

DRAFT GENERAL CONSTRUCTION CONTRACT

THIS CONTRACT dated _____ is by and between the CITY OF SUNNYVALE, a California chartered municipal corporation of the State of California ("Owner") and GRADETECH INC., a California corporation ("Contractor").

RECITALS:

The parties to this Contract have mutually covenanted and agreed, as follows:

1. The Contract Documents. The complete Contract consists of the following documents: this Contract; Notice Inviting Bids; Instructions to Bidders; Performance Bond and Payment Bond; Guaranty; City of Sunnyvale Standard Specifications for Public Works Construction, 2006 Edition; City of Sunnyvale Standard Details for Public Works Construction, 2006 Edition; Plans and Specifications, "EVELYN AVENUE MULTI-USE TRAIL, Project No. TR-23-02, Invitation for Bids No. PW26-19", including OSHA, two (2) addenda, and other standards and codes as outlined in the Specifications. These documents are all incorporated by reference. The documents comprising the complete contract are collectively referred to as the Contract Documents.

All obligations of Owner and Contractor are fully set forth and described therein.

All the above-referenced documents are intended to work together so that any kind of work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all Contract Documents.

2. The Work. Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete the project in a good and workmanlike manner. The work consists of installing a Multi-use Trail on the north side of West Evelyn Avenue from South Bernardo Avenue to Mathilda Place and connections to cross-street bike and pedestrian facilities. The Multi-use trail shall include AC grinding and AC overlay, minor concrete work, curb ramps replacement, AC pavement, micro-surfacing on AC pavement, drainage facilities, bioretention areas, signing and striping, adjusting utility boxes to finished grade, planting and irrigation, traffic loops, signal and conduit work, as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications prepared by BKF Engineers and adopted by Owner. These Plans and Specifications are for the project entitled EVELYN AVENUE MULTI-USE TRAIL, Project No. TR-23-02.

It is understood and agreed that the work will be performed and completed as required in the Plans and Specifications under the sole direction and control of Contractor, and subject to inspection and approval of Owner, or its representatives. Owner hereby designates as its representative for the purpose of this Contract the Senior Civil Engineer for Construction or an employee of Owner who will be designated in writing by the Director of Public Works.

3. Contract Price. Owner agrees to pay, and Contractor agrees to accept, in full payment for the work above agreed to be done, the sum of Three Million Eight Hundred Ninety-Two Thousand Seven Hundred Seventy-Two and 50/100 Dollars (\$3,892,772.50) subject to final determination of the work performed and materials furnished at unit prices per "Exhibit A", attached hereto and incorporated by this reference, and subject to additions and deductions in accordance with and as provided in the Contract Documents. The sum includes base bid and accepted Additive Alternate(s) No. 1-4.

4. Permits; Compliance with Law. Contractor shall, at its expense, obtain all necessary permits and licenses, easements, etc., for the construction of the project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules, and regulations relating to the work and to the preservation of the public health and safety.

5. Inspection by Owner. Contractor shall always maintain proper facilities and provide safe access for inspection by the Owner to all parts of the work, and to the shops wherein the work is in preparation. Where the Specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the Owner of its readiness for inspection and without the approval thereof or

consent thereto by the latter. Should any such work be covered up without such notice, approval, or consent, it must, if required by Owner, be uncovered for examination at the Contractor's expense.

6. Extra or Additional Work and Changes. Should Owner at any time during the progress of the work request any alterations, deviations, additions, or omissions from the Specifications or Plans or other Contract Documents it shall be at liberty to do so, and the same shall in no way affect or make void the contract but will be added to or deducted from the amount of the contract price by a fair and reasonable valuation, agreed to in writing between the parties hereto. No extra work shall be performed, or change be made, unless in pursuance of a written order from the Director of Public Works or authorized representative, stating that the extra work or change is authorized and no claim for an addition to the contract sum shall be valid unless so ordered.

7. Time for Completion. All work under this contract shall be completed before the expiration of two hundred sixty (260) working days from the date specified in the Notice to Proceed.

If Contractor shall be delayed in the work by the acts or neglect of Owner, or its employees or those under it by contract or otherwise, or by changes ordered in the work, or by strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Owner, or by any cause which the Owner shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Owner may decide.

