

CONTRACT AGREEMENT & ATTACHMENT A

THIS AGREEMENT IS MADE AND ENTERED INTO THIS 6th DAY OF JUNE, 2017, by and between California Fairs Financing Authority ("CFFA") and O.C. JONES & SONS, INC. ("Contractor") ("Agreement"). CFFA and the Contractor agree as follows:

1. **The Work:** Contractor shall furnish all tools, equipment, apparatus, facilities, labor, and material necessary to perform and complete in a good and workmanlike manner, the work of the following project:

PROJECT SMA-17-008
PAVEMENT REHABILITATION PROJECT
SAN MATEO COUNTY FAIR

The Work shall be performed and completed as required in the Contract Documents as defined in the General Conditions including, without limitation, the Drawings and Specifications, under the direction and supervision of, and subject to, the approval of CFFA or its authorized representative.

2. **The Contract Documents:**

- A. The complete Contract consists of all Contract Documents as defined in the General Conditions and incorporated herein by this reference. CFFA is not obligated to provide the contractor prior written notice of changes to these documents from the bid package. It is the contractor's responsibility to thoroughly read and verify this document before initialing and signing. All obligations of CFFA and Contractor are fully set forth and described in the Contract Documents. The Contract Documents are intended to cooperate so that Work called for in one and not mentioned in the other or vice versa is to be performed the same as if mentioned in all Contract Documents.
- B. **Interpretation of Contract Documents:** Questions concerning the intent, precedence, or meaning of the Contract Documents, including the Drawings or Specifications, shall be submitted to CFFA for interpretation. Inconsistencies in the Contract Documents shall be resolved by giving precedence in the following order:
 1. CFFA-approved modifications, beginning with the most recent (if any);
 2. Agreement;
 3. Special Conditions (if any);
 4. Supplemental Conditions (if any);
 5. General Conditions;
 6. Remaining documents (Sections beginning with "00"), if applicable;

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7. Division 1 sections (Specifications – General Conditions; Sections beginning with “01”), if applicable;
8. Division 2 through Division 33 sections (Technical Specifications), if applicable;
9. Figured dimensions;
10. Large-scale drawings;
11. Small-scale drawings.

In no case shall a document call for lower quality and/or quantity material or workmanship control. The decision of CFFA in the matter shall be final.

3. **Time For Completion:** It is hereby understood and agreed that the work as outlined in the Contract Documents for this project is considered Critical Path Construction. Many pre-scheduled uses for this site are currently under contract for this site. All pre-scheduled events all their requirements as listed must be incorporated within the timeline of construction. Contractor is required to be 100% Complete, by August 31, 2017. The Contract Time is more fully detailed in the attached Attachment A. CFFA shall not approve an early completion schedule by Contractor. A schedule showing the Work completed in less than the Contract Time indicated in the Contract, shall be considered to have Project Float.
4. **Completion-Extension Of Time:** If Contractor fails to complete the Work within the Contract Time, due allowance being made for the contingencies provided for herein, Contractor shall become liable to CFFA for all loss and damage that CFFA may suffer on account thereof. Contractor shall coordinate its Work with the work of all other contractors. CFFA shall not be liable for delays resulting from Contractor's failure to coordinate its Work with other contractors in a manner that allows for timely completion of Contractor's Work. Contractor shall be liable for delays to other contractors caused by Contractor's failure to coordinate its Work with the work of other contractors.
5. **Liquidated Damages:** Time is of the essence for all Work to be performed. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that CFFA will sustain in the event of and by reason of Contractor's delay; therefore, Contractor shall forfeit to CFFA the sum(s) set forth in the attached Attachment A, (“Contract Price, Contract Time & Liquidated Damages”) per day for each and every day's delay beyond the time prescribed for each item listed with a liquidated damage amount.
 - A. Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if Contractor is late in completing two milestones and the entire Project, Contractor will forfeit three separate Liquidated Damages amounts. CFFA may deduct Liquidated Damages from money due or that may become due.

