY

_____

SIGNATURE

_____

(Type) NAME OF SIGNER

_____

(Type) TITLE

_____

(Type) NUMBER AND STREET

_____

(Type) CITY STATE ZIP CODE

_____

(Type) TELEPHONE

CONTRACTORS RESPONSE FORM

Contractors Declarations and Statement of Understanding

The undersigned (hereinafter called the "Contractor") declares that he/she has read the Notice Inviting Bids and has authority to submit the following. The Contractor understands that, in addition to this Response Form, the Information for Bidders and Contractor's supporting documents constitute parts of the contract and are incorporated herein by reference.

Contractor acknowledges that Addenda numbers _____ through _____ have been delivered and have been taken into account as part of the Agreement, and that all addenda issued are hereby made part of the Agreement.

Contractor hereby designates _____ as the person to contact for additional information. (Telephone No: _____ Fax No: _____, e-mail Address:_____)

Internal Revenue Service (IRS) Reporting Requirements

Check one: ☐ Corporation; ☐ Partnership; ☐ Sole Proprietor; ☐ Other: _____

Identify: State of Incorporation: _____

Provide one: Federal Tax Number _____
Social Security Number _____

What is the official name registered with the IRS for this number _____

Firm Name: _____

Address: _____

_____

City, State, Zip _____

Phone Number _____

Authorized Signature _____

CITY OF SARATOGA

A CERTIFICATION CONCERNING CONTROL OF EMPLOYEES

OF CONTRACTOR

The Contractor, by entering into this Agreement with CITY to perform or provide work, services or materials to CITY, does hereby certify and assure that in performing the services under this Agreement, the Contractor shall act as an independent Contractor and shall have full control of the work and Contractor's employees. Contractor and its employees in no circumstances whatsoever shall imply or be deemed an agent(s) or employee(s) of CITY. Contractor's employees in no circumstances shall be entitled to part of any pension plan, insurance, bonus or any similar benefits which CITY provides its own employees.

Any infraction of this Certification shall be cause for termination of this Agreement.

Signed

_____

Authorized Representative of Bidder

Title

_____

Date _____

319458.1