This provision does not exclude the recovery of damages for delay by either party under other provisions.

8. Inspection and Testing of Materials. Contractor shall notify Owner a sufficient time in advance of the manufacture or production of materials, to be supplied under this contract, in order that the Owner may arrange for mill or factory inspection and testing of same, if Owner requests such notice from Contractor.

9. Termination. If Contractor should file a bankruptcy petition and/or be judged bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if Contractor or any subcontractors should violate any of the provisions of the Contract, Owner may serve written notice upon Contractor and its surety of Owner's intention to terminate the Contract. The notice shall contain the reasons for such intention to terminate the Contract, and, unless within ten (10) days after serving such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten days, the Contract shall cease and terminate. In the event of any such termination, Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided, however that, if the surety within fifteen (15) days after the serving upon it of notice of termination does not give Owner written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty (30) days from the date of the serving of such notice, Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be liable to Owner for any excess cost occasioned Owner thereby, and in such event Owner may without liability for so doing take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Contractor as may be on the site of the work and necessary therefor.

10. Owner's Right to Withhold Certain Amounts and Make Application Thereof. In addition to the amount which Owner may retain under Section 21 until the final completion and acceptance of all work covered by the Contract, Owner may withhold from payment to Contractor such amount or amounts as in its judgment may be necessary to pay just claims against Contractor or any subcontractors for labor and services rendered and materials furnished in and about the work. Owner may apply such withheld amount or amounts to the payment of such claims in its discretion. In so doing Owner shall be deemed the agent of Contractor and any payment so made by Owner shall be considered as a payment made under the Contract by Owner to the Contractor and Owner shall not be liable to Contractor for any such payment made in good faith. Such payment may be made without prior judicial determination of the claim or claims.

11. Notice and Service Thereof. All notices required pursuant to this Contract shall be communicated in writing, and shall be delivered in person, by commercial courier or by first class or priority mail delivered

by the United States Postal Service. Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email or fax, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing. All notices sent pursuant to this Contract shall be addressed as follows:

Owner: City of Sunnyvale
Department of Public Works
Construction Contract Administrator
P. O. Box 3707
Sunnyvale, CA 94088-3707

Contractor: GradeTech, Inc.

Attn: Chris Jordan

299 W Jack London Blvd

Livermore, CA 94544

12. Assignment of Contract. Neither the Contract, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Contractor without the prior written approval of Owner.

13. Compliance with Specifications of Materials. Whenever in the Plans and Specifications, any material or process is indicated or specified by patent or proprietary name, or by name of manufacturer, such Plans and Specifications shall be met by Contractor, unless Owner agrees in writing to some other material, process or article offered by Contractor which is equal in all respects to the one specified.

14. Contract Security. Contractor shall furnish a surety bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of this Contract. Contractor shall also furnish a separate surety bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the payment of all persons for furnishing materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond. Bonds shall be issued by an admitted surety insurer authorized to operate in the state of California.

15. Insurance. Owner requires that Contractor maintain insurance requirements on Owner's electronic insurance verification system. Contractor shall procure and maintain, at its own expense during the life of this Contract policies of insurance as specified in Exhibit "C", attached hereto and incorporated herein by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "C" electronically for approval by Owner's Risk Manager prior to Contractor (or subcontractor) commencing any work under this Contract.

16. Indemnification and Hold Harmless. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, its officers, officials, agents, employees and volunteers and any successors to Owner's interest from and against any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the "Losses"), arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them are liable except where caused by the active negligence, sole negligence, or willful misconduct of Owner. The defense and indemnification obligations of this agreement are undertaken in

addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement. Contractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement.

17. Hours of Work. Eight hours of labor during any one calendar day and forty hours of labor during any one calendar week shall constitute the maximum hours of service upon all work done hereunder, and it is expressly stipulated that no laborer, worker, or mechanic employed at any time by Contractor or by any subcontractor or subcontractors under this Contract, upon the work or upon any part of the work contemplated by this Contract, shall be required or permitted to work thereon more than eight hours during any one calendar day and forty hours during any one calendar week, except, as provided by Section 1815 of the Labor Code of the State of California, work performed by employees of contractors in excess of eight hours per day and forty hours during any one week shall be permitted upon public work upon compensation for all hours worked more than eight hours per day at not less than one and one-half times the basic rate of pay. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein, Contractor shall forfeit, as a penalty to Owner, twenty-five dollars (\$25.00) for each laborer, worker, or mechanic employed in the execution of this Contract by Contractor, or by any subcontractor under this Contract, for each calendar day during which the laborer, worker, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of the Sections of the Labor Code.

