

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 GRAHAM CONTRACTORS INC. ("Contractor"). A California general contractor corporation.

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: 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, Slurry Seal 2024 B-SB1, Project No. ST-23-07, Invitation for Bids No. PW24-10, including OSHA, 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 the Owner and the Contractor are fully set forth and described therein.

All the above documents are intended to work together so that any 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 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 furnishing all labor, materials, equipment, tools and incidentals necessary to remove (by grinding) existing thermoplastic striping, pavement markings and legends; remove raised pavement markers; apply slurry seal in areas indicated; install new striping, pavement markings, legends and raised pavement markers as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications prepared by TJKM and adopted by the Owner. These Plans and Specifications are entitled respectively, Slurry Seal 2024 B-SB1, Project No. ST-23-07.

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 the Contractor, and subject to inspection and approval of the Owner, or its representatives. The Owner hereby designates as its representative for the purpose of this contract the Senior Civil Engineer for Construction or an employee of the Owner who will be designated in writing by the Director of Public Works.

3. Contract Price. The Owner agrees to pay, and the Contractor agrees to accept, in full payment for the work above agreed to be done, the sum of Seven Hundred Eighty One Thousand Eight Hundred Forty and 41/100 Dollars (\$781,840.41) 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, as provided in the Documents and in accordance with Contract Documents. The sum includes base bid and accepted Additive Alternate(s) No. All other Additive Alternate(s) are rejected by Owner and are not included in this contract.

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 sixty (60) 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 Paragraph 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: Graham Contractors Inc.
860 Lonus Street
San Jose, CA 95126

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 Specifications, any material or process is indicated or specified by patent or proprietary name, or by name of manufacturer, such Specifications must 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. The Owner requires that CONTRACTOR maintain insurance requirements on the Pacific Insurance Network System (PINS). CONTRACTOR shall procure and maintain, at its own expense during the life of this Agreement, policies of insurance as specified in Exhibit "C" attached and incorporated by reference and shall provide all certificates and/or endorsements as specified in Exhibit "C" through PINS for approval by the Owner Risk Manager prior to CONTRACTOR (or subcontractor) commencing any work under this Agreement.

16. Indemnification and Hold Harmless. Contractor agrees to defend, save, indemnify and hold harmless Owner and all its officers, employees, and agents, against any and all liability, claims, judgments, or demands, including demands arising from injuries or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigation arising through the active negligence or willful misconduct of Owner, or of Owner's officials, agents, employees, servants, or independent contractors who are directly responsible to Owner. Contractor shall make good and reimburse Owner for any expenditures, including reasonable attorneys' fees, Owner may make by

reason of such claim or litigation, and, if requested by Owner, Contractor shall defend any such suits at the sole cost and expense of Contractor.

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 the 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 five hundred (\$500), 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 Agreement 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 Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

25. Execution and Counterparts. This Agreement 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, two identical counterparts of this contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties.

CITY OF SUNNYVALE
a California chartered municipal corporation
of the State of California, Owner

GRAHAM CONTRACTORS INC.
Contractor

License No. 315789

By _____ / /
City Manager Date

By _____

Title
/ /

Date

Attest:
City Clerk

By _____

_____ / /
Title Date

By _____ / /
City Clerk Date

(SEAL)

APPROVED AS TO FORM:

_____/_____/_____
City Attorney Date

EXHIBIT A
BID SCHEDULE

| No. | Description | QTY | Unit | Unit Cost | Total Cost |
|---|---|---------|------|-------------|---------------|
| 1 | Mobilization (Recommend Not to Exceed 5% of Total Base Bid) | 1 | LS | | \$ 30,000.00 |
| 2 | Traffic Control | 1 | LS | | \$ 100,000.00 |
| 3 | Changeable Message Board (CMB) (Revocable) | 6 | EA | \$ 2,000.00 | \$ 12,000.00 |
| 4 | Install Slurry Seal (Type II) with 2 ½ % Latex | 740,829 | SF | \$ 0.29 | \$ 214,840.41 |
| 5 | Remove existing pavement striping, markings, legends, and raised pavement markers | 1 | LS | | \$ 55,000.00 |
| 6 | Install thermoplastic pavement striping, markings, legends, and raised pavement markers | 1 | LS | | \$ 300,000.00 |
| 7 | Traffic Signal Modification by City's contractor (Allowance) | 1 | LS | | \$ 70,000.00 |
| TOTAL BASE BID AMOUNT \$ 781,840.41 | | | | | |
| 1) 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. 2) If a project includes any "Allowance" Unit Price Bid items, the amount in the "Total" column will be entered by the City and shall not be altered. | | | | | |

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 reviewed 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 industry specific coverage box is 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.

