

# ORIGINAL

## CONTRACTOR AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of October 2018, by and between the CITY OF ALAMEDA, a municipal corporation (the "City"), and **MCGUIRE AND HESTER**, a California corporation, whose address is **2810 HARBOR BAY PARKWAY, ALAMEDA, CALIFORNIA 94502**, ("Contractor"), in reference to the following:

### **RECITALS:**

A. The City of Alameda is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.

B. The City is in need of the construction of the Cross Alameda Trail – Ralph Appezato Memorial Parkway Improvements Project; parallel to and south of Ralph Appezato Memorial Parkway between Webster Street and Main Street, in accordance with Plans and Specifications adopted therefor, P.W. 03-18-11, filed in the Office of the City Clerk. Plans and Specifications were sent out on August 2, 2018, after a minimum period of 21 days, three firms submitted bids. The bids were opened on August 30, 2018. Staff reviewed the bids and selected the lowest responsive and responsible bidder per Administrative Order No. 5.

C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. City and Contractor desire to enter into an agreement for the construction of the Cross Alameda Trail – Ralph Appezato Memorial Parkway Improvements, upon the terms and conditions herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

### **1. TERM:**

The Contractor shall have One Hundred and Forty Six (146) consecutive working days from the date the work is to commence pursuant to the Notice to Proceed to diligently prosecute the work to completion.

### **2. SERVICES TO BE PERFORMED:**

Contractor agrees, at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all work strictly in accordance with Specifications, Special Provisions and Plans, which Specifications, Special Provisions and Plans are hereby referred to and expressly made a part hereof with the same force and effect as if the same were fully incorporated herein. The Contractor acknowledges that the work plan included in Exhibit "A" (Bidder's Proposal) is tentative and does not commit the City to request Contractor to perform all tasks included therein.

### **3. COMPENSATION TO CONTRACTOR:**

Contractor shall be compensated for services performed pursuant to this Agreement in the amount and manner set forth in Contractor's bid, which is attached hereto as Exhibit "A" (Bidder's Proposal) and incorporated herein by this reference. Payment will be made in the same manner that claims of a like character are paid by the City, with checks drawn on the treasury of said City, with checks drawn on the treasury of said City, to be taken from CIP 91402.

Payment will be made by the City in the following manner: On the first day of each month, Contractor shall submit a written estimate of the total amount of work done the previous month. However, the City reserves the right to adjust budget within and between tasks. Pricing and accounting of charges are to be according to the bid packet pricing, unless mutually agreed to in writing.

Payment shall be made for 95% of the value of the work completed as determined by the City. The City shall retain 5% of the value of the work as partial security for the completion of the work by Contractor. Retained amounts shall be paid to Contractor within sixty days of acceptance by the City of the project. Payment shall not be construed as acceptance of defective work. No interest will be paid to Contractor on retained funds.

Compensation is \$4,498,740. for base bid and \$351,000. for add alternate no. 1, for a total compensation for work of \$4,849,740. with a ten percent contingency in the amount of \$449,874. for a total not to exceed of \$5,299,614. Use of contingency shall be for items of work outside the original scope and requires prior written authorization by the City.

**Prompt Payment Of Withheld Funds To Subcontractors:** The City shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor, including but not limited to remedies under California Public Contract Code Section 9204. This clause applies to both DBE and non-DBE subcontractors.

### **4. TIME IS OF THE ESSENCE:**

Contractor and the City agree that time is of the essence regarding the performance of this Agreement.

It is agreed by the parties to the Agreement that in case all the work called for under the Agreement is not completed before or upon the expiration of the time limit as set forth in paragraph 1 above, damage will be sustained by the City, and that it is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay. It is therefore agreed that the Contractor will pay to the City the sum of Five Hundred Dollars (\$500) per day for each and every day's delay beyond the time prescribed to complete the work; and the Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the City may deduct the amount thereof from any money due or that may become due the Contractor under the Agreement.

It is further agreed that in case the work called for under the Agreement is not finished and completed in all parts and requirements within the time specified, the City shall have the right to extend the time for completion or not, as may seem best to serve the interest of the City; and if the City decides to extend the time limit for the completion of the Agreement, it shall further have the right to charge the Contractor, his or her heirs, assigns, or sureties, and to deduct from the final payment for the work, all or any part, as it may deem proper, of the actual costs and overhead expenses which are directly chargeable to the Agreement, and which accrue during the period of such extensions.

The Contractor shall not be assessed with liquidated damages during any delay in the completion of the work caused by an act of God or of the public enemy, acts of the City, fire, flood, epidemic, quarantine restriction, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided that the Contractor shall, within one (1) day from the beginning of such delay, notify the City in writing of the causes of delay. The City shall ascertain the facts in good faith and the extent of the delay, and its findings of the facts thereon shall be final and conclusive.

**5. STANDARD OF CARE:**

Contractor agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City nor have any contractual relationship with City.

**6. INDEPENDENT PARTIES:**

Contractor hereby declares that it is engaged as an independent business and it agrees to perform its services as an independent contractor. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Contractor's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Contractor, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Contractor. Payments of the above items, if required, are the responsibility of Contractor.

**7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Contractor assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Contractor shall indemnify, defend, and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Contractor.