Contractor, and each subcontractor, shall, in accordance with California Labor Code Section 1776 or as the same may be later amended, keep accurate payroll records 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 work under this agreement. Each payroll record shall contain or be verified by a written declaration under penalty of perjury, in accordance with Labor Code Section 1776(a). Such payroll records shall be made available at all reasonable times at the Contractor's principal office to the persons authorized to inspect such records pursuant to Labor Code Section 1776. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, as well as to the Owner's representative. In the event the Contractor or a Subcontractor fails to comply in a timely manner within ten (10) days to a written notice requesting the records, such contractor or subcontractor shall forfeit one hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, in accordance with Labor Code Section 1776(h).

18. Wage Rates. Pursuant to the Labor Code of the State of California, or any applicable local law, Owner has ascertained the general prevailing rate per diem wages and rates for holidays, and overtime work in the city, for each craft, classification or type of laborer, worker, or mechanic needed to execute this Contract. Owner has adopted, by reference, the general prevailing rate of wages applicable to the work to be done under the Contract, as adopted, and published by the Division of Labor Standards Enforcement and Labor Statistics and Research of the State of California, Department of Industrial Relations, to which reference is hereby made for a full and detailed description. A copy of the prevailing wage rates may be reviewed in the office of the Director of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California. Wage rates can also be obtained through the California Department of Industrial Relations website at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

Neither the notice inviting bids, nor this Contract, shall constitute a representation of fact as to the prevailing wage rates upon which the Contractor or any subcontractor may base any claim against Owner.

It shall be mandatory upon Contractor and upon any subcontractor to pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the Contract. It is further expressly stipulated that Contractor shall, as a penalty to Owner, forfeit two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic paid less than the stipulated prevailing rates for any work done under this Contract by Contractor or by any subcontractor; and Contractor agrees to comply with all provisions of Section 1775 of the Labor Code. In case it becomes necessary for Contractor or any subcontractor to employ on the project under this

Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, Contractor shall immediately notify Owner who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

19. Accident Prevention. Precaution shall be always exercised for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

20. Contractor's Guarantee. Owner shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to the building, work, or equipment or any part thereof, or in, on, or about the same during its construction and before acceptance. Contractor unqualifiedly guarantees the first-class quality of all workmanship and of all materials, apparatus, and equipment used or installed by Contractor or by any subcontractor or supplier in the project which is the subject of this Contract, unless a lesser quality is expressly authorized in the Plans and Specifications, in which event Contractor unqualifiedly guarantees such lesser quality; and that the work as performed by Contractor will conform with the Plans and Specifications or any written authorized deviations therefrom. In case of any defect in work, materials, apparatus, or equipment, whether latent or patent, revealed to Owner within one (1) year of the date of acceptance of completion of this Contract by Owner, Contractor will forthwith remedy such defect or defects without cost to Owner.

21. Liquidated Damages. Time shall be the essence of this Contract. If Contractor fails to complete, within the time fixed for such completion, the entire work mentioned and described and contracted to be done and performed, Contractor shall become liable to Owner for liquidated damages in the sum of one thousand and no/100 (\$1,000), for every calendar day during which work shall remain uncompleted beyond such time fixed for completion or any lawful extension thereof. The amount specified as liquidated damages is presumed to be the amount of damage sustained by Owner since it would be impracticable or extremely difficult to fix the actual damage; and the amount of liquidated damages may be deducted by Owner from moneys due Contractor hereunder, or its assigns and successors at the time of completion, and Contractor, or its assigns and successors at the time of completion, and its sureties shall be liable to Owner for any excess.

22. Governing Law, Jurisdiction and Venue. This Contract shall be governed by and construed in accordance with the laws of the State of California, without regard to conflict of law or choice of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara and waive all venue objections.

23. Severability Clause. In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

24. Entire Agreement; Amendment. This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Contract shall be effective unless and until such modification is evidenced by writing signed by all parties.