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- B. It is hereby understood and agreed that neither the total cumulative Liquidated Damages amount nor any portion of the Liquidated Damage amount are penalties.
 - C. Contractor under this Agreement. Contractor's forfeiture of Liquidated Damages to CFFA, and CFFA's right to retain Liquidated Damages, is as indicated in Government Code section 53069.85 and as indicated herein and in the General Conditions.
 - D. Liquidated Damages are automatically and without notice of any kind forfeited by Contractor upon the accrual of each day of delay. Neither CFFA's failure or delay in deducting Liquidated Damages from payments otherwise due the Contractor, nor CFFA's failure or delay in notifying Contractor of the forfeiture of Liquidated Damages, shall be deemed a waiver of CFFA's right to Liquidated Damages.
 - E. Contractor and Surety shall be liable for and pay to CFFA the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by CFFA.
 - F. Liquidated Damages shall be in addition, and not in lieu of, CFFA's right to charge Contractor for CFFA's cost of completing or correcting items of the Work.
 - G. CFFA may extend the Contract time if Work is delayed for causes outside the Contractor's control, as further described in the General Conditions. This provision does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.
6. **Loss Or Damage:** CFFA and its authorized representatives shall not be answerable or suffer loss, damage, expense, or liability for any loss or damage that occurs to the Work, or any part thereof, during its construction and before Completion. Contractor shall assume all liabilities of every kind or nature arising from the Work, either by accident, negligence, theft, vandalism, or any cause whatever; and shall hold CFFA and its authorized representatives harmless from all liability of every kind and nature arising from accident, negligence, or any cause whatever.
7. **Insurance and Bonds:** Contractor shall provide all required certificates of insurance, and payment and performance bonds.
8. **Performance Of Work:** If Contractor fails to perform the Work properly or fails to perform any provisions of this Contract, CFFA, may, pursuant to the General Conditions and without prejudice to any other remedy it may have, cure the deficiencies and deduct the cost thereof from the payment then or thereafter due Contractor.

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9. **Authority of Architect, Project Inspector, and DSA:** Contractor hereby acknowledges that the Architect(s) or the Project Inspector(s) have authority to approve and/or stop Work
If Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. Contractor shall be liable for any delay caused by its non-compliant Work.
10. **Assignment Of Contract:** Neither the Contract, nor any part thereof, nor any moneys due or to become due thereunder, may be assigned by Contractor without the written approval of CFFA, nor without the written consent of the Surety on Contractor's Performance Bond (the "Surety"), unless the Surety has waived in writing its right to notice of assignment.
11. **Classification Of Contractor's License:** Contractor hereby acknowledges that it currently holds valid A or C-12 Contractor's license(s) issued by the State of California, Contractor's State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents.
12. **Payment of Prevailing Wages:** Contractor and all Subcontractors under Contractor shall pay all workers on Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of CFFA, pursuant to sections 1770 et seq. of the California Labor Code.
13. **Contract Price:** In consideration of the foregoing covenants, promises, and agreements, Contractor offers, in the amounts set forth in the attached Attachment A, Contract Price, Contract Time & Liquidated Damages, to perform the Work according to the Contract Documents. CFFA covenants, promises, and agrees that it will pay and cause to be paid to Contractor in full, and as the Contract Price the amount(s) set forth in the attached Attachment A, Section.
- A. The Allowances set forth in the "Instructions to Bidders" and included in the attached Attachment A, if any, are within the Contract Price only to the extent Contractor has performed Work encompassed by the Allowance description, Contractor has appropriately invoiced for that Work, and CFFA has approved Contractor's invoice. Contractor shall invoice only for components of the Work encompassed by the Allowance description, in the identical structure as a Change Order. The unused portion of each Allowance shall be retained by CFFA.

B. The Contract Price shall be paid in lawful money of the United States pursuant to the payment provisions in the General Conditions.

14. **Authority of Contractor's Representative:** Contractor hereby certifies that its legal representative as defined in the General Conditions and the person(s) it employees on the Project at or above the level of project superintendent, each have the authority to legally bind the Contractor.

15. **Severability:** If any term, covenant, condition, or provision of the Contract Documents is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions in the Contract Documents shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

IN WITNESS WHEREOF, accepted and agreed on the date indicated above:

Dated: 6-21-17
6-29-17, 20__

Dated: June 6, 20 17

**CALIFORNIA FAIRS FINANCING
AUTHORITY**

O.C. JONES & SONS, INC.

By: *Becky Bailey-Findley*

By: *Greg Souder*

Print Name: Becky Bailey-Findley

Print Name: Greg Souder

Print Title: Managing Director

Print Title: Secretary

NOTE: If the Contractor is a corporation, Contractor must attach a certified copy of the corporation's by-laws, or of the resolution of the Board of Directors of the corporation, authorizing the above person to execute this Agreement and the bonds required by the Contract Documents.