**8. NON-DISCRIMINATION:**

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Contractor agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Contractor or Contractor's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Contractor agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

Contractor certifies and agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, or condition or physical or mental handicap (as defined in 41 C.F.R. Section 60-741, et. seq.), in accordance with requirement of state or federal law. Contractor shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap in accordance with requirements of state and federal law. Such shall include, but not be limited to, the following:

A. Employment upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.

B. Selection for training, including interns and apprentices.

(i) Contractor agrees to post in conspicuous places in each of Contractor's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirements of state and federal law.

(iii) Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of Contractor's commitments under this paragraph.

(iv) Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to race, color, religion, national origin,

ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirement of state and federal law.

(v) In accordance with applicable state and federal law, Contractor shall allow duly authorized county, state and federal representatives access to its employment records during regular business hours in order to verify compliance with the anti-discrimination provisions of this paragraph. Contractor shall provide such other information and records as such representatives may require in order to verify compliance with the anti-discrimination provisions of this paragraph.

a. If the City finds that any of the provisions of this paragraph have been violated, the same shall constitute a material breach of Agreement upon which City may determine to cancel, terminate, or suspend this Agreement. City reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated. In addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Contractor has violated state and federal anti-discrimination laws shall constitute a finding by City that Contractor has violated the anti-discrimination provisions of Agreement.

b. The parties agree that in the event Contractor violates any of the anti-discrimination provisions of this paragraph, City shall be entitled, at its option, to the sum of \$500.00 pursuant to California Civil Code Section 1671 as liquidated damages in lieu of canceling, terminating, or suspending this Agreement.

c. Contractor hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), all requirements imposed by the applicable regulations (45 C.F.R.), and all guidelines and interpretations issued pursuant thereto, to the end that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of Contractor receiving Federal Financial Assistance. In addition, Contractor shall comply with the Uniform Federal Accessibility Standards, and Contractor, Engineer, or Architect responsible for any design, construction or alteration shall certify compliance with those Standards.

d. Contractor's attention is directed to laws, including but not limited to:

#### A. CIVIL RIGHTS/EQUAL OPPORTUNITY

(i) Civil Rights Act of 1964. Under Title VII of the Civil Rights Act of 1964, no person shall, on the grounds of race, sex, religion, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(ii) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination

under any program or activity funded in whole or in part with funds made available under this title.

(iii) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.

## **B. PROGRAM ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES**

This Agreement is subject to laws and regulations concerning the rights of otherwise qualified individuals with handicaps for equal participation in, and benefit from federally assisted programs and activities, including but not limited to:

(i) Americans with Disabilities Act of 1990 (ADA) (28 C.F.R. 35). Title II, Subpart A of the Americans with Disabilities Act of 1990 applies to all publicly funded activities and programs. Contractor shall also comply with the public accommodations requirements of Title III of the ADA, as applicable.

(ii) Nondiscrimination on the Basis of Handicap (24 CFR 8). These regulations, which implement Section 504 of the Rehabilitation Act of 1973, as amended, and as cited in Section 109 of the Housing and Community Development Act, apply to all federally assisted activities and programs and are implemented through the regulations at 24 C.F.R. 8.

(iii) Architectural Barrier Act of 1968. Any building or facility, excluding privately owned residential structures, designed, constructed, or altered with federal funds, shall comply with the Uniform Federal Accessibility Standards, 1984 (41 C.F.R. 3) and the Handicapped Accessibility Requirements of the State of California Title 24. The Consultant, Engineer or Architect responsible for such design, construction or alteration shall certify compliance with the above standards.

(iv) In resolving any conflict between the accessibility standards cited in paragraphs (i), (ii) and (iii) above, the more stringent standard shall apply.

## **9. HOLD HARMLESS:**

Contractor shall indemnify, defend, and hold harmless the City, its City Council, boards, commissions, officials, employees, and volunteers ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("Claims"), arising from or in any manner connected to Contractor's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Contractor, Contractor shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Contractor.

However, Contractor shall not be obligated to indemnify Indemnitees from Claims arising from the sole negligence or willful misconduct of Indemnitees.

**10. INSURANCE:**

On or before the commencement of the terms of this Agreement, Contractor shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 10A, B, C and D. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide fourteen (14) days' advance written notice to the City of Alameda, "Attention: Risk Manager."

It is agreed that Contractor shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to the City Risk Manager and licensed to do insurance business in the State of California. Endorsements naming the City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

**A. COVERAGE:**

Contractor shall maintain the following insurance coverage:

- (1) Workers' Compensation:  
Statutory coverage as required by the State of California.
- (2) Liability:  
Commercial general liability coverage in the following minimum limits:  

|                  |                                   |
|------------------|-----------------------------------|
| Bodily Injury:   | \$2,000,000 each occurrence       |
|                  | \$2,000,000 aggregate - all other |
| Property Damage: | \$2,000,000 each occurrence       |
|                  | \$2,000,000 aggregate             |

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

- (3) Automotive:  
Comprehensive automobile liability coverage (any auto) in the following minimum limits:

|                  |                             |
|------------------|-----------------------------|
| Bodily injury:   | \$1,000,000 each occurrence |
| Property Damage: | \$1,000,000 each occurrence |

or

Combined Single Limit: \$2,000,000 each occurrence

(4) Pollution Prevention:

Legal liability required for hazardous materials excavation in the amount of \$2,000,000 each occurrence.

(5) Builders Risk: \$2,000,000.

B. SUBROGATION WAIVER:

Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to the City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance.