Additional Insured Endorsement 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 certified mail, return receipt requested, 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 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, 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 A: VII, and who are admitted and authorized to do business and in good standing in California unless otherwise acceptable to the City of Sunnyvale's Risk Manager.

Verification of Coverage:

The City of Sunnyvale utilizes PINSAdvantage.com (PINS) to track and verify all insurance related documents. The City is no longer accepting Certificates of Insurance by mail and requires the use of PINS. The City will email the Contractor requesting proof of insurance for this Contract through the PINS platform (no-reply@pinsadvantage.com), which include instructions on how to upload insurance documents electronically. Contractor shall furnish the City of Sunnyvale 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 of Sunnyvale, 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 PINS. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Subcontractors:

Contractor shall require all subcontractors to procure and maintain insurance policies subject to these requirements. 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.

Bond No: 30210917
Premium: \$3,554.00
Premium is for contract term and is subject
to adjustments based on final contract
price.

PERFORMANCE BOND

Invitation for Bids No. PW24-10

Slurry Seal 2024 B-SB1

Project No. ST-23-07

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the City of Sunnyvale ("City") has awarded to Graham Contractors, Inc. as principal ("Contractor"), a contract for the public work described as follows:

The project entitled Slurry Seal 2024 B-SB1, Project No. ST-23-07 pursuant to the award made to said Principal by the Council of the City of Sunnyvale to do and perform the following work, to wit: furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner, the work furnishing all labor, materials, equipment, tools and incidentals necessary to remove (by grinding) existing thermoplastic striping, pavement markings and legends; remove raised pavement markers; apply slurry seal in areas indicated; install new striping, pavement markings, legends and raised pavement marker, as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications (the "work").

It is acknowledged that the contract provides for a one (1) year warranty period during which time this Bond remains in full force and effect. The contract and all its terms and conditions are incorporated into this Bond by reference.

AND WHEREAS, the Contractor is required to furnish a bond in connection with the contract guaranteeing its faithful performance.

AND THEREFORE, we the undersigned Contractor as principal and Western Surety Company a corporation admitted and duly authorized to transact business under the laws of the State of California as surety, are held and firmly bound unto the City as obligee in the sum of Seven Hundred Eighty One Thousand Eight Hundred Forty and 41/100 Dollars (\$781,840.41), which amount is not less than one hundred percent (100%) of the contract price, to be paid to the City or its successors and assigns; and for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION of the obligation is such:

That if the Contractor, (or the Contractor's heirs, executors, administrators, successors, or assigns) shall in all respects abide by, and well and truly keep and perform all of the covenants, conditions, and agreements in the contract (and any alteration made as provided in the contract) at the time and in the manner specified and, in all respects, according to their true intent and meaning; and if the contractor

shall indemnify and save harmless the City, its officers, employees, and agents, as stipulated in the contract, then this obligation shall become and be null and void; otherwise, this obligation shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the contract, the obligation of the Contractor and surety under this Bond shall remain in effect for a period of one (1) year after the completion and acceptance of the work. During that time, if the Contractor (or the Contractor's heirs, executors, administrators, successors, or assigns) fails to make full, complete, and satisfactory repair and replacement or totally protect the City from any loss or damage made evident during that year which results from or is caused by either defective materials or faulty workmanship in the prosecution of the work, then the obligation shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of the Surety shall continue so long as any obligation of the Contractor remains.

No prepayment or delay in payments, and no change, extension, addition, or alteration of any provision of the contract, or in the specifications agreed to between the Contractor and the City, or any forbearance on the part of the City shall operate to relieve the surety. The surety hereby waives the provisions of Section 2819 of the California Civil Code. The surety waives all rights of subrogation against the City, or any person employed by the City. If the contract price increases by the issuance of change orders, the amount specified in this bond shall increase by the same amount.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this 29th
day of February, 2024.

SURETY (Name):

Western Surety Company

Address of Principal Place of Business:

151 N. Franklin Street. 17th Floor

Chicago, IL 60606

Telephone No.: 312-822-5000

Facsimile No.: 605-335-0357

By: 

Breanna Boatright Attorney In Fact

CONTRACTOR (Name):

Graham Contractors, Inc.

Address:

PO Box 26770

San Jose, CA 95159

By: 

David Graham

(Name: print or type)

Title: President

By: 

Kristen Graham

(Name: print or type)

Title: Corporate Secretary

(Notice: The signatures of the Surety
and Contractor on this bond must be
acknowledged before a 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 Nevada
County of Washoe

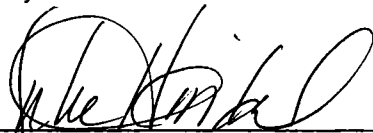
On February 29, 2024 before me, Julie Heimdahl, Notary Public
(insert name and title of the officer)

personally appeared Breanna Boatright,
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.

