

**TOWN OF APPLE VALLEY
SHORT FORM CONSTRUCTION CONTRACT**

James Woody Park Retention Basin Landscape Restoration

1. PARTIES AND DATE.

This Contract is made and entered into this 8th day of June, 2021 by and between the Town of Apple Valley, a municipal corporation organized under the laws of the State of California with its principal place of business at 14955 Dale Evans Parkway, Apple Valley, California, 92307 ("Town") and Five Star Landscape Maintenance with its principal place of business at 5419 Pedley Road, Riverside, California, 92509 ("Contractor"). Town and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

2. RECITALS.

2.1 Town. Town is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the Town on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing necessary labor, equipment and materials for the installation of new irrigation and re-establishing turf related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of Town. The following license classifications are required for this Project: C-27.

2.3 Project. Town desires to engage Contractor to render such services for the James Woody Park Retention Basin Landscape Restoration ("Project") as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, performance bond, payment bond, insurance documents, and other certifications as required by the Contract.

3. TERMS

3.1 Compensation and Payment.

3.1.1 Amount of Compensation. As consideration for performance of the Work required herein, Town agrees to pay Contractor the Total Contract Price of **Forty-Nine Thousand Six Hundred Seventy-Six Dollars and Forty-Five Cents (\$49,676.45)** ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the Town.

3.1.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, Town will arrange for payment of the Total Contract Price upon completion and approval by Town of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, Town will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the Town an itemized

application for payment in the format supplied by the Town indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the Town may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the Town and in such detail and form as the Town shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.1.3 Prompt Payment. Town shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.1.4 Contract Retentions. If this Contract is greater than Five Thousand dollars (\$5,000), from each approved progress estimate, five percent (5%) will be deducted and retained by the Town, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.1.5 Other Retentions. In addition to Contract retentions, the Town may deduct from each progress payment an amount necessary to protect Town from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the Town in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by Town during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the Town, incurred by the Town for which Contractor is liable under the Contract; and (11) any other sums which the Town is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the Town to deduct any of these sums from a progress payment shall not constitute a waiver of the Town's right to such sums.

3.1.6 Substitutions for Contract Retentions. Pursuant to California Public Contract Code section 22300, Contractor may substitute securities for any money withheld by the Town to ensure the performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the Town, with the State or a federally chartered bank as the escrow agent, who shall return such securities to Contractor upon satisfactory completion of the Contract. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the Town, which provides that no portion of the securities shall be paid to Contractor until the Town has certified to the escrow agent, in writing, that the Contract has been satisfactorily completed. The Town shall certify that the Contract has been satisfactorily completed within sixty (60) days of work "completion" as defined in Section 7107(c) of the California Public Contract Code. Securities eligible for investment under this section shall be limited to those listed in Section 16430 of the Government

Code, bank or savings & loan certificates of deposit, interest-bearing demand deposit accounts, stand-by letters of credit, or any other security mutually agreed to by Contractor.

3.1.7 Payment to Subcontractors. Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts and as provided for in Section 7108.5 of the California Business and Professions Code. Such payments to subcontractors shall be based on the measurements and estimates made and progress payments provided to Contractor pursuant to this Contract.

3.1.8 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the Town at the time of payment. To the extent that title has not previously been vested in the Town by reason of payments, full title shall pass to the Town at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the Town, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.1.9 Labor and Material Releases. Contractor shall furnish Town with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by Town.

3.2 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule (Exhibit "A")
- Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Public Works Contractor Registration Certification (Exhibit "E")
- Payment and Performance Bonds (Exhibit "F")
- Addenda
- Change Orders executed by the Town
- Latest Edition of the Standard Specifications for Public Works Construction (The Greenbook), Excluding Sections 1-9
- Notice Inviting Bids, if any
- Instructions to Bidders, if any

To the extent there is a conflict between any portions of this Contract, the order of precedence shall be as follows: change orders, special conditions, technical specifications, plans/construction drawings, general contract terms, scope of work, standard plans, advertisements for bid/proposals, bids/proposals or other documents submitted by Contractor.

3.3 Contractor's Basic Obligation; Scope of Work.

3.3.1 Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the Town all labor, materials, tools, equipment, services, and incidental and

customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.3.2 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in advance and in writing by a valid change order executed by the Town.

3.3.3 Change Orders. Changes to the Contract Time (as defined in Section 3.3) or Total Contract Price shall be in the form of a written Change Order, either signed by both parties or issued unilaterally by the Town. No adjustment shall be made to the Contract Time unless the delay impacts the critical path to completion and the delay was not caused in whole or in part by the Contractor. The Town's liability to Contractor for delays for which the Town is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. Failure to timely request a Change Order shall constitute a waiver of any right to adjust the Contract Time or the Total Contract Price. All requests for Change Orders shall be accompanied by detailed supporting documentation, including but not limited to payroll records, invoices, schedules, and any other documentation requested by the Town for the purpose of determining the additional costs or the impact of any delay. If the change involves Work bid at a unit price, then the Total Contract Price shall be increased at the unit price. If there is no unit price, then the Total Contract Price shall be adjusted to account for costs actually incurred plus an allowed mark-up of fifteen percent (15%), which shall constitute the entire amount of profit, mark-ups, field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such work. Regardless of ownership, equipment rates shall not exceed the listed prevailing rates at local equipment rental agencies, or distributors, at the time the work is performed. Nothing herein shall prevent the Parties from agreeing to a lump sum cost.

3.3.4 Changes Ordered By Town. Town may at any time issue a written directive ordering additions, deletions, or changes to the Work. Contractor shall proceed with the work in accordance with the directive. To the extent the directive results in extra work or requires additional Contract Time, Contractor shall request a Change Order within seven (7) days of receiving the Work Directive. If any costs are not capable of being determined within seven (7) days, then Contractor shall request a Change Order within seven (7) days of when the costs are capable of being determined.

3.3.5 Changes Requested By Contractor. With respect to any matter that may involve or require an adjustment to the Contract Time or the Contract Price, Contractor shall provide written notice of the underlying facts and circumstances that gave rise to the potential change within seven (7) days or prior to the alteration of conditions, whichever is earlier. Failure to give notice shall constitute a waiver of Contractor's right to a change order. If any costs are not capable of being determined within seven (7) days, then Contractor shall request a Change Order within seven (7) days of when the costs are capable of being determined.

3.4 Substitutions/"Or Equal". Pursuant to Public Contract Code Section 3400(b), the Town may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the Town may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The Town has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the Town in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the Town's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

3.5 Period of Performance and Liquidated Damages.

3.5.1 Contractor shall perform and complete all Work under this Contract within 45 working days, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the Town. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the Town will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the Town as fixed and liquidated damages the sum of seven hundred fifty dollars (\$750.00) per day for each and every calendar day of delay beyond the Contract Time or

beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.5.2 If Contractor is delayed in the performance or progress of the Work by a Force Majeure Event (as defined herein), then the Contractor shall be entitled to a time extension, as provided herein, when the Work stopped is on the critical path and shall not be charged liquidated damages. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays and the Contractor will not receive an adjustment to the Total Contract Price or any other compensation. Contractor must submit a timely request in accordance with the requirements of the Contract.

3.5.3 A Force Majeure Event shall mean an event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the work); (4) pandemics, epidemics or quarantine restrictions; and (5) strikes and other organized labor action occurring at the project site and the effects thereof on the work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the Town in its capacity as a municipal authority.

3.6 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including a Town Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the Town, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the Town to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the Town, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.7 Control and Payment of Subordinates; Contractual Relationship. Town retains Contractor on an independent contractor basis and Contractor is not an employee of Town. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.8 Town's Basic Obligation. Town agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the Town shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

3.9 Labor.

3.9.1 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Town shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.9.2 Apprenticeable Crafts. When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.9.3 Hours of Work. Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.9.4 Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident

after such 10-day period, Contractor shall, as a penalty to Town, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.9.5 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the DIR. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the DIR to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.9.6 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the DIR. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the DIR against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the Town. Contractor shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any subcontractor.

3.10 Performance of Work; Jobsite Obligations.

3.10.1 Water Quality Management and Compliance.

3.10.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.10.1.2 Compliance with the Statewide Construction General Permit.

Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.10.1.3 Other Water Quality Rules Regulations and Policies.

Contractor shall comply with the lawful requirements of any applicable municipality, drainage Town, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.10.1.4 Cost of Compliance.

Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. Therefore, the Contractor, hereby acknowledges that it has investigated the risk arising from such waters and assumes any and all risks and liabilities arising therefrom.

3.10.1.5 Liability for Non-Compliance.

Failure to comply with laws, regulations, standards, ordinances, and permits listed in Sections 3.10.1.1, 3.10.1.2, 3.10.1.3, and 3.10.1.4 of the Contract is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the Town and its directors, officials, officers, employees, volunteers and agents for any alleged violations. In addition, Town may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.10.1.6 Reservation of Right to Defend.

Town reserves the right to defend any enforcement action brought against the Town for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the Town for the costs (including the Town's attorney's fees) associated with, any settlement reached between the Town and the relevant enforcement entity.

3.10.1.7 Training.

In addition to the standard of performance requirements set forth in this Contract, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.10.1. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by Town, regarding the requirements of the laws, regulations and policies described in paragraph 3.10.1 as they may relate to the Work provided under this Contract. Upon

request, Town will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.10.2 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.10.3 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with the Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the Town in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Town, Contractor shall be solely responsible for all costs arising therefrom. Town is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold Town, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.10.4 Permits and Licenses. Contractor shall be responsible for securing Town permits and licenses necessary to perform the Work described herein, including, but not limited to, a Town Business License. While Contractor will not be charged a fee for any Town permits, Contractor shall pay the Town's applicable business license fee. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.10.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for Town's review and approval 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. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.10.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify Town of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by Town; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, Town shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.10.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, Town shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of Town to provide for removal or relocation of such utility facilities.

3.10.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify Town against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Contract.

3.10.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.10.10 Inspection Of Site. Contractor has visited sites where Work is to be performed and has become acquainted with all conditions affecting the Work. Contractor warrants that it has made such examinations as it deems necessary to determine the condition of the Work sites, its accessibility to materials, workmen and equipment, and to determine the Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances—time or money—will be allowed as to such matters.

3.10.11 Field Measurements. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities.

Errors, inconsistencies or omissions discovered shall be reported to the Town immediately and prior to performing any work or altering the condition.

3.11 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify Town in writing and shall furnish all labor and material releases required by this Contract. Town shall thereupon inspect the Work. If the Work is not acceptable to the Town, the Town shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a re-inspection by the Town. Once the Work is acceptable to Town, Town shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which Town may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

3.12 Claims; Government Code Claim Compliance.

3.12.1 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

3.12.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the Town, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the Town. A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a change order, or otherwise failed to follow any procedures contained in the Contract Documents.

3.12.3 Filing Claims. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fourteen (14) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the Town and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

3.12.4 Supporting Documentation. The Contractor shall submit all claims in the following format:

3.12.4.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.12.4.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.12.4.3 Chronology of events and correspondence

3.12.4.4 Analysis of claim merit

3.12.4.5 Analysis of claim cost, including calculations and supporting documents

3.12.4.6 Time impact analysis in CPM format

3.12.5 Town's Response. Upon receipt of a Claim pursuant to this Section, Town shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days of receipt of the Claim, or as extended by mutual agreement, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 days after the Town issues its written statement.

3.12.5.1 If Town needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, Town shall have up to three (3) days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

3.12.5.2 Within 30 days of receipt of a Claim, Town may request in writing additional documentation supporting the Claim or relating to defenses or claims Town may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of Town and the Contractor. Town's written response to the Claim, shall be submitted to the Contractor within 30 Days (if the Claim is less than \$50,000, within 15 Days) after receipt of the additional documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3.12.6 Meet and Confer. If the Contractor disputes Town's written response, or Town fails to respond within the time prescribed, the Contractor may so notify Town, in writing, within 15 Days of receipt of Town's response or the Town's failure to respond, and demand an

informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, Town shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

3.12.7 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, Town shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after Town issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with Town and the Contractor sharing the associated costs equally. Town and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the Parties agree to select a mediator at a later time.