END OF SECTION

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ATTACHMENT A

CONTRACT PRICE

CONTRACT TIME & LIQUIDATED DAMAGES

PROJECT EXP-SMA-17-008
PAVEMENT REHABILITATION PROJECT
SAN MATEO COUNTY FAIR

1. CONTRACT PRICE:

The Contract Price shall be the following amount:

(\$2,793,793.10), (Base Bid Amount)

TWO MILLION SEVEN HUNDRED NINETY THREE THOUSAND SEVEN HUNDRED
NINETY THREE DOLLARS AND 10/100 CENTS.

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2. CONTRACT TIME AND LIQUIDATED DAMAGES

PROJECT SMA-17-008
PAVEMENT REHABILITATION PROJECT
SAN MATEO COUNTY FAIR

DATE	ACTIVITY	LIQUIDATED DAMAGES
June 5, 2017	Notice of Intent to Award	
June 15, 2017 (Anticipated)	Notice of Award	
June 23, 2017(Anticipated)	Notice to Proceed (NTP): Project Start Date Set, Project Submittal Log including determination of critical path submittals, Schedule of Values	
Project Start Date July 28, 2017	Start Date	
Project Completion Date August 31, 2017	Project Completion	\$500/Day

* Milestone schedules may be revised as necessary to accommodate a late or delayed NTP date. CFFA may change Anticipated Award and/or Proceed dates without notifying contractor.

END OF SECTION

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ENGINEER'S ESTIMATE
 SAN MATEO COUNTY EXPO CENTER
 PAVEMENT REHABILITATION PROJECT
 OPTION 1

Item No.	Section No.	Estimated Quantity	Unit of Measure	Item Description	Item Price (In Figures)	Total (In Figures)
1	10	1	LS	Construction waste management	4,000.- \$	4,000.- \$
2	11-1	1	LS	Water pollution control	9,000.- \$	9,000.- \$
3	11	1	LS	Mobilization	204,000.- \$	204,000.- \$
4	15	4,490	LF	Remove existing buried concrete curb	5.- \$	22,450.- \$
5	20	1	LS	Erosion control	30,000.- \$	30,000.- \$
6	39	141,240	SF	1.5" deep hot mixed asphalt concrete overlay on bus path areas	1.20 \$	169,488.- \$
7	39	26	EA	Adjust vaults, boxes and Manholes to grade	1,400.- \$	36,400.- \$
8	84	1	LS	Parking lot striping and markings	65,000.- \$	65,000.- \$
9	200	828,650	SF	Mill existing asphalt concrete minimum 3"	0.14 \$	116,011.- \$
10	200	687,410	SF	14" deep full depth rehabilitation on general areas	1.10 \$	756,151.- \$
11	200	141,240	SF	18" deep full depth rehabilitation on bus path areas	1.45 \$	204,798.- \$
12	300	687,410	SF	3" deep asphalt concrete pavement with recycled asphalt concrete on general areas	0.96 \$	659,913.- \$ ⁶⁰
13	300	141,240	SF	2.5" deep asphalt concrete pavement with recycled asphalt concrete on bus path areas	0.90 \$	127,116.- \$
14	400	828,650	SF	Type III micro surfacing all areas	0.30 \$	248,595.- \$
15	400	828,650	SF	Type I slurry seal all areas	0.17 \$	140,870.50 \$
TOTAL						\$2,793,793.10

(F) Final Pay Quantities - See Section 9-1.015, "Final Pay Items," of the Standard Specifications.
 (S) Specialty Items - As defined in Section 8-1.01, "Subcontracting," of the Standard Specifications.

(Note: Gaps in section numbering, above, indicate the Section is blank or does not apply.)

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APPENDIX "A"
TO AGREEMENT
SAN MATEO COUNTY EXPO CENTER
PAVEMENT REHABILITATION PROJECT

I. The Contractor assumes any and all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the Owner, and for all risks of every description connected with the work, and also assumes any and all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and to the Plans, Specifications and Special Provisions and requirements of the Engineer hereunder. The Contractor shall guarantee all materials and workmanship for a period of one (1) year from date of acceptance of the project by the Owner. Any defects due to faulty materials, method of installation or workmanship within that period shall be repaired by the Contractor promptly upon notice by the Owner or Engineer, at the expense of the Contractor.