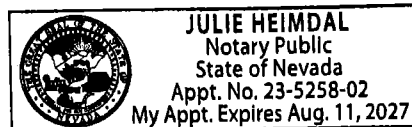
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

John Hopkins, Steve Williams, Tony Clark, Bill Rapp, Joseph H Weber, Renee Ramsey, Phil Watkins, Jason March, Matthew Foster, Elizabeth Collodi, Mindy Whitehouse, John J Weber, Sara Walliser, Jennifer Lakmann, Paula Senna, Brad Espinosa, Kathleen Le, Sharon Smith, Pam Sey, Cassandra Medina, Breanna Boatright, Jessica Monlux, Samantha Watkins, Deanna Quintero, Individually

of Chico, CA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the Authorizing By-Laws and Resolutions printed at the bottom of this page, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 5th day of January, 2024.



WESTERN SURETY COMPANY

Larry Kasten, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 5th day of January, 2024, before me personally came Larry Kasten, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

March 2, 2026



M. Bent, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law and Resolutions of the corporation printed below this certificate are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 29th day of February, 2024.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

This Power of Attorney is signed by Larry Kasten, Vice President, who has been authorized pursuant to the above Bylaw to execute power of attorneys on behalf of Western Surety Company.

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 27th day of April, 2022:

"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

Go to www.cnasurety.com > Owner / Obligor Services > Validate Bond Coverage, if you want to verify bond authenticity.

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.

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California)

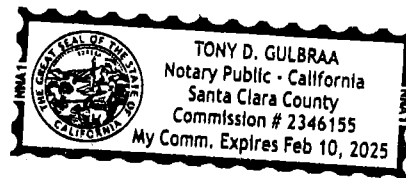
County of Santa Clara)

On March 5, 2024 before me, Tony D. Gulbraa, Notary Public, personally appeared David Graham 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 Tony D. Gulbraa



(Seal)

*******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.)

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer – Title(s): _____
☐ Partner -- ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

Right Thumbprint of Signer Above

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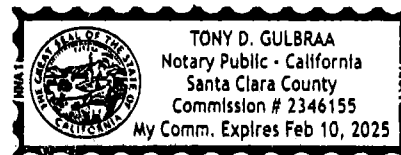
County of Santa Clara)

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WITNESS my hand and official seal.

Signature Tony D. Gulbraa



(Seal)

*******OPTIONAL*******

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- ☐ Partner -- ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

Right Thumbprint of Signer Above

Bond No: 30210917
Premium is included in the performance
bond and is subject to adjustments based
on final contract price.

PAYMENT BOND

Invitation for Bids No. PW24-10

Slurry Seal 2024 B-SB1

Project No. ST-23-07

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the City of Sunnyvale ("City") has awarded to Graham Contractors, Inc as principal ("Contractor"), a contract for the public work described as follows:

The project entitled Slurry Seal 2024 B-SB1, Project No. ST-23-07 pursuant to the award made to said Principal by the Council of the City of Sunnyvale to do and perform the following work, to wit: furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner, the work furnishing all labor, materials, equipment, tools and incidentals necessary to remove (by grinding) existing thermoplastic striping, pavement markings and legends; remove raised pavement markers; apply slurry seal in areas indicated; install new striping, pavement markings, legends and raised pavement marker, as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications (the "work").

It is acknowledged that the contract provides for a one (1) year warranty period during which time this Bond remains in full force and effect. The contract and all its terms and conditions are incorporated into this Bond by reference.

AND WHEREAS, the Contractor is required to furnish a bond in connection with the contract guaranteeing payment of persons who provide labor and material;

AND THEREFORE, we the undersigned Contractor as principal and Western Surety Company a
corporation admitted and duly authorized to transact business under the laws of the State of California, as surety, are held and firmly bound unto the City or its successors and assigns as obligee in the sum of Seven Hundred Eighty One Thousand Eight Hundred Forty and 41/100 Dollars (\$781,840.41), which amount is not less than one hundred percent (100%) of the contract price, and for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION of the obligation is such:

That if the Contractor, (or the Contractor's subcontractors, heirs, executors, administrators, successors or assigns) fails to pay any of the persons named in Section 3181 of the Civil Code of the State of California, or the amounts due under the Unemployment Insurance Code of the State of California 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 from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code of the State of California, with respect to such work and labor, that the surety will pay for the same, in an amount not exceeding the sum specified in this bond, and also, in case suit is brought upon the bond, shall pay reasonable attorney's fees, to be fixed by the Court.