3.12.7.1 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.

3.12.7.2 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3.12.7.3 Unless otherwise agreed to by Town and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.12.7.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

3.12.8 Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.12.9 Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:

3.12.9.1 Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both Parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures. The mediation process shall provide for the selection within 15 Days by both Parties of a

disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

3.12.9.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration:

3.12.9.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.12.10 Government Code Claim Procedures.

3.12.10.1 This section does not apply to tort claims and nothing in this section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.

3.12.10.2 In addition to any and all Contract requirements pertaining to notices of and requests for adjustments to the Contract Time, Contract Price, or compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the Town.

3.12.10.3 Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time, Contract Price, or compensation or payment for extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor may not file any action against the Town.

3.12.10.4 A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to the Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.

3.12.11 Non-Waiver. Town's failure to respond to a Claim from the Contractor within the time periods described in this section or to otherwise meet the time requirements of this section shall result in the Claim being deemed rejected in its entirety and shall not constitute a waiver of any rights under this section.

3.13 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to

herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by Town. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the Town may terminate this Contract pursuant to the termination provisions in this Contract; provided, however, that the Town needs to provide Contractor with only one (1) day advanced written notice.

3.14 Indemnification.

3.14.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the Town, its officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Contract, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to such loss or damage which is caused by the sole or active negligence or willful misconduct of the Town.

3.14.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of Town's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against Town or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against Town or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse Town for the cost of any settlement paid by Town or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Town's attorney's fees and costs, including expert witness fees. Contractor shall reimburse Town and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Contract, and shall not be restricted to insurance proceeds, if any, received by the Town, its officials, employees, agents and authorized volunteers.

3.15 Insurance.

3.15.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the Town that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Town that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the Town to terminate this Contract for cause.

3.15.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work

hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:

3.15.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) OR Insurance Services Office Owners and Contractors Protective Liability Coverage Form (CG 00 09 11 88) (coverage for operations of designated contractor); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto); (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Builders'/All Risk*: Builders'/All Risk insurance covering for all risks of loss, including explosion, collapse, underground excavation and removal of lateral support (and including earthquakes and floods if requested by the Town). Policies shall not contain exclusions contrary to this Contract.

3.15.2.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury, personal injury and property damage; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease; and (4) *Builders'/All Risk*: Completed value of the project. Defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the parties required to be named as additional insureds pursuant to this Contract.

3.15.2.3 Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the Town. If such coverage is cancelled or materially reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Town evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, the Town has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the Town will be promptly reimbursed by Contractor or the Town may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the Town may suspend or terminate this Contract.

3.15.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the Town to add the following provisions to the insurance policies:

3.15.3.1 General Liability. (1) Such policy shall give the Town, its officials, employees, agents and volunteers additional insured status using ISO endorsements CG20 10 10 01 plus CG20 37 10 01, or endorsements providing the exact same coverage, with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or

any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the Town, its officials, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its officials, employees, agents and volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

3.15.3.2 Automobile Liability. (1) Such policy shall give the Town, its officials, employees, agents and volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the Town, its officials, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its officials, employees, agents and volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

3.15.3.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Town, its officials, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

3.15.3.4 All Coverages. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Town, its officials, employees, agents and volunteers.

3.15.4 Builders'/All Risk Policy Requirements. The builders'/all risk insurance shall provide that the Town be named as loss payee. In addition, the insurer shall waive all rights of subrogation against the Town.

3.15.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Town, its officials, employees, agents and volunteers.

3.15.6 Professional Liability Insurance. All architects, engineers, consultants or design professionals retained by Contractor shall also procure and maintain, for a period of five (5) years following completion of the Contract, errors and omissions liability insurance with a limit of not less than \$1,000,000 per occurrence. This insurance shall name the Town, its directors, officials, officers, employees, agents and volunteers as additional and insureds with respect to Work performed, and shall otherwise comply with all requirements of this Section. Defense costs shall be paid in addition to the limits.