It is distinctly understood that the estimate set forth in the Notice to Contractors is only an approximation of the amount of work to be done and the Owner does not expressly or by implication agree that the actual amount of work will correspond with the amount set forth therein, and payment shall be made to the Contractor as above set forth.

II. Time is of the essence in the Agreement, and the work to be performed hereunder shall be completed by August 31, 2017.

This Contract is subject to termination as provided by Section 4410 and Section 4411 of the Government Code of the State of California, being portions of the Emergency Termination of Public Contracts Act of 1949. In the event that the Contract is terminated pursuant to said sections, compensation to the Contractor shall be determined on the basis of the reasonable value of the work done, including preparatory work. As an exception to the foregoing, in the case of any fully completed separate item or portion of the work for which there is a separate Contract price, the Contract price shall control.

III. Payment to the Contractor shall be made progressively by the Owner for the work and materials furnished under this Agreement in accordance with the provisions of these Contract documents.

IV. Relationship of Parties: Contractor agrees and understands that the work/services performed under this Agreement are performed as independent contractor and not as an employee of the Owner or County of San Mateo ("County" and that Contractor acquires none of the rights, privileges, powers, or advantages of Owner or County employees.

V. This Agreement, together with the Notice to Contractors, the Contractor's Proposal, the Plans, Specifications and Special Provisions and the Payment and Performance Bonds form the Contract, and said documents by this reference become as fully a part of the Contract as if hereto attached or herein set forth in full. The Standard Specifications of the County of San Mateo, State of California, which, except as specifically noted in the Contract

documents and specifications, are identical with the Standard Specifications of the State of California, Department of Transportation, dated May 2006, and are on file with the County Manager/Clerk of the Board of Supervisors, County of San Mateo, are incorporated herein by reference as a part of the Contract documents and shall apply to this project except where the terms of this Agreement or other Contract documents are inconsistent therewith, in which case the provisions of this Contract shall prevail.

VI. The performance of this Contract is secured by a "Payment" Surety Bond in the sum of one hundred percent (100%) of the Contract bid, and a "Performance" Surety Bond in the sum of one hundred percent (100%) of the Contract bid.

VII. Insurance: The Contractor shall not commence work under this Contract until he has obtained all insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained. The Contractor shall furnish Owner with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract. Certificates of Insurance shall be filed with the Owner within **TEN (10) WORKING DAYS** after award of the Contract. These certificates shall specify or be endorsed to provide that **THIRTY (30) CALENDAR DAYS'** notice must be given, in writing, to Owner of any pending change in the limits of liability or of any cancellation or modifications of the policy.

A. Worker's Compensation and Employer's Liability Insurance

The Contractor shall have in effect during the entire life of this Contract, Worker's Compensation and Employer's Liability Insurance providing full statutory coverage; and in case any work is sublet, the Contractor shall require all subcontractors similarly to provide Worker's Compensation and Employer's Liability Insurance to full statutory limits. In signing this Contract, the Contractor makes the following certifications, required by Section 1861 of the Labor Code:

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

B. Liability Insurance

The Contractor shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance as shall comply with Section 7-1.12, "Indemnification and Insurance," of the Standard Specifications and protect him/her and any subcontractor performing work covered by this Contract, from claims for damages for bodily injury, including accidental death, as well as from claims for property damage including third party property damage, to include coverage on property in the care, custody and control of the Contractor, and also including coverage for what are commonly known as the "X, C and U" exclusions (having to do with

blasting, collapse and underground property damage), which may arise from the Contractor's operations under this Contract, whether such operations be by himself/herself or by any subcontractor or by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be **ONE MILLION DOLLARS (\$1,000,000)** combined single bodily injury and property damage for each occurrence. The Owner, the County of San Mateo, San Mateo Event Center and its/their officers, agents, servants and employees, shall be named as additional insureds on any such policies of insurance, which shall also contain a provision stating that the insurance afforded thereby to the Owner, the County of San Mateo, San Mateo Event Center, and its/their officers, agents, servants and employees, shall be primary insurance to the full limits of liability of the policy, and that if the Owner, the County of San Mateo, San Mateo Event Center or its/their officers and employees, have other insurance against a loss covered by such policy, such other insurance shall be excess insurance only. **Such statements, mentioned above, shall be included on a separate endorsement to be submitted to the Owner with the Certificate of Insurance.**

C. In case of the breach of any provision of this Article, the Owner, at its option, may take out and maintain at the expense of the Contractor, or subcontractor, such insurance as the County may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be due, or become due, to the Contractor, under this Contract.

D. Hold Harmless

The Contractor's attention is directed to Section 7-1.12, "Indemnification and Insurance," of the Standard Specifications.

The provisions contained in Section 7-1.12, "Indemnification and Insurance," of the Standard Specifications of the State of California, Department of Transportation, shall be applicable with the understanding that where said provisions specifically refer to the State of California, a department or division of the State or an official, officer or employee of the State, said provision shall be interpreted to refer to the Owner, the County of San Mateo, San Mateo Event Center and all officers, agents, servants and employees thereof connected with the work, including but not limited to the Director of Public Works, their duly authorized representatives, other appropriate department, division, official, officer or employee of the County of San Mateo. San Mateo Event Center.

The provisions of Section 7-1.12A, "Indemnification," of the Standard Specifications are superseded by the following:

"To the full extent permitted by law, Contractor shall indemnify and save harmless the Owner, the County, its officers, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of:

1. Injuries to or death of any person, including Contractor, its officers, employees and servants, or
2. Damage to any property of any kind whatsoever and to whomsoever belonging, or

3. Any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with applicable laws, or
4. Any other loss or cost resulting from the contractor's negligent or reckless acts or omissions or willful misconduct in connection with the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damages for which the County has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless, as set forth herein, shall include the duty to defend, as set forth in Section 2778 of the California Civil Code.

The obligations set forth in this Section shall continue beyond the term of this Agreement as to any act or omission which occurred during or under this Agreement."

E. Compensation

All insurance required by the paragraphs of this section shall be obtained and maintained by the Contractor at Contractor's own expense and Owner shall not compensate Contractor for said insurance expenses other than as they are included in the Contract prices the Owner pays for the various items of work.

- F.** Nothing herein contained shall be construed as limiting in anyway the extent to which the Contractor may be held responsible for payments of damages resulting from his operation.

VIII. Wage Scale: Reference is hereby made to the rate of prevailing wage scale established by the Department of Industrial Relations, a copy of which is on file in the office of the Director of Public Works, and available at www.dir.ca.gov/DLSR or by phone at 415-703-4774, the provisions of which are hereby specified as the rate of prevailing wage to be paid to workmen on this project, and the provisions of California Labor Code, Article 2, Chapter 1, Part 7, Division 2, Section 1770 et seq and Section 1810 et seq, and particularly Section 1775 and 1776(a) thereof, shall be complied with.

The Contractor hereby agrees to pay not less than the prevailing rates of wages which are effective on the date the Notice to Contractors is issued for each craft or type of workman or mechanic needed to execute the Contract as provided for by the County for the performance of public work.

Additionally, pursuant to State Senate Bill SB 854 (Stat. 2014, chapter 28), effective January 1, 2015:

- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

IX. The Contractor expressly covenants and agrees to comply with all the provisions of the Labor Code of the State of California limiting the hours of labor on public works to eight (8) hours during any one calendar day, and forty (40) hours in any one calendar week, requiring the payment of not less than the prevailing wage rates, and further agrees to the forfeitures provided for in said Labor Code and as set forth in Section 7, "Legal Relations and Responsibility," of the Standard Specifications and all amendments thereto, in the event of a violation of any of the provisions thereof during the course of execution of this Contract.

The Contractor expressly agrees to be responsible for compliance with all the provisions of Sections 1776 and 1777.5 of the California Labor Code.

X. No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with Federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to:

- i) Termination of this Agreement;
- ii) Disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
- iii) Liquidated damages of \$2,500 per violation;
- iv) Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to:

- i) Examine Contractor's employment records with respect to compliance with this paragraph;
- ii) Set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the Owner/County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the

complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

Compliance with Equal Benefits Ordinance. With respect to the provisions of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