25. Execution and Counterparts. This Contract may be executed in multiple counterparts and/or with the signatures of the Parties set forth on different signature sheets and all such counterparts, when taken together, shall be deemed one original.

IN WITNESS WHEREOF, this Contract has been duly executed by the parties.

CITY OF SUNNYVALE,
a California chartered municipal
corporation ("Owner")

GRADETECH INC. ("Contractor")

License No. _____

By: _____
City Manager Date

By: _____

Title Date

Attest:
City Clerk

By: _____

Title Date

By: _____
City Clerk Date

(SEAL)

APPROVED AS TO FORM

By: _____
City Attorney Date

EXHIBIT A

No.	Description	Qty	Unit*	Unit Cost
BASE BID				
1.	Mobilization (Recommended to Not Exceed 5%)	1	LS	\$150,000.00
2.	Implementation of Construction BMPs	1	LS	\$22,000.00
3.	Traffic Control	1	LS	\$55,000.00
4.	Remove Tree	9	EA	\$2,090.00
5.	Tree Protection	22	EA	\$330.00
6.	Concrete Demolition	1	LS	\$103,180.00
7.	Roadway Excavation	1,450	CY	\$243.00
8.	Cold Plane 2-inch AC	6,400	SY	\$7.04
9.	Topsoil Excavation	40	CY	\$110.00
10.	Remove Guardrail	55	LF	\$11.00
11.	Install Guardrail	65	LF	\$220.00
12.	Remove Sign Panel	35	EA	\$165.00
13.	Remove Sign & Pole	21	EA	\$165.00
14.	Cap and Abandon Inlet	2	EA	\$550.00
15.	Adjust Storm Drain Covers & Inlet to Grade	29	EA	\$825.00
16.	Adjust Traffic Signal & Signal Light Box to Grade	18	EA	\$825.00
17.	Adjust Sewer Facility Cover to Grade	32	EA	\$825.00
18.	Adjust Water Facility Cover to Grade	85	EA	\$825.00
19.	Adjust Survey Monument to Grade	1	EA	\$825.00
20.	Salvage and Relocate Existing Trash Capture	1	EA	\$825.00
21.	12-inch SDR 26 PVC	8	LF	\$660.00
22.	12-inch RCP	35	LF	\$550.00
23.	Convert Inlet to SDMH	1	EA	\$3,300.00

No.	Description	Qty	Unit*	Unit Cost
24.	Install COS 24-inch Curb Drop Inlet	4	EA	\$4,400.00
25.	Install COS SDMH	2	EA	\$5,500.00
26.	Reconstruct SDMH	2	EA	\$4,400.00
27.	COS Sidewalk (4-inch PCC)	11,000	SF	\$24.75
28.	Detectable Warning Surface	625	SF	\$36.30
29.	12-inch HMA Deep Lift (Type A)	1,700	TON	\$357.50
30.	2-inch Min. HMA (Type A) Overlay	1,550	TON	\$275.00
31.	Base Repair (3-inch Digouts)	3,000	SF	\$7.70
32.	Concrete Median Paving (4-inch PCC)	2,000	SF	\$24.59
33.	Slurry Seal	29,300	SY	\$5.15
34.	COS Curb (Type I-6, Type II, & Type IV-6)	5,200	LF	\$44.00
35.	COS Valley Gutter	120	SF	\$46.20
36.	Signal Modifications - Bernardo & Evelyn	1	LS	\$165,850.00
37.	Signal Modifications - Mary & Evelyn	1	LS	\$153,250.00
38.	Rectangular Rapid Flashing Beacons – Sunset & Evelyn	1	LS	\$36,950.00
39.	Rectangular Rapid Flashing Beacons – Pastoria & Evelyn	1	LS	\$36,950.00
40.	Pavement Striping & Markings	1	LS	\$209,157.00
41.	Install New Sign & Pole	27	EA	\$550.00
42.	Install New Sign Panel	32	EA	\$250.00
43.	Vertical Element – Delineators	400	EA	\$110.00
44.	Concrete Wheel Stops	790	EA	\$70.00
45.	Landscape and Irrigation at Non-Stormwater Treatment Area	1	LS	\$45,272.00
46.	Plant Establishment Period	1	LS	\$22,917.00
47.	Tactile Directional Indicators	21	LF	\$125.00
48.	Improvements at SE Corner of Evelyn/Bernardo	1	LS	\$20,282.90

No.	Description	Qty	Unit*	Unit Cost
49.	Improvements at SW Corner of Evelyn/Sunset	1	LS	\$71,500.00
50.	Improvements at SW Corner of Evelyn/Pastoria	1	LS	\$45,100.00
51.	Roadway Excavation (for Bioretention Areas)	150	CY	\$143.00
52.	6-inch Plastic Perforated Pipe	190	LF	\$33.00
53.	Storm Drain Cleanout	1	EA	\$440.00
54.	Overflow Structure	1	EA	\$3,300.00
55.	Concrete Lateral Bracing	2	CY	\$1,980.00
56.	Planter Walls	30	CY	\$1,980.00
57.	12-inch Class II Permeable	30	CY	\$165.00
58.	Imported Biofiltration Soil	45	CY	\$132.00
59.	Geosynthetic Liner	200	LF	\$11.00
60.	Stormwater Treatment Landscape	1	LS	\$15,356.00
61.	Temporary Water Service and Irrigation Work at Stormwater Treatment Area	1	LS	\$35,690.00

BID ALTERNATIVES

BID ALTERNATIVE #1				
No.	Description	Qty	Unit*	Unit Cost
1.	Bulb out Improvements at SE Corner of Evelyn/Bernardo	1	LS	\$44,000.00
2.	Deduct Bid Item No. 48 – Improvements at SE Corner of Evelyn/Bernardo	1	LS	\$(20,282.90)

BID ALTERNATIVE #2				
No.	Description	Qty	Unit*	Unit Cost
1.	Bulb out Improvements at SW Corner of Evelyn/Sunset	1	LS	\$73,700.00

2.	Deduct Bid Item No. 49 – Improvements at SW Corner of Evelyn/Sunset	1	LS	\$(71,500.00)
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BID ALTERNATIVE #3				
No.	Description	Qty	Unit*	Unit Cost
1.	Bulb-Out Improvements at SW Corner of Evelyn/Pastoria	1	LS	\$47,300.00
2.	Deduct Bid Item No. 50 - Improvements at SW Corner of Evelyn/Pastoria	1	LS	\$(45,100.00)

BID ALTERNATIVE #4				
No.	Description	Qty	Unit*	Unit Cost
1.	Micro surfacing	29,300	SY	\$5.21
2.	Deduct Bid Item No. 33 – Slurry Seal	29,300	SY	\$(5.15)

*For Lump Sum Bid Items (LS), only an amount in the "Total" column is required and only the amount in the "Total" column will be considered.

EXHIBIT B

Utilization of Local Workforce in Construction Projects – The Sunnyvale City Council has adopted a policy which encourages utilization of local workforces, including State-certified apprentices, as a means of supporting economic opportunities for all members of the community. Local workforce is defined as workers residing in Santa Clara County. The lowest responsive and responsible bidder must provide a projection of locally hired workers utilized for this contract.

Contractor	Projected Number of Locally Hired Workers _____ Projected Percent of Locally Hired Workers _____%
Subcontractor(s)	Projected Number of Locally Hired Workers _____ Projected Percent of Locally Hired Workers _____%

EXHIBIT C

INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor, their agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Contractor shall maintain limits not less than:

1. **Commercial General Liability:** coverage written on an occurrence basis with limits not less than \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury, and property damage. ISO Occurrence Form shall be at least as broad as CG 0001.
2. **Automobile Liability:** coverage with a combined single limit of not less than \$2,000,000 per occurrence applying to all owned, non-owned, or hired vehicles used in conjunction with this contract for bodily injury and property damage. ISO Form shall be at least as broad as CA 0001.
3. **Workers' Compensation:** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☐ Professional Liability / Errors and Omissions Liability coverage with limits not less than \$2,000,000 per occurrence or claim.
- ☐ Valuable Papers and Electronic Data Processing with limits not less than \$10,000 each.
- ☒ **Pollution Liability** coverage with limits not less than \$2,000,000 per occurrence.
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants.
- ☐ Builder's Risk / Course of Construction coverage written on an "all risk" basis with limits equal to the completed value of the project and no coinsurance penalty provisions.
- ☒ **Installation Floater** coverage written on an "all risk" basis with limits equal to the completed value of the project and no coinsurance penalty provisions.

Deductibles, Self-Insured Retentions and Other Coverages:

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale, Risk Manager. The Contractor shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

The aforementioned insurance requirements can be met through any combination of self-insured, primary, and excess/umbrella policies that fulfill the stipulated coverage as cited above.

Other Insurance Provisions:

1. During the term of the contract, the City of Sunnyvale, its officers, officials, employees, agents, and volunteers are to be covered as an additional insured in the Contractor's commercial general liability policy (and if indicated above, valuable papers, electronic data processing, pollution liability, builder's risk, and installation floater policies) with respect to liability arising out of activities

performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, officials, employees, agents, or volunteers. Policies containing any self-insured retention provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the Named Insured or the City.

Additional Insured Enforcement for ongoing operations at least as broad as ISO CG 20 10 Scheduled, or automatic CG 20 38 and completed operations shall be at least as broad as ISO CG 20 37 scheduled or automatic ISO CG 20 40.

2. During the term of the contract, the Contractor's Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Sunnyvale.
3. For all Architects, Engineers, and Design Professionals - If Industry Specific Coverage box is checked above **and** if the Contractor's Professional Liability/Errors and Omissions coverage is written on a claims-made basis:
 - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained, and evidence of insurance must be provided, *for at least three (3) years after completion of the contract of work.*
 - c. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of *three (3) years* after completion of contract work
4. If Industry Specific Coverage box is checked above, during the term of the contract, the Contractor's Builder's Risk / Course of Construction or Installation Floater policy shall provide coverage for any building, structures, machinery, or equipment that is damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation, and testing. The policy shall name the City of Sunnyvale as a Loss Payee with respect to any repairs or replacement of any damaged property or other amounts payable under the policy.
5. For any claims related to this project, the Contractor's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not contribute with it and shall be at least as broad as ISO CG 20 01 04 13.
6. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents, or volunteers.
7. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
8. Each insurance policy required by this clause, shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by email to riskmanagement@sunnyvale.ca.gov has been given to the City of Sunnyvale.
9. Any umbrella or excess insurance Liability policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including the additional insured, SIR, and primary and non-contributory

insurance requirements for the benefit of the City (if agreed to in a written contract or agreement) until all coverage carried by or available to the Contractor's primary and excess liability policies are exhausted and before the City's own insurance or self-insurance shall be called upon to contribute to a loss.

10. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the Contractor's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured and also available to the Additional Insured, whichever is greater.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than less than Superior or Excellent, and who are admitted and authorized to do business and in good standing in California unless otherwise acceptable to City of Sunnyvale's Risk Manager.

Verification of Coverage:

City utilizes an electronic insurance verification system to track and verify all insurance related documents. City is no longer accepting insurance documents by mail and will only accept electronic insurance documents. City will email the Contractor requesting proof of insurance for this Agreement through an electronic insurance verification system, which includes instructions on how to upload insurance documents electronically. Contractor shall furnish the City with an electronic Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf and name City of Sunnyvale, Attn: Risk Management, 456 W. Olive Ave, Sunnyvale, CA 94088 as the certificate holder. All certificates are to be received and approved by the City, Risk Manager prior to commencement of work.

The Contractor shall provide certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance. Contractor shall submit insurance certificates, reflecting the policy renewals through the City's electronic insurance verification system. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Subcontractors:

Contractor shall require and verify that all subcontractors or other parties hired for this Work, purchase and maintain coverage for indemnity and insurance requirements at least as broad as specified in this Agreement herein, to the extent they apply to the scope of the subcontractor's work with the same Certificate of Insurance requirements and naming as additional insureds all parties to this Contract. Failure of Contractor to verify existence of sub-contractor's insurance shall not relieve Contractor from any claim arising from sub-contractors work on behalf of Contractor.

Contractor shall include the following language in their agreement with Subcontractors: "Subcontractors hired by Contractor agree to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the Agreement Documents and provide a valid certificate of insurance and the required endorsements included in the Agreement as proof of compliance prior to commencement of any work and to include this same requirement for any subcontractors they hire for this work. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request." Contractor shall provide proof of such Compliance and verification to the City upon request.