This bond shall inure to the benefit of all persons, companies, and corporations named in Section 3181 of the Civil Code of the State of California, to give a right of action to them or their assigns in any suit brought upon this bond.

No prepayment or delay in payments, and no change, extension, addition, or alteration of any provision of the contract or in the specifications agreed to between the Contractor and the City, or any forbearance on the part of the City shall operate to relieve the surety. The surety hereby waives the provisions of Section 2819 of the California Civil Code. The surety waives all rights of subrogation against the City, or any person employed by the City. If the contract price increases by the issuance of change orders, the amount specified in this bond shall increase by the same amount.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this 29th
day of February, 2024.

SURETY (Name):

Western Surety Company

CONTRACTOR (Name):

Graham Contractors, Inc.

Address of Principal Place of Business:

151 N. Franklin Street, 17th Floor

Chicago, IL 60606

Address:

PO Box 26770

San Jose, CA 95159

Telephone No.: 312-822-5000

Facsimile No.: 605-335-0357

By: Breanna Boatright
Breanna Boatright Attorney in Fact

By: David Graham
David Graham
(Name: print or type)

Title: President

By: Kristen Graham
Kristen Graham
(Name: print or type)

Title: Corporate Secretary

(Notice: The signatures of the Surety
and Contractor on this bond must be
acknowledged before a notary public.)

ACKNOWLEDGMENT

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State of Nevada
County of Washoe

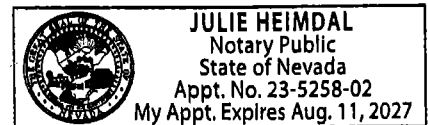
On February 29, 2024 before me, Julie Heimdal, Notary Public
(insert name and title of the officer)

personally appeared Breanna Boatright,
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
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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  (Seal)



Western Surety Company

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of Chico, CA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the Authorizing By-Laws and Resolutions printed at the bottom of this page, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 5th day of January, 2024.



WESTERN SURETY COMPANY

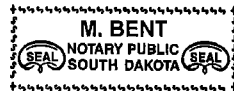
Larry Kasten, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 5th day of January, 2024, before me personally came Larry Kasten, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

March 2, 2026



M. Bent, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law and Resolutions of the corporation printed below this certificate are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 29th day of February, 2024.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

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State of California)

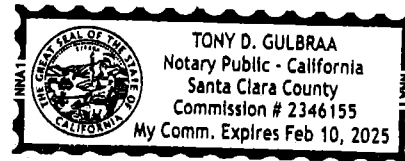
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WITNESS my hand and official seal.

Signature Tony D. Gulbraa



(Seal)

*******OPTIONAL*******
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Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer – Title(s): _____
☐ Partner -- ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

Right Thumbprint of Signer Above

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CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California)

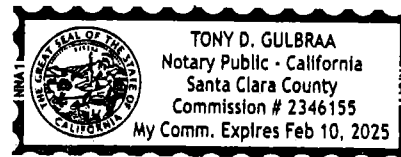
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☐ Partner -- ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

Right Thumbprint of Signer Above

GUARANTY

TO THE CITY OF SUNNYVALE, for construction of
Slurry Seal 2024 B-SB1, ST-23-07

The undersigned guarantees all construction performed on this project, as well as all material and equipment incorporated therein.

Contractor hereby grants to City for a period of one (1) year following the date of Final Acceptance of the Work, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all Work and its compliance with the Contract Documents including, without limitation, all labor, materials, and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.

Neither final payment nor use or occupancy of the Work performed by the Contractor shall constitute an acceptance of work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom which shall appear within one (1) year, or longer if specified, from the date of Final Acceptance.

If within one (1) year after the date of Final Acceptance, or such longer period as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions, correct such defective Work. Contractor shall remove any defective Work rejected by City and replace it with Work that is not defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses, and damages

caused by or resulting from such removal and replacement. Where Contractor fails to correct defective work, or defects are discovered outside the correction period, City shall have all rights and remedies granted by law.

Inspection of the work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or work found to be defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.

All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents, including, without means of limitation, Supplemental General Provisions, Definition of Works, and Terms.

The foregoing Guaranty is in addition to any other warranties of Contractor contained in the Contract Documents, and not in lieu of, all other liability imposed on Contractor under the Contract Documents and at law with respect to Contractor's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Contractor.


Contractor Name:

Graham Contractors, Inc.

Contractor Address:

860 Lonus Street

San Jose, CA 95126



Contractor Signature
David Graham, President

February 29, 2024

Date