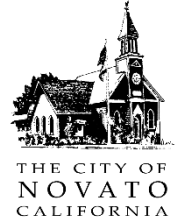


**CITY OF NOVATO PUBLIC WORKS DEPARTMENT
EMERGENCY LIMITED BID TERMS AND CONDITIONS (ELB-State Funded)**



1. General

- A. The location, scope of work, cost and working days are estimates. Emergency work is subject to highly changeable field conditions. Actual cost, schedule and type of work may vary.
- B. The Contract Requirements are incorporated by reference into the Agreement. In the event that there is a conflict of inconsistency between the Agreement terms and the Contract Requirements, the terms and conditions of this Agreement shall control.

2. Contract Provisions

- A. All work shall be done in accordance with the provisions of the *2015 Caltrans Standard Specifications*, and the amendments, and as shown on plans to be furnished by the Engineer, if plans are available to be furnished. In the event of conflict between the *2015 Caltrans Standard Specifications* and the special provisions in this Agreement, the special provisions in this Agreement shall control.
- B. All references to the Director in the *2015 Caltrans Standard Specifications* shall be construed to mean the City of Novato Public Works Director.
- C. All references to the Engineer or Resident Engineer shall be construed to mean the City of Novato Project Engineer.

3. Start of Job Site Activities and Time

The first three paragraphs of Section 8-1.04, "Start of Job Site Activities," of the *2015 Caltrans Standard Specifications* are amended to read: "Begin work as soon as possible when directed to do so by the City of Novato Project Engineer and diligently prosecute the work to completion without causing delay. The estimated number of working days needed to complete the work indicated is an estimate and does not constitute an expressed or implied promise of the actual contract duration. If conditions at the site make it feasible to finish ahead of schedule, endeavor to do so."

4. Budget Contingency Clause

- A. It is mutually understood by the parties that this Agreement may have been written before the availability of appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available by the City Council or City Manager of the City of Novato for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by City Council or City Manager of the City of Novato, Federal Government or State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.
- C. It is mutually agreed that if the City Council or City Manager of the City of Novato does not appropriate sufficient funds for the program, either the scope of work or the maximum

amount of this Agreement, or both, may be reduced or altered. The City also has the option of terminating the Agreement. Termination will be in accordance with Section 8-1.14, "Contract Termination," of the *2015 Caltrans Standard Specifications*.

5. Cost Limitation

The total amount of this Agreement shall not exceed the original amount unless a Change Order is received and processed in accordance with Section 4-1.05, "Changes and Extra Work," of the *2015 Caltrans Standard Specifications*.

6. Payment

- A. Work performed under this contract will be paid for on a force account basis in accordance with the provisions of Section 9-1.04, "Force Account," of the *2015 Caltrans Standard Specifications* and the terms of this Agreement.
- B. The markup rates in Section 9-1.04, "Force Account," of the *2015 Caltrans Standard Specifications* that are added to the direct costs of labor, materials, and equipment rental are amended to the agreed upon amount listed on the Limited Bid Emergency Force Account Agreement.
- C. Paragraph 2 of Section 9-1.04A, "Force Account - General" of the *2015 Standard Specifications* is amended to read: "If a subcontractor performs work, a markup of twenty one percent (21%) will be added to the total of the direct costs of labor, materials and equipment rental computed as provided in Sections 9-1.04B, "Labor," 9-1.04C, "Materials," and 9-1.04D, "Equipment Rental" of the *2015 Caltrans Standard Specifications*. An additional agreed upon Force Account markup listed on the Limited Bid Emergency Force Account Agreement will be added to the total cost of that work paid including the twenty one percent (21%) markup provided. The additional agreed upon Administrative cost markup rate listed on the Limited Bid Emergency Force Account Agreement shall fully reimburse the Contractor for additional administrative costs. The bid administrative markup rate must not exceed the Contractor's Force Account bid markup rate and must not exceed ten percent (10%)."
- D. The following is added to Section 9-1.04D(1), "(Equipment Rental) General" of the *2015 Caltrans Standard Specifications* as the 4th paragraph, "Overtime and Multiple shift differentials shown in the publication, 'Labor Surcharge And Equipment Rental Rates,' shall not apply. All equipment will be paid at the straight time rate in the publication, 'Labor Surcharge And Equipment Rental Rates,' for all hours worked. If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged by the rental agency will be paid to the Contractor."
- E. All equipment operated for this contract and compensated by force account, except equipment covered by **Paragraphs 6F and 6G** of this section, is considered equipment not on the job site and required for original-contract work. The following is added to Section 9-1.04D(4), "Equipment Not on the Job Site and Required for Original-Contract Work" of the *2015 Caltrans Standard Specifications* as the 2nd paragraph, "Overtime and Multiple shift differentials shown in the publication, 'Labor Surcharge and Equipment Rental Rates,' shall not apply. All equipment will be paid for at the straight time rate for all hours worked. If a minimum equipment rental amount is required by the

local equipment rental agency, the actual amount charged by the rental agency will be paid to the Contractor.”

- F. The fifth paragraph of Section 9-1.04A, “General,” of the *2015 Caltrans Standard Specifications* is amended to read: “Payment for owner-operated labor and equipment is made at the current market-priced invoice submitted “
- G. Section 9-1.05, “Extra Work Performed by Specialists” of the *2015 Caltrans Standard Specifications* is amended to read: “The Contractor, and all subcontractors obtained before or after contract execution, must itemize all labor, material, and equipment rental costs, and shall not be deemed Specialists unless the selected Contractor or available subcontractors on site are not capable of performing the specialty work and it is not the special service industry’s established practice to provide cost itemization. In addition, the Engineer may approve for non-itemized specialist billing work required to be performed at an off-site manufacturing plant or machine shop. To obtain approval as a Specialist, the Contractor shall submit on behalf of the subcontractor a request to the Engineer prior to the start of the proposed specialist work. If approval is granted, the Engineer will accept the non-itemized invoices for specialist work performed, provided the invoices are at current market rates. If approval is not granted prior to the start of the proposed specialist work, the Contractor or subcontractor shall itemize labor, material, and equipment rental costs as required by the *2015 Caltrans Standard Specifications*.” The Engineer determines the cost based on the specialist invoice price minus any available or offered discounts plus an agreed upon administrative costs markup listed on the Limited Bid Emergency Force Account.
- H. Upon completion of all of the work and acceptance of the contract, the Contractor will be paid only the fees directly charged by the surety for the bond premium. No other fees or costs will be reimbursed.
- I. Section 12-1.04, “Payment,” of the *2015 Caltrans Standard Specifications* does not apply. Payment for flagging will be made under Section 9-1.04, “Force Account,” of the *2015 Caltrans Standard Specifications*.

7. General Prevailing Wage Rates

- A. State prevailing wage requirements apply to this contract.
- B. The Contractor shall comply with the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing wage rates. The Contractor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.
- C. Pursuant to Section 1771.5 of the Labor Code, not less than the general prevailing wage rate of per diem wages and the general prevailing rate of per diem wages for holiday and overtime work for work of a similar character in the county in which the work is to be performed shall be paid to all workers employed on this Agreement, if this Agreement is for:
 - 1. More than \$25,000 for public works construction or,
 - 2. More than \$15,000 for the alteration, demolition, installation, repair, or maintenance of public works.

- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this **Section 7**.

8. State Prevailing Wage Rate Determinations

- A. The General Prevailing Wage Rate Determinations applicable to this project are made a specific part of this contract by reference pursuant to Labor Code Section 1773.2. Any special wage rate determinations applicable to this project are attached.
- B. General Prevailing Wage Rate Determinations applicable to this project may be obtained from the Department of Industrial Relations Internet site at:
<http://www.dir.ca.gov/OPRL/PWD/index.htm>
- C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations are to be obtained by the Contractor and are to be posted by the Contractor at the job site in accordance with Section 1773.2 of the California Labor Code.

9. Hours of Labor

- A. Eight (8) hours labor constitutes a legal day's work. The Contractor shall forfeit, as a penalty to the City of Novato, twenty-five dollars (\$25) for each worker employed in the execution of the Agreement by the Contractor or any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular Sections 1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half times the basic rate of pay, as provided in Section 1815.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this **Section 9**.

10. Contractor Registration Program

No Contractor or Subcontractor may be awarded a public works contract, or engage in the performance of any contract for public works, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

12. Employment of Apprentices

- A. Where either this Agreement or a subcontract exceeds \$30,000, the Contractor and any subcontractors of any tier shall comply with all applicable requirements of Labor Code sections 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
- B. The Contractor and its subcontractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Contractors and subcontractors are advised to contact the State Division of Apprenticeship Standards, P.O. Box 420603, San Francisco, California 94142-0603, or one of its branch offices, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the contract work. The Contractor is responsible for all

subcontractors' compliance with these requirements. Penalties for failure to comply with apprenticeship requirements are specified in Labor Code Section 1777.7.

- C. Any subcontract entered into as a result of this contract shall contain all of the provisions of this **Section 12**.

13. Payroll Records

- A. The Contractor and its subcontractors shall comply with the following provisions. The Contractor shall be responsible for compliance by subcontractors of any tier.
1. The Contractor and its subcontractors shall keep accurate payroll records and supporting documents as mandated by Section 1776 of the California Labor Code and as defined in Section 16000 of Title 8 of the California Code of Regulations, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor or Subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 2. The information contained in the payroll record is true and correct.
 3. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by all employees on the public works project.
 4. The payroll records described in **paragraph (1) above** shall be certified. The certified payrolls and records related to employee wages, fringe benefits, payroll tax and deductions shall be made available for inspection and copying by City of Novato during regular business hours at the principal office of the Contractor. The Contractor shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative upon request.
 - b) A certified copy of all payroll records described in **paragraph (1) above**, shall be made available for inspection or furnished upon request to a representative of the City of Novato, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to the City of Novato and, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the Contractor.
 - c) The public shall not be given access to certified payroll records by the Contractor.

d) The Contractor is required to forward any requests for certified payrolls to the Project Engineer by both facsimile and regular mail on the business day following receipt of the request.

e) Each Contractor shall submit a certified copy of the records described in **paragraph (1) above**, to the entity that requested the records within ten (10) days after receipt of a written request.

f) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the City of Novato shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address and social security number. The name and address of the Contractor awarded the Agreement or performing the Agreement shall not be marked or obliterated.

g) The Contractor shall inform the City of Novato of the location of the records described in **paragraph (1) above**, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

h) The Contractor and any subcontractor shall have ten (10) days in which to comply subsequent to receipt of written notice requesting the records enumerated in **paragraph (1) above**. In the event the Contractor or a subcontractor fails to comply within the ten-day period, they shall, as a penalty to the City of Novato forfeit one hundred dollars (\$100) for each calendar day, or for any portion of a calendar day, for each worker, until strict compliance is achieved. Such penalties shall be withheld by the City of Novato from payments when due. The Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

B. The penalties specified in **paragraph 6 above** for noncompliance with the provisions of said Section 1776 will be deducted from any monies due or which may become due to the Contractor. Penalties assessed for failure to submit certified payrolls are forfeitures and not withholdings that will be returned to the Contractor.

C. Payrolls shall contain the full name, address and social security number of each employee, the correct work classification (including apprentices, if applicable), rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Agreement. The "Statement of Compliance" shall be on forms furnished by the City of Novato, Caltrans or on any form with identical wording. Any payroll that does not include the required "Statement of Compliance" will be

deemed inadequate and unacceptable. The Contractor shall be responsible for the submission of copies of payrolls of all subcontractors.

The Contractor and each subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.

- D. The Contractor shall submit a certified copy of all payroll records for verification by a representative of the City of Novato with each invoice. When progress payments are called for, the Contractor shall submit a certified copy of all payroll records for verification for the work completed to date with each invoice. Delinquent or inadequate certified payrolls or other required documents will result in the withholding of payment until such documents are submitted by the Contractor.
- E. The Contractor shall pay any employee actually engaged in the moving and handling of goods being relocated under this Agreement no less than the prevailing wage rate.
- F. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this **Section 13**.

14. Penalty

- A. The Contractor and any subcontractor shall comply with Labor Code Sections 1774 and 1775. In accordance with said Section 1775, the Contractor shall forfeit, as a penalty to the City of Novato, two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for any public work done under the contract by him or her, or by any subcontractor under him/her, in violation of the provisions of the Labor Code and, in particular, Labor Code Sections 1775 to 1780, inclusively.
- B. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor or any subcontractor had knowledge of the obligations under the Labor Code. The Contractor by executing and receiving a copy of this Agreement is deemed to have knowledge of his or her obligations regarding the Labor Code's prevailing wage requirements. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or any subcontractor.
- C. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by a subcontractor, the Contractor of the project is not liable for any penalties described above unless the Contractor had knowledge of that failure of its subcontractor to pay the specified prevailing rate of wages to those workers or unless the Contractor fails to comply with all of the following requirements:
 - 1. The Agreement executed between the Contractor and any subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.

2. The Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by a subcontractor to the employees by periodic review of the certified payroll records of a subcontractor.
 3. Upon becoming aware of the failure of a subcontractor to pay their workers the specific prevailing rate of wage, the Contractor shall diligently take corrective action to stop or rectify the failure, including, but not limited to, withholding sufficient funds due the subcontractor for work performed on the public works project.
 4. Prior to making final payment to a subcontractor for work performed on the public works project, the Contractor shall obtain an affidavit signed under penalty of perjury for the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.
- D. Pursuant to Section 1775 of the Labor Code, the City of Novato shall notify the Contractor on a public works project within fifteen (15) days of receipt of a complaint that a subcontractor has failed to pay workers the general prevailing rate of per diem wages.
- E. If the City of Novato determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if the City of Novato did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the City of Novato.
- F. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this **Section 14**.

15. Subcontracting

- A. The second and fifth paragraphs of Section 5-1.13, "Subcontracting," of the *2015 Caltrans Standard Specifications* shall not be applicable to this project.
- B. The Contractor shall perform not less than fifty percent (50%) of the total cost of all work performed under this Agreement with its own organization.

16. Bonds

Section 3-1.05, "Contract Bonds", of the *2015 Caltrans Standard Specifications* is amended to read: "Furnish a payment bond which shall secure the payment of the claims of laborers, mechanics or materialmen employed on the work. The payment bond shall be in a sum equal to this Agreement." No performance bond is required.

"All alterations, extensions of time, extra and additional work, and other changes authorized by these specifications or any part of the contract may be made without securing the consent of the surety or sureties on the contract bonds."

19. Surface Mining And Reclamation Act (SMARA)

All imported mineral aggregate materials from surface mines or commercial sources shall be from material sites listed as SMARA-approved by the California Department of

Conservation. The Engineer may accept non-SMARA mineral aggregate material if the Governor suspends SMARA in either a disaster proclamation or Executive Order and the mineral aggregate material is used for the sole purpose of reconstructing roadways damaged by the disaster.

20. Public Safety

- A. The first sentence of the ninth paragraph of Section 7-1.04, "Public Safety," of the *2015 Caltrans Standard Specifications* is amended to read:
“Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in Part 6 of the California Manual of Uniform Traffic Control Devices (MUTCD).”
- B. Any work performed on or near a roadway must be in accordance with safety standards set forth in Sections 7-1.03, "Public Convenience," and 7-1.04, "Public Safety," of the 2015 Caltrans Standard Specifications.

21. Removal of Asbestos and Hazardous Substances

- A. When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and the Contractor encounters materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe, and shall immediately cease work in the affected area and report the condition to the Engineer in writing.
- B. In accordance with Section 25914.1 of the Health and Safety Code, all such removal of asbestos or hazardous substances including any exploratory work to identify and determine the extent of such asbestos or hazardous substance will be performed by separate contract.

22. Insurance

- A. Minimum Scope of Insurance: Contractor agrees to have and maintain, for the duration of the Agreement, a Commercial General Liability insurance policy insuring him/her and his/her firm to an amount not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage.
 - 1. In lieu of commercial general liability insurance, the Contractor may secure and maintain a minimum of Two Million Dollars (\$2,000,000) of excess limit (umbrella) coverage on his/her homeowner's or renter's insurance policy.
 - 2. Contractor agrees to have and maintain for the duration of the Agreement an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident for bodily injury and property damage.
 - 3. Contractor shall have and maintain a Professional Liability insurance policy insuring him/her and his/her staff to an amount not less than Three Million Dollars (\$3,000,000) per claim for injuries arising out of the negligent acts or omissions of Contractor in the rendering of services or the failure to render services under this

Agreement.

4. In accordance with Labor Code Section 1860, the Contractor shall secure the payment of worker's compensation in accordance with Labor Code Section 3700.
5. Contractor shall provide to the City all certificates of insurance with original endorsements reflecting coverage required by this section. Certificates of such insurance shall be filed with the City on or before commencement or performance of this Agreement.
6. Any Contractor utilizing the services of a secondary contractor in the performance of this Agreement shall either provide the required insurance(s) for the type of service being provided by the secondary contractor or provide evidence acceptable to the City demonstrating that the secondary contractor has in effect the required insurance(s).

B. General Liability:

1. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor.
2. Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect Contractor's obligations under this Agreement.
4. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (except for 10 days' notice for cancellation due to nonpayment of premium) by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Clerk at all times during the term of this Agreement.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City.

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

23. Compliance with Laws

- A. General. Contractor shall comply with all applicable federal, state and local laws, code, ordinances and regulations. Contractor represents to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required for Contractor to practice its profession. Contractor represents to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Contractor to practice its profession. Contractor shall, at all times during the term of this Agreement and for one year thereafter, provide written proof of such licenses, permits, insurance and approvals upon request by the City.
- B. Novato Business License. Unless otherwise exempt, Contractor will maintain a valid City of Novato business license pursuant to Chapter VIII of the Novato Municipal Code during the term of this Agreement. Concurrently with execution of this Agreement, and upon request of City thereafter, Contractor will submit proof of compliance with this Subsection.
- C. Workers' Compensation. Contractor shall take out and maintain at all times during the life of this agreement, up to the date of acceptance of the work by the City, workers' compensation insurance as required by the Labor Code of the State of California. The Contractor shall require all subcontractors similarly to provide such insurance for all of subcontractors' employees. The amount of said insurance shall be \$1 million per accident. Contractor certifies that it is aware of the provision of the California Labor Code which requires every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor certifies that it will comply with such provisions before commencing performance of this Agreement.
- D. Injury and Illness Prevention Program. Contractor certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.
- E. City Not Responsible. The City is not responsible or liable for Contractor's failure to comply with any and all of said requirements.

24. Indemnification of the City

Contractor hereby agrees to defend, indemnify and hold harmless the City from and against any and all claims to the extent arising out of Contractor's breach of this Agreement and/or the willful misconduct or negligent acts, errors or omissions of Contractor relating to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise, except to the extent caused by the active negligence or willful misconduct of City.

25. Nondiscrimination Clause (2 CCR 11105 Clause b)

- A. During the performance of this Agreement, the Contractor, and its Subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- B. The Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135-11139.5), and the regulations or standards adopted by the City of Novato to implement such article.
- C. The Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the City of Novato upon reasonable notice at any time during the normal business hours, but in no case less than twenty four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or the City of Novato shall require to ascertain compliance with this clause.
- D. The Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

30. Solid Waste Disposal and Recycling Report

Submit a final Solid Waste Disposal and Recycling Report within five (5) business days after Contract acceptance. Show the types and amounts of project-generated solid waste taken to or diverted from landfills or reused on the project from start of work to Contract acceptance. This form is available for download from the internet at <http://www.dot.ca.gov/hq/construc/forms/cem4401.pdf>.