3.15.7 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. Contractor shall guarantee that, at the option of the Town, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the Town guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.15.8 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the Town. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

3.15.9 Verification of Coverage. Contractor shall furnish Town with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the Town. All certificates and endorsements must be received and approved by the Town before work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.15.10 Subcontractors. All subcontractors shall meet the requirements of this Section before commencing Work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the Town, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the Town in writing.

3.15.11 Reporting of Claims. Contractor shall report to the Town, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

3.16 Bond Requirements.

3.16.1 Payment Bond. If required by law or otherwise specifically requested by Town in Exhibit "F" attached hereto and incorporated herein by reference, Contractor shall execute and provide to Town concurrently with this Contract a Payment Bond in an amount required by the Town and in a form provided or approved by the Town. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the Town.

3.16.2 Performance Bond. If specifically requested by Town in Exhibit "F" attached hereto and incorporated herein by reference, Contractor shall execute and provide to Town concurrently with this Contract a Performance Bond in an amount required by the Town and in a form provided or approved by the Town. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the Town.

3.16.3 Bond Provisions. Should, in Town's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from Town. In the event the surety or

Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the Town, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the Town. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the Town, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Town. If Contractor fails to furnish any required bond, the Town may terminate the Contract for cause.

3.16.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the Town.

3.17 Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the Town of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the Town in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the Town may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the Town, regardless of whether or not such warranties and guarantees have been transferred or assigned to the Town by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the Town. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the Town, the Town shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the Town for any expenses incurred hereunder upon demand.

3.18 Employee/Labor Certifications.

3.18.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California 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 agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.18.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.18.3 Verification of Employment Eligibility. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.

3.19 Termination. This Contract may be terminated by Town at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event of termination by Town for any reason other than the fault of Contractor, Town shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, Town may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset Town's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, Town may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, Town may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.20 General Provisions.

3.20.1 Town's Representative. The Town hereby designates the Public Works Manager, or designee, to act as its representative for the performance of this Contract ("Town's Representative"). Town's Representative shall have the power to act on behalf of the Town for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the Town's Representative or his or her designee.

3.20.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the Town ("Contractor's Representative"). Following approval by the Town, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the Town,

shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the Town, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the Town's written approval.

3.20.3 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from Town, the matter shall be referred to Town's Representative, whose decision shall be binding upon Contractor.

3.20.4 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the Town 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. Section 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 Contract. This assignment shall be made and become effective at the time the Town tender final payment to Contractor, without further acknowledgment by the Parties.

3.20.5 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONTRACTOR:

Five Star Landscape Maintenance
5419 Pedley Road
Riverside, CA 92509
Attn: Jason Chaidez, Owner

TOWN:

Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, California 92307
Attn: Mike Molinari, Public Works Manager

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.20.6 Time of Essence. Time is of the essence in the performance of this Contract.

3.20.7 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of Town. If Contractor attempts an assignment

or transfer of this Contract or any obligation, right, title or interest herein, Town may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

3.20.8 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.20.9 Laws; Venue. This Contract shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Contract, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California.

3.20.10 Attorneys' Fees. If either Party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

3.20.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.20.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.20.13 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, Town shall have the right to terminate this Contract without liability.

3.20.14 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, Town shall have the right to rescind this Contract without liability. For the term of this Contract, no director, official, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the Town's Filing Officer as required under state law in the performance of the Work.

3.20.15 Certification of License.

3.20.15.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.20.15.2 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.

3.20.16 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.20.17 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

3.20.18 Non-Waiver. None of the provisions of this Contract shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.20.19 Town's Right to Employ Other Contractors. Town reserves right to employ other contractors in connection with this Project or other projects.

[Signatures on Next Page]

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT
BETWEEN THE TOWN OF APPLE VALLEY
AND FIVE STAR LANDSCAPE MAINTENANCE**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

TOWN OF APPLE VALLEY

FIVE STAR LANDSCAPE MAINTENANCE

Approved:

By: _____
Douglas B. Robertson
Town Manager

By: Jason Chaidar
Its: owner
Printed Name: Jason Chaidar

ATTESTED:

By: _____
La Vonda M. Pearson
Town Clerk

1099893 C-27
Contractor's License Number and
Classification

APPROVED AS TO FORM:

10000440472
DIR Registration Number

Thomas A. Rice, Best Best & Krieger LLP
Town Attorney

EXHIBIT "A"

SERVICES/SCHEDULE

Five Star landscape Maintenance
5419 Pedley Rd.
Riverside, Ca 92509
Jason Chaidez (714)715-3833

ESTIMATE

City Of Apple Valley
Parks And Recs
Email: jvargas@applevalley.org

Estimate # 0000037
Estimate Date 05/10/2021

Item	Description	Unit Price	Quantity	Amount
Service	Cost proposal retention basin city of apple valley: Remove existing turf around building. install irrigation around building, area adjacent to parking lot and entire basin area.			
Service	Prepare soil in the basin area. Hydro seed entire area including: Entire basin area , areas adjacent to parking lot. areas around building square footage of all areas 53300 square feet turf mix hydro seed to be utilized.			
Service	All mainline and lateral lines to be installed sub surface I.E in trenches. all sprinklers heads to be installed below grade rain bird 5000 rotor. Sprinklers to be used existing irrigation valves and controller to be used in the irrigation installation. Total Cost including all labor , materials and equipment	49676.45	1.00	49,676.45
NOTES: retention basin irrigation and hydro seed 90 day warranty begins upon installation completion. Insure proper and adequate irrigation coverage, no bare areas, no runoff, no dry or dead areas. Mow turf as needed or directed. job will take 15 working days to complete. example if we get the ok to start June 14th, 2021 complete by July 1st, 2021.				
Subtotal				49,676.45
Total				49,676.45
Amount Paid				0.00
Estimate				\$49,676.45

EXHIBIT "B"
PLANS AND SPECIFICATIONS

- **SITE LAYOUT (1 SHEET)**
- **AS-BUILT PREVIOUS IRRIGATION PLAN (1 SHEET)**



JAMES WOODY PARK RETENTION BASIN	
IRRIGATION AND SEEDING AREA OF WORK	
5/13/2021	SHEET 1 OF 1
SCALE: NTS	



Building

TRUSS AREA

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Contract	Little Valley, Alaska
Order	NAAS, Alaska
Designation	Building, Naval Air Station
Project	10-11-12
Sheet	10-11-12

EXHIBIT "C"

SPECIAL CONDITIONS

ARTICLE 1. BONDS

Concurrently with this Contract, the Contractor shall deliver to the Town four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the Town and included as Exhibit "F" to the Contract. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the Town. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

ARTICLE 2. NOTICE TO PROCEED

Upon award of this contract and signing the contract documents, the Town shall issue the Contractor a Notice to Proceed.

The work on this project shall commence within 10 calendar days of the Notice to Proceed and be completed within **45** working days. **Working days will be counted from the date of the Notice to Proceed.** Working days are defined as any day that Town offices are open for business.

EXHIBIT "D"

**CERTIFICATION
LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California 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 the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

FIVE STAR LANDSCAPE MAINTENANCE

By: _____
Signature

Name (Print)

Title (Print)

EXHIBIT "E"

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Contractor: _____

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: _____ Yes or _____ No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

1. Contractor shall maintain a current DIR registration for the duration of the project.
2. Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor: _____

Signature: _____

Name and Title: _____

Dated: _____

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

EXHIBIT "F"
PAYMENT AND PERFORMANCE BONDS

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Town of Apple Valley (hereinafter referred to as "Town") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Town in the sum of _____ DOLLARS, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the Town, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by Town, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Town from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the Town's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the Town to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the Town's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the Town, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Town under the Contract and any modification thereto, less any amount previously paid by the Town to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the Town to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Town under the Contract and any modification thereto, less any amount previously paid by the Town to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the Town may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the Town, when declaring the Contractor in default, notifies Surety of the Town's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__).

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$ _____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited
 ☐ General

Number of Pages

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the Town of Apple Valley (hereinafter designated as the "Town"), by action taken or a resolution passed _____, 20____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

_____ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the Town in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by Town in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining

or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Town and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)_____

Contractor/ Principal

By_____

Title_____

(Corporate Seal)

Surety

By_____

Attorney-in-Fact

Title_____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited
 ☐ General

Number of Pages

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above