XI. The Contract may be terminated by the Owner in the event the Contractor should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his subcontractors should violate any of the provisions of the Contract, or if he should persistently or repeatedly refuse, or should fail, except in cases where extension of time is provided, to furnish enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors, or for materials or labor, or persistently disregard laws, ordinances, or the instructions of the Engineer. In the event of any of the foregoing conditions, the Engineer is authorized and directed to serve written notice upon the Contractor and his Surety of its intention to terminate the Contract, such notice to contain the reasons for action and unless within **TWO (2) CALENDAR DAYS** after serving of such notice such conditions shall be remedied and satisfactory arrangements for continuation be made, the Contract shall, upon expiration of **TWO (2) CALENDAR DAYS**, cease and terminate. In the event of any such termination, the Engineer may take over the work and prosecute the same to completion by Contract or by any other method he may deem advisable, and at the expense of the Contractor, and the Contractor and his Surety shall be liable to the Owner for any excess cost occasioned thereby, and in such event, the County may without liability to so doing take possession of and utilize such materials, appliances, plant and other property belonging to the Contractor as may be on the site of the work, and necessary therefore. In such cases, the Contractor shall not be entitled to receive any further payment until the work is completed.

XII. The Contractor shall comply with all existing and future State and Federal and regulating laws and all ordinances and regulations of the County of San Mateo 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 the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

XIII. Neither party to the Contract shall assign the Contract or sublet it as a whole without written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the Owner. The Contractor shall neither mortgage nor convey title to equipment or material to be used in this work, without the written permission of the County.

XVI. Retention of Records, Right to Monitor and Audit:

A. CONTRACTOR shall maintain all required records for three (3) years after the OWNER makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the

State of California.

B. Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies and as required by the OWNER.

C. CONTRACTOR agrees to provide to OWNER, to any Federal or State department having monitoring or review authority, to OWNER's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

XIV. Merger Clause: This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

XV. Controlling Law: The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

XVI. Notices: Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when both: (1) transmitted via facsimile to the number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

XVII. Claims Resolution:

A. Exclusive Remedy.

Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Contractor's right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project ("Claims Resolution Process").

Contractor acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit the Owner's review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert,

request, or demand any entitlement to an adjustment of the Contract Time or the contract Price on account of any instruction, request, drawings, specifications, action, condition, omission, default or other situation.

To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.

B. Performance during Claim Resolution Process.

The Contractor shall diligently proceed with Work on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of Owner to resolve Claims with the Contractor as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Contractor's failure to diligently proceed in accordance with the Owner's instructions or the Contract terms will be considered a material breach of the Contract and a waiver of Contractor's rights under this Contract.

C. Waiver.

If Contractor fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Contractor waives and releases its rights regarding further review of its Claim, unless Contractor and Owner mutually agree in writing to other time limits.

D. Intention.

The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.

E. Other Provisions.

If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.

F. Claim Presentation("Claim")

1. **Claim:** A claim is a written demand by Contractor (or by Contractor on behalf of a Subcontractor) that the Contractor must submit by **registered**

mail or certified mail return receipt requested for:

- a) An extension to the Contract Time, including relief from damages or penalties assessed by the Owner for delay;
 - b) Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or the Contractor is not otherwise entitled; or
 - c) Payment that is disputed by the Owner.
2. A PCO may be a Claim, but the Parties agree that a PCO shall only be a Claim if:
- a) The Owner states in writing that it disagrees with the terms of a PCO and directs the Contractor to utilize the Claim Resolution Process, or
 - b) The Owner rejects in whole or in part a PCO and the Contractor states in writing that it is utilizing the Claim Resolution Process for the portion of the PCO that the Owner rejected.
 - i)

G. Subcontractors.

1. Public Contract Code section 9204(d)(5) states that the Contractor may present to the Owner a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a claim for Work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the Owner shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the Owner and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.
2. Contractor is responsible for providing this Claims Resolution Process to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Contractor shall indemnify, keep and hold

harmless the Owner and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

H. Contractor Must Timely Identify, Present and Document Any Claim

1. Every Claim shall be stated with specificity in writing and signed by Contractor under penalty of perjury and presented to the Owner within ten (10) calendar days from the date Contractor discovers or reasonably should discover, that an act, error or omission of Owner, its agents or employees, or action, condition or other situation has occurred that may entitle Contractor to make a Claim. This shall include the Contractor's actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the contractor believes there should an adjustment of the Contract Price or Contract Time. Contractor shall provide this writing even if Contractor has not yet been damaged, delayed, or incurred extra cost when Contractor discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:
 - a) identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;
 - b) Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments; and
 - c) Identify in detail line-item costs if the Claim seeks money.
 - d) If the Claim involves extra work, a detailed cost breakdown of the amounts the Contractor is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within seven (7) days of the date the cost reflected in the record is incurred. At the request of Owner, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).
 - e) If the Claim involves an error or omission in the Contract

Documents:

- ii) An affirmative representation under penalty of perjury by Contractor and any affected Subcontractors and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and
 - iii) A detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Contractor, its Subcontractors and suppliers, prior to submitting a proposal for the Work.
 - iv) Contractor shall not be entitled to compensation for escalation of materials costs unless Contractor demonstrates to the satisfaction of the Owner that such cost escalation is the result of unusual, unforeseeable market conditions, not the fault of the Contractor, and were not reasonably foreseeable at the time of the award of the Contract. Contractor shall provide evidence to Owner of the costs included in the Contract for those materials and that those costs were reasonable at the time and that Contractor timely ordered the materials at issue.
- c) The writing shall be accompanied by all documents substantiating Contractor's position regarding the Claim.
 - d) A Claim that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.
- I. Certification. Each copy of the Claim Documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before the Contractor's signature: "***I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit.***" The Contractor acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractor(s) or others who are asserting Claims by and through Subcontractors and/or the Contractor.

J. Owner's Written Statement/Decision on Claim. The Owner shall issue a written statement/decision regarding the Claim to the Contractor within forty-five (45) days of receipt of the written Claim from the Contractor, or three (3) days after the Owner's first regular governing board meeting after that 45-day period if the Owner's governing board does not meet within that first 45-day period. If the Owner fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed rejected in its entirety.

K. Contractor Must Demand an Informal Meet and Confer Conference if Contractor Pursues Any Claim

FAILURE OF A CONTRACTOR TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.

1. **Where There Is No Agreement:** If there is no agreement between Contractor and the Owner on a Claim, then within ten (10) calendar days of the date of the Owner's written statement/decision in response to a Claim or PCO, if Contractor pursues that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with Owner staff. A meet and confer conference with Owner staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below.
2. **Where There Is Partial Agreement:** If Contractor and the Owner partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Contractor pursues those issues from that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with Owner staff regarding those issues. A meet and confer conference with Owner staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below, in connection with the Owner's rejection.
3. **Meet and Confer Conference.** Owner and Contractor shall schedule the meet and confer conference as soon as reasonably possible after Contractor's written demand for a meet and confer conference, but in no case later than thirty (30) days after Contractor's demand.
4. **Owner's Written Decision.** Within ten (10) **business** days of the meet and confer conference, the Owner shall issue a written decision. If the Owner fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.

- a) If the Owner's decision completely resolves the Claim, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to.
- b) If the Owner rejects the Contractor's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.
- c) Contractor's costs incurred in seeking relief for Claims are not recoverable from Owner.

L. Mediation.

1. At the Owner's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other Owner consultants.
2. The Owner and Contractor shall mutually agree to a mediator within ten (10) **business** days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

M. Contractor's Obligation to File a Government Code Claim. Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, the Contractor is required to present claims to the Owner pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the Owner, the Contractor may proceed under the post-mediation provisions of this Claims Resolution Process.

N. Post Mediation Provisions

1. **Claims of \$375,000 or Less:** The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.

2. **Litigation of Claims in Excess of \$375,000.** If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.

- a) The Owner shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to the Owner by the Contractor or any Subcontractor under the standards set forth in Government Code section 12650 *et seq.* Any Contractor or Subcontractor who submits a false claim shall be liable to the Owner for three times the amount of damages that the Owner sustains because of the false claim. A Contractor or Subcontractor who submits a false claim shall also be liable to the Owner for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim.

O. Documentation of Resolution.

1. If a Claim is resolved, the Owner shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate.

P. Claim Resolution Process – Non-Applicability.

The procedures and provisions in this Claims Resolution section shall **not** apply to:

1. Owner's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;
2. Owner's rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from Owner contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Claims Resolution section and the Contract;
3. Personal injury, wrongful death or property damage claims;
4. Latent defect or breach of warranty or guarantee to repair;

5. Stop notices or stop payment notices; or
6. Any other Owner rights as set forth herein.
7. The Owner's failure to respond to a Claim from the Contractor within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by the Owner as to the merits of the Claim.
8. If Owner fails timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, the Contractor is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code §7107, the Owner is entitled to withhold up to 150% of disputed amounts and the Owner shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.