C. FAILURE TO SECURE:

If Contractor at any time during the term hereof should fail to secure or maintain the foregoing insurance, the City shall be permitted to obtain such insurance in the Contractor's name or as an agent of the Contractor and shall be compensated by the Contractor for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. ADDITIONAL INSURED:

City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. SUFFICIENCY OF INSURANCE:

Contractor shall furnish the following bonds from a bonding company acceptable to the City Risk Manager. Faithful Performance Bond and Labor and Material Bond are only required for work over \$25,000. Therefore, those estimates that are under \$25,000 will not need to budget for the bond premiums and those estimates over \$25,000 will need to be sure to budget for the bond premiums.

The insurance limits required by City are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor's insurance broker to determine adequate coverage for Contractor.

**11. BONDS:**

Contractor shall furnish the following bonds from a bonding company acceptable to the City Risk Manager:

**A. Faithful Performance:**

A bond in the amount of 100% of the total contract price guaranteeing the faithful performance of this contract, and

**B. Labor and Materials:**

A bond for labor and materials in the amount of 100% of the total contract price.

**12. PROHIBITION AGAINST TRANSFERS:**

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, Contractor's claims for money from the City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to the City by Contractor.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Contractor is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Contractor, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

**13. SUBCONTRACTOR APPROVAL:**

Unless prior written consent from the City is obtained, only those people and subcontractors whose names are listed in Contractor's bid shall be used in the performance of this Agreement.

Requests for additional subcontracting shall be submitted in writing, describing the scope of work to be subcontracted and the name of the proposed subcontractor. Such request shall set forth the total price or hourly rates used in preparing estimated costs for the subcontractor's services. Approval of the subcontractor may, at the option of the City, be issued in the form of a Work Order.

In the event that Contractor employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general and automobile liability insurance in reasonable conformity to the insurance carried by Contractor. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

**14. PERMITS AND LICENSES:**

Contractor, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License that may be required in connection with the performance of services hereunder.

**15. REPORTS:**

Each and every report, draft, work product, map, record and other document reproduced, prepared or caused to be prepared by Contractor pursuant to or in connection with this Agreement shall be the exclusive property of the City.

No report, information nor other data given to or prepared or assembled by Contractor pursuant to this Agreement shall be made available to any individual or organization by Contractor without prior approval by the City.

Contractor shall, at such time and in such form as the City may require, furnish reports concerning the status of services required under this Agreement.

**16. RECORDS:**

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by the City that relate to the performance of services under this Agreement.

Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to such books and records to the representatives of the City or its designees at all proper times, and gives the City the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by the City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Contractor shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

**17. NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Contractor to the City shall be addressed to the City at:

City of Alameda  
Public Works Department  
950 West Mall Square, Room 110  
Alameda, CA 94501-7575  
ATTENTION: Jack Dybas – Project Manager II  
Ph: (510) 747-7948  
Email: [jdybas@alamedaca.gov](mailto:jdybas@alamedaca.gov)

With a copy to:  
Transportation Planning Division  
2263 Santa Clara Avenue  
Alameda, CA 94501-4417  
ATTENTION: Rochelle Wheeler, Senior Transportation Coordinator  
Ph: (510) 747-6814  
E-mail: [rwheeler@alamedaca.gov](mailto:rwheeler@alamedaca.gov)

All notices, demands, requests, or approvals from the City to Contractor shall be addressed to Contractor at:

**McGuire and Hester**  
Contracts Administration  
2810 Harbor Bay Parkway  
Alameda, CA 94502  
ATTENTION; Shawna Olgin  
Ph: (510) 632-7676 / Fax: (510) 562-5210

**18. RESTRICTIONS ON LOBBYING – FEDERAL REQUIREMENT:**

This Agreement is subject to 24 C.F.R. 87 which prohibits the payment of Federal funds to any person for influencing or attempting to influence, any public officer or employee in connection with the award, making, entering into, extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or agreement.

**19. UTILITIES:**

Contractor shall pay all charges for fuel, gas, water, electricity, telephone services and any other utilities necessary to carry on the operations of Contractor.

**20. NUISANCE:**

Contractor shall not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

**21. SAFETY REQUIREMENT:**

All work performed under this Agreement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL-OSHA. City reserves the right to issue restraints or cease and desist orders to Contractor when unsafe or harmful acts or conditions are observed or reported relative to the performance of the work under this Agreement.

Contractor shall maintain the work sites free of hazards to persons and/or property resulting from his or her operations. Any hazardous condition noted by Contractor, which is not a result of his or her operations, shall immediately be reported to City.

The Contractor will be solely and completely responsible for conditions of all vehicles owned or operated by Contractor, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Contractor will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. The Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

The Contractor will immediately notify the City's Risk Manager within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. The Contractor will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Contractor's employee(s) involved in the incident; (iii) name and address of Contractor's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

**22. HOURS OF OPERATION:**

Contractor shall be allowed to operate on weekdays only from the hours of 8:00 a.m. to 5:00 p.m. unless prior written approval has been secured from City to do otherwise.

**23. LAWS TO BE OBSERVED:**

Contractor shall comply with all applicable laws, state, federal, and all ordinances, rules and regulations enacted or issued by City. In addition, the Contractor shall keep himself fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

**24. DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE AND PREVAILING WAGE REQUIREMENTS ON PUBLIC WORKS PROJECTS:**

Effective January 1, 2015, no Contractor or Subcontractor may be listed on a bid proposal for a public works project (submitted after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 (with the limited exceptions from this requirement for bid purposed only under Labor code Section 1771.1(a)). Register at <https://efiling.dir.ca.gov/PWCR>

No Contractor or Subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The Prime Contractor is required to post job site notices prescribed by regulations. See 8 Calif. Code Regulation §16451(d).

Effective April 1, 2015, All Contractors and Subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner at: <https://apps.dir.ca.gov/ecpr/das/altlogin>

**25. HOURS OF LABOR:**

As provided in Article 3 (commencing at §1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work provided that the employees' compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

The Contractor shall pay to the City a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of *per diem* wages, unless otherwise

specified. Holidays shall be defined in the Collective Bargaining Contract applicable to each particular craft, classification, or type of worker employed.

**26. CERTIFIED PAYROLL:**

Contractor's attention is directed to California Labor Code Section 1776, which requires Contractor and any subcontractors to keep an accurate payroll record and which imposes inspection requirements and penalties for non-compliance. Certified payrolls shall be prepared and submitted weekly to the Construction Management Consultant and Labor Compliance Officer, Gail Carlson, Public Works Department, 950 W. Mall Square, Room 110, Alameda, CA 94501 by the Contractor and each subcontractor. Contractor is responsible for the submission of copies of payrolls by all subcontractors. Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract, and shall certify the following:

- a. That the payroll for each payroll period contains the name, social security number, and address of each employee, his or her correct classification, including applicable area and group code, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid, and that such information is correct and complete;
- b. That such laborer or mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions; and
- c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

If the Contractor or a subcontractor does not work during the payroll period, a Statement of Non-Working Days must be submitted for each day not worked.

In the event of noncompliance with the requirements of such section after 10 Days written notice specifying in what respects compliance is required, the CONTRACTOR shall forfeit as a penalty to the CITY, \$25.00 for each calendar Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

**27. APPRENTICES:**

Attention is directed to the provisions in sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him on contracts greater than \$30,000 or 20 working days. The Contractor and any subcontractor under him shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

Section 1777.5 requires the Contractor or subcontractor employing workers in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the

public works project, and which administers the apprenticeship program in that trade, for a certificate of approval, if they have not previously applied and are covered by the local apprenticeship standards.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if: (1) the Contractor employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions; or (2) if the Contractor is not a signatory to an apprenticeship fund and if the funds administrator is unable to accept Contractor's required contribution. The Contractor or subcontractor shall pay a like amount to the California Apprenticeship Council.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

**28. LABOR DISCRIMINATION:**

No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, religion, age, national origin, sexual orientation, or physical disability of such persons and every Contractor for public works violating this section is subject to all the penalties imposed for a violation of the provisions of the Labor Code, and, in particular, Section 1735.

**29. REGISTRATION OF CONTRACTORS:**

Before submitting bids, contractors shall be licensed in accordance with the provisions of Chapter 9, Division 3, of the Business and Professional Code of the State of California.

**30. URBAN RUNOFF MANAGEMENT:**

The Contractor shall avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, contractor shall use as little as necessary. Contractor shall take all steps necessary to keep wash water out of the streets, gutters and storm drains.

The Contractor shall develop and implement erosion and sediment control to prevent pollution of storm drains. Such control includes but is not limited to:

- a. Use storm drain inlet protection devices such as sand bag barriers, filter fabric fences, block and gravel filters. (Block storm drain inlets prior to the start of the rainy season (October 15), on site de-watering activities and saw-cutting activities; shovel or vacuum saw-cut slurry and remove from the site).
- b. Cover exposed piles of soil or construction material with plastic sheeting. All construction materials must be stored in containers.

- c. Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain as well as at the end of the each work day. At the completion of the project, the street shall be washed and the wash water shall be collected and disposed of offsite in an appropriate location.
- d. After breaking old pavement, Contractor shall remove all debris to avoid contact with rainfall or runoff.
- e. Contractor shall maintain a clean work area by removing trash, litter, and debris at the end of each workday. Contractor shall also clean up any leaks, drips, and other spills as they occur.

The objective is to ensure that the City and County of Alameda County-Wide Clean Water Program is adequately enforced. These controls should be implemented prior to the start of construction, up-graded as required, maintained during construction phases to provide adequate protection, and removed at the end of construction.

These recommendations are intended to be used in conjunction with the State's Best Management Practices Municipal and Construction Handbooks, local program guidance materials from municipalities, Section 7.1.01 of the Standard Specifications and any other appropriate documents on storm water quality controls for construction.

Failure to comply with this program will result in the issuance of noncompliance notices, citations, project stop orders or fines. The fine for noncompliance of the above program is two hundred and fifty dollars (\$250.00) per occurrence per day. The State under the Federal Clean Water Act can also impose a fine on the contractor, pursuant to Cal. Water Code §13385.

### **31. COMPLIANCE WITH MARSH CRUST ORDINANCE:**

Contractor shall perform all excavation work in compliance with the City's Marsh Crust Ordinance as set forth at Section 13-56 of the Municipal Code. Prior to performing any excavation work, Contractor shall verify with the Building Official whether the excavation work is subject to the Marsh Crust Ordinance. Contractor shall apply for and obtain permits from Building Services on projects deemed to be subject to the Marsh Crust Ordinance.

### **32. COMPLIANCE WITH THE CITY'S INTEGRATED PEST MANAGEMENT POLICY:**

The Contractor shall follow the requirements of the City's Integrated Pest Management (IPM) Policy to ensure the City is in compliance with its Municipal Regional Stormwater NPDES Permit, Order No. R2-2009-0074, issued by the San Francisco Bay Regional Water Quality Control Board.

- ☐ Contractor shall use the most current IPM technologies available to ensure the long-term prevention or suppression of pest problems and to minimize negative impacts on the environment, non-target organisms, and human health for the control or management of

pests in and around City buildings and facilities, parks and golf courses, urban landscape areas, rights-of-way, and other City properties.

- ☐ Contractor will consider the City IPM Policy's hierarchy of options or alternatives listed below, in the following order before recommending the use of or applying any pesticide on City property: (1)
  - a. No controls (e.g. tolerating the pest infestation, use of resistant plant varieties or allowing normal life cycle of weeds);
  - b. Physical or mechanical controls (e.g. hand labor, mowing, exclusion);
  - c. Cultural controls (e.g. mulching, disking, alternative vegetation) and good housekeeping (e.g. cleaning desk area);
  - d. Biological controls (e.g., natural enemies or predators);
  - e. Reduced-risk chemical controls (e.g., soaps or oils);
  - f. Other chemical controls.
- ☐ Prior to applying chemical controls the contractor shall complete a checklist for the City's pre-approval that explains why a chemical control is necessary. For annual contracts that require regular application of chemical controls the contractor shall submit one checklist prior to the initiation of the project demonstrating that the hierarchy has been reviewed and no other options exist. (Attached as Exhibit C). Additionally, the Contractor shall provide documentation to the City's project manager of the implementation of the IPM techniques hierarchy described in the City's IPM Policy.
- ☐ Contractor shall avoid the use of the following pesticides that threaten water quality, human health and the environment:
  - a. Acute Toxicity Category I chemicals as identified by the Environmental Protection Agency (EPA)
  - b. Organophosphate pesticides (e.g., those containing Diazinon, chlorpyrifos or malathion)
  - c. Pyrethroids (bifenthrin, cyfluthrin, beta-cyfluthrin, cypermethrin, deltamethrin, esfenvalerate, lambda-cyhalothrin, permethrin, and tralomethrin), carbamates (e.g., carbaryl), and fipronil
  - d. Copper-based pesticides unless their use is judicious, other approaches and techniques have been considered, and the threat of impact to water quality is prevented.
- ☐ Contractor shall sign the Contractor Verification Form (attached as Exhibit B) indicating the intent to implement the City's IPM Policy, and return a signed copy to the City's project manager.

- ☐ Contractor shall provide to the City's project manager an annual Report of all pesticide usage in support of City operations including pesticide name, active ingredient(s), target pest(s), the total amounts used and the reasons for any increase in use of any pesticide.
- ☐ Contractor shall provide a copy of any current IPM certifications(s) to the City's project manager prior to initiation of the service work.

A copy of the City's IPM Policy may be obtained from the City's project manager and is also on file with the City Clerk.

*If this agreement pertains to the use of any items listed above, the Contractor will need to fill out and send in the Contractor Verification Form and Contractor Check List. ADD EXHIBIT B IF PEST CONTROL.*

### **33. PURCHASES OF MINED MATERIALS REQUIREMENT:**

Contractor shall ensure that all purchases of mined materials such as construction aggregate, sand and gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation identified on the AB3098 List per the Surface Mining and Reclamation Act of 1975 (SMARA).

Within five days of award of contract, Contractor shall submit a report to City which lists the intended suppliers for the above materials and demonstrates that the suppliers are in compliance with the SMARA requirements. The AB3098 List is maintained by the Department of Conservation's Office of Mine Reclamation (OMR) and can be viewed at: [www.conservation.ca.gov/OMR/ab\\_3098\\_list/index.htm](http://www.conservation.ca.gov/OMR/ab_3098_list/index.htm). Note that the list changes periodically and should be reviewed accordingly.

### **34. TERMINATION:**

In the event Contractor fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Contractor shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) business days after receipt by Contractor from the City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the City may terminate the Agreement forthwith by giving to the Contractor written notice thereof.

The City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Contractor as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

### **35. ATTORNEY'S FEES:**

In the event of the bringing of any action or suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of

its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For the purposes of this Agreement, reasonable fees of attorneys of the Alameda City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Alameda City Attorney's services were rendered who practice in Alameda County in law firms with approximately the same number of attorneys as employed by the Alameda City Attorney's Office.

**36. PCC SECTION 9204 SUMMARY - CLAIMS SUBMITTED BETWEEN 01-01-2017 AND 01-01-2020.:**

Notwithstanding anything else to the contrary stated in the Information For Bidders (IFB) or the Contract Documents, all claims, regardless of dollar amount, submitted between January 1, 2017 and January 1, 2020 shall be governed by PCC Section 9204 and this section.

The following provisions and procedures shall apply:

A. For the purposes of this section, the term "Claim", "Contractor", "mediation", "Public Entity" "Public works project" and "Subcontractor" shall have the meaning provided for in PCC Section 9204.

B. Contractor shall submit each Claim (whether for a time extension, payment for money or damages) in writing and in compliance with PCC Section 9204. Contractor must include reasonable documentation to support each claim.

C. Upon receipt of a Claim, the City shall conduct a reasonable review and respond in writing within 45 days of receipt and shall identify in a written statement what portions of the claim are disputed and undisputed. Undisputed portions of the Claim shall be process and paid within 60 days of the written statement. Undisputed amounts not paid in a timely manner shall bear interest at 7% per annum. The City and Contractor may mutually agree to extend the 45 day response time.

D. If the City needs approval from the City Council to provide a written statement, the 45 days may be extended to 3 days following the next duly noticed public meeting pursuant to PCC Section 9204(d)(1)(C).

E. If the City fails to timely respond to a Claim or if Contractor disputes the City's response, Contractor may submit a written demand for an informal meet and confer conference with the City to settle the issues in dispute. The demand must be sent via registered or certified mail, return receipt requested. Upon receipt, the City shall schedule the conference within 30 days.

F. Within 10 business days following the informal meet and confer conference, the City shall submit to Contractor a written statement describing any issues remaining in dispute and that portion which is undisputed. Undisputed portions of the Claim shall be process and paid within 60 days of the written statement. Undisputed amounts not paid in a timely manner shall bear

interest at 7% per annum. The issues remaining in dispute shall be submitted to non-binding mediation. If the City and Contractor mutually agree on a mediator, each party shall pay equal portions of all associated costs. If within 10 business days, the City and Contractor cannot agree on a mediator, each party shall select a mediator (paying all costs associated with their selected mediator), and those mediators shall select a qualified neutral third party to mediate the disputed issues. The City and Contractor shall pay equal portions of all associated costs of such third party mediator.

G. Unless otherwise agreed by the City and Contractor, any mediation conducted hereunder shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has commenced.

H. The City reserves all rights and remedies that it has pursuant to the Construction Contract, plans and specification, at law or in equity which are not in conflict with PCC 9204.

I. This Section shall be automatically extended if legislation is lawfully passed which extends the terms of Public Contract Code Section 9204 beyond January 1, 2020.

**37. COMPLIANCES:**

Contractor shall comply with all applicable laws, state, federal, and all ordinances, rules and regulations enacted or issued by City.

**38. CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

**39. ADVERTISEMENT:**

Contractor shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from the City to do otherwise.

**40. WAIVER:**

A waiver by City of any breach of any term, covenant, or condition contained herein, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

**41. INTEGRATED CONTRACT:**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of

whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both the City and Contractor.

**42. INSERTED PROVISIONS:**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

**43. CAPTIONS:**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

*Signatures on next page*

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

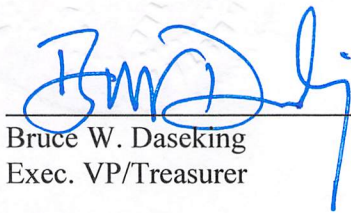
MCGUIRE AND HESTER  
A California Corporation



Michael R. Hester  
President

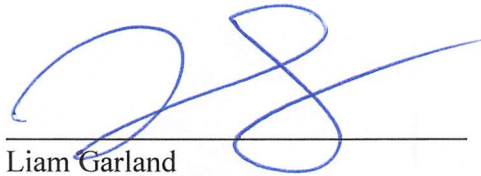
CITY OF ALAMEDA  
A Municipal Corporation

David Rudat  
Interim City Manager



Bruce W. Daseking  
Exec. VP/Treasurer

RECOMMENDED FOR APPROVAL



Liam Garland  
Public Works Director

APPROVED AS TO FORM:  
City Attorney



Michael H. Roush  
Assistant City Attorney

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT****CIVIL CODE § 1189**

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

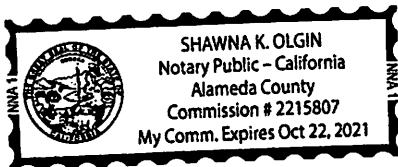
State of California )

County of Alameda )On 09/19/2018 before me, Shawna Kay Olgin, Notary Public,  
Date Here Insert Name and Title of the Officerpersonally appeared Michael R. Hester and Bruce W. Daseking  
Name(s) of Signer(s)

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 \_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**Title or Type of Document: Contract Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**Signer's Name: Michael R. Hester☒ Corporate Officer — Title(s): President☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_Signer Is Representing: McGuire and HesterSigner's Name: Bruce W. Daseking☒ Corporate Officer — Title(s): Exec VP/Treasurer☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_Signer Is Representing: McGuire and Hester

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

PROPOSAL

TO THE DIRECTOR OF PUBLIC WORKS OF ALAMEDA  
ALAMEDA, CALIFORNIA  
\*\*\*\*\*

FOR: CROSS ALAMEDA TRAIL - RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS (a.k.a. CAT RAMP +  
GAP)

(See "NOTICE TO CONTRACTORS", page 7, for a more detailed Project Description.)

This CAT/RAMP + Gap project, between Main Street and Constitution Way, totaling approximately 0.9 miles in  
length, is divided into two distinct sub-segments:

1. Ralph Appezzato Memorial Parkway (Main Street to Webster Street)

Construction of separate walking, bicycling and jogging paths within the City-owned abandoned railroad right-of-  
way. This approximately 70 foot wide right-of-way sits immediately to the south of Appezzato Parkway, adjacent  
to apartment complexes, schools, several businesses and a Boys and Girls Club. This segment includes connector  
trail, pedestrian, bicycle pathways, ADA improvements, signage, landscaped plazas, landscape, bioretention and  
'self-retaining' areas, and traffic signal modifications.

Note: This section includes significant earthwork in the excavation (or relocation and 'capping') of contaminated  
soils, creating the subgrade for the bicycle and pedestrian paths, with the placement of a soil cap over the  
majority of the site.

2. Atlantic Avenue (Webster Street to Constitution Way)

Construction of separated two-way bicycle lanes on the south side of this short urban block, one half of which will  
be at sidewalk-grade (west of business parking lot driveway), and the other which will be at street grade (east of  
this driveway). This section includes significant improvements to the two intersections to facilitate safe pedestrian  
and bicycle crossings.

Name of Bidder: McGwire and Heister

Business Address: 2810 Harbor Bay Parkway, Alameda, CA 94502

Place of Residence: 2810 Harbor Bay Parkway, Alameda, CA 94502

TO THE DIRECTOR OF PUBLIC WORKS OF ALAMEDA:

The undersigned, as bidder, declares that the only persons or parties interested in this proposal as principals are  
those named hereby that this proposal is made without collusion with any other person, firm or corporation; that  
he has carefully examined the location of the proposed work, plans and specifications; and he proposes and

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

agrees, if this proposal is accepted, that he will contract with the City of Alameda to provide all necessary machinery, tools, apparatus, and other means of construction, and to do all the work and furnish all the materials specified in this contract in the manner and time prescribed, and according to the requirements of the Engineer as therein set forth; and that he will take in full payment therefor an amount based on the unit prices specified herein below for the various items of work,

the total value of said work as estimated herein being

\$ ~~4,144,740.00~~ 4,498,740 *mn*

and the following being the unit prices bid to-wit:

ADDENDUM NO. 07

**CITY OF ALAMEDA**  
**CROSS ALAMEDA TRAIL - RALPH APPEZZATO MEMORIAL PARKWAY + GAP**  
**ADDENDUM NO. 07 BASE BID SCHEDULE**

| ITEM   | DESCRIPTION                               | SPEC. REF. | UNIT COST | QTY.    | UNIT | AMOUNT        |
|--|---|------------|-----------|---------|------|---------------|
| <b>FUNDING PACKAGE #1 (1930 Main Street)</b> |   |            |           |         |      |               |
| 1  | REMOVE CONCRETE CURB                      | 10.19      | 14.00     | 39      | LF   | \$ 546.00     |
| 2  | ACCESSIBLE RAMPS                          | 10.44      | 40.00     | 100     | SF   | \$ 4,000.00   |
| 3  | ACCESSIBLE SIGN                           | 10.65      | 400.00    | 1       | EA   | \$ 400.00     |
| 4  | AC PAVEMENT GRIND                         | 10.46      | 3.00      | 4,900   | SF   | \$ 14,700.00  |
| 5  | ASPHALT AT PARKING LOT                    | 10.46      | 260.00    | 122     | TON  | \$ 31,720.00  |
| 6  | 6" CONCRETE CURB                          | 10.44      | 115.00    | 39      | LF   | \$ 4,485.00   |
| 7  | INSTALL PARKING STRIPING (4")             | 10.48      | 13.00     | 370     | SF   | \$ 4,810.00   |
| <b>FUNDING PACKAGE #2 (FTA via BART)</b>     |   |            |           |         |      |               |
| 8  | MOBILIZATION (2.5% of Base Bid)           | 10.04      | 43000     | 1       | LS   | \$ 43000      |
| 9  | TRAFFIC CONTROL                           | 10.04      | 53,400.16 | 1       | LS   | \$ 53,400.16  |
| 10   | TEMPORARY CONSTRUCTION FENCING            | 10.05      | 7.00      | 2,809   | LF   | \$ 19,663.00  |
| 11   | INSTALL PROJECT SIGNS                     | 10.06      | 1,500.00  | 1       | LS   | \$ 1,500.00   |
| 12   | CONSTRUCTION STAKING                      | 10.34      | 20,000    | 1       | LS   | \$ 20,000     |
| 13   | CONSTRUCTION SURVEYING (CAP VERIFICATION) | 10.30      | 10,000    | 1       | LS   | \$ 10,000     |
| 14   | SWPPP/EROSION CONTROL                     | 10.08      | 70,000    | 1       | LS   | \$ 70,000     |
| 15   | CLEARING AND GRUBBING                     | 10.16      | 1.00      | 117,868 | SF   | \$ 117,868.00 |
| 16   | TREE REMOVAL                              | 10.18      | 1,000.00  | 29      | EA   | \$ 29,000.00  |
| 17   | TREE TRIMMING                             | 10.18      | 24,000.00 | 1       | LS   | \$ 24,000.00  |
| 18   | REMOVE CONCRETE CURB AND GUTTER           | 10.19      | 18.00     | 506     | LF   | \$ 9,108.00   |
| 19   | REMOVE CONCRETE PAVING                    | 10.19      | 5.00      | 2,874   | SF   | \$ 14,370.00  |
| 20   | REMOVE ASPHALT CONCRETE PAVING            | 10.19      | 1.10      | 14,594  | SF   | \$ 16,053.40  |
| 21   | SALVAGE SIGNS                             | 10.16      | 155.00    | 2       | EA   | \$ 310.00     |
| 22   | TREE PROTECTION                           | 10.18      | 10,000.00 | 1       | LS   | \$ 10,000.00  |
| 23   | REMOVE BOLLARDS                           | 10.21      | 175.00    | 6       | EA   | \$ 1,050.00   |
| 24   | REMOVE AND DISPOSE OF EXISTING BUILDING   | 10.20      | 38,000.00 | 1       | EA   | \$ 38,000.00  |
| 25   | REMOVE CHAIN LINK FENCE                   | 10.22      | 11.00     | 150     | LF   | \$ 1,650.00   |
| 26   | TEMPORARY CONTAINMENT                     | 10.27      | 8.00      | 1,480   | CY   | \$ 11,840.00  |
| 27   | GEOTEXTILE SEPARATION BARRIER             | 10.33      | 0.40      | 155,719 | SF   | \$ 62,287.00  |
| 28   | REUSE EXISTING MULCH                      | 10.58      | 0.80      | 20,400  | SF   | \$ 16,320.00  |
| 29   | EROSION CONTROL LAYER / HYDROSEED         | 10.53      | 0.70      | 81,600  | SF   | \$ 57,120.00  |

## ADDENDUM NO. 07

| ITEM | DESCRIPTION   | SPEC. REF. | UNIT COST | QTY.   | UNIT | AMOUNT        |
|------|---|------------|-----------|--------|------|---------------|
| 30   | EARTHWORK - EXCAVATION (CUT TO BURIAL)                                    | 10.32      | 9.00      | 3,230  | CY   | \$ 29,070.00  |
| 31   | FULL DEPTH RECLAMATION (REVOCABLE)  | 10.31      | 0.65      | 59,700 | SF   | \$ 38,805.00  |
| 32   | FINE GRADING  | 10.29      | 0.25      | 59,700 | SF   | \$ 14,925.00  |
| 33   | CEMENT APPLICATION (REVOCABLE)  | 10.31      | 245.00    | 100    | TON  | \$ 24,500.00  |
| 34   | IMPORT AND PLACE CLEAN FILL (REVOCABLE)                                   | 10.28      | 25.00     | 9,600  | CY   | \$ 240,000.00 |
| 35   | CLASS II RECYCLED AGGREGATE BASE - 6" BIKE & JOG, 4" WALKING              | 10.45      | 35.00     | 2,000  | TON  | \$ 70,000.00  |
| 36   | WALKING PATH - 2" ASPHALT   | 10.46      | 185.00    | 125    | TON  | \$ 23,125.00  |
| 37   | JOGGING PATH - 4" DECOMPOSED GRANITE                                      | 10.47      | 171.00    | 203    | TON  | \$ 34,713.00  |
| 38   | 3" ASPHALT AT INTERSECTIONS   | 10.46      | 204.00    | 50     | TON  | \$ 10,200.00  |
| 39   | CONCRETE PAVING (PLAZAS)  | 10.44      | 12.00     | 3,100  | SF   | \$ 37,200.00  |
| 40   | 4" CONCRETE AT INTERSECTIONS & ACCESS PATHS                               | 10.44      | 0         | 0      | SF   | \$0           |
| 41   | BICYCLE PATH - 3" ASPHALT   | 10.46      | 190.00    | 435    | TON  | \$ 82,650.00  |
| 42   | AGGREGATE BASE SERVICE ROAD FOR MH ACCESS                                 | 10.45      | 92.00     | 94     | TON  | \$ 8,648.00   |
| 43   | PEDESTRIAN CURB RAMP  | 10.44      | 26.00     | 625    | SF   | \$ 16,250.00  |
| 44   | 2" by 4' CDF CAP (INSTALLED ADJACENT TO TRAVEL WAY)                       |            | 340.00    | 41     | CY   | \$ 13,940.00  |
| 45   | BICYCLE CURB RAMP   | 10.44      | 42.00     | 457    | SF   | \$ 19,194.00  |
| 46   | CONCRETE CURB AND GUTTER  | 10.44      | 67.00     | 813    | LF   | \$ 54,471.00  |
| 47   | MAIN STREET DRIVEWAY  | 10.44      | 5,000.00  | 1      | EA   | \$ 5,000.00   |
| 48   | STRIPING: 12" SOLID WHITE LINE  | 10.48      | 6.40      | 30     | LF   | \$ 192.00     |
| 49   | STRIPING: 4" SOLID YELLOW   | 10.48      | 2.00      | 400    | LF   | \$ 800.00     |
| 50   | STRIPING: 4" SOLID WHITE  | 10.48      | 2.00      | 120    | LF   | \$ 240.00     |
| 51   | STRIPING: 4" BROKEN YELLOW  | 10.48      | 2.00      | 1,350  | LF   | \$ 2,700.00   |
| 52   | PAVEMENT MARKINGS   | 10.48      | 160.00    | 55     | EA   | \$ 8,800.00   |
| 53   | NEW SIGNAGE   | 10.65      | 500.00    | 26     | EA   | \$ 13,000.00  |
| 54   | LANDSCAPE SOIL PREPARATION (INCLUDES COMPOST AT 6CY/1000SF AT \$1,800 SF) | 10.58      | 95.00     | 551    | CY   | \$ 52,345.00  |
| 55   | TREE - 15 GALLON  | 10.59      | 300.00    | 61     | EA   | \$ 18,300.00  |
| 56   | CONCRETE BAND   | 10.44      | 125.00    | 20     | LF   | \$ 2,500.00   |
| 57   | PAVERS AT EMERGENCY ACCESS  | 10.61      | 26.00     | 475    | SF   | \$ 12,350.00  |
| 58   | BRICK PAVERS - MORTAR SET WITH CONCRETE BASE                              | 10.62      | 32.00     | 209    | SF   | \$ 6,688.00   |
| 59   | BOULDER   | 10.64      | 425.00    | 50     | TON  | \$ 21,250.00  |
| 60   | TRAFFIC SIGNS/POSTS/WAYFINDING SIGNAGE-NOT SHOWN IN PLANS                 | 10.65      | 600.00    | 1      | EA   | \$ 600.00     |
| 61   | SHEET MULCH (2 LAYERS OF RECYCLED CARDBOARD)                              | 10.67      | 0.80      | 10,400 | SF   | \$ 8,320.00   |
| 62   | RECYCLED WOOD MULCH (2 INCH DEPTH/10,400 SF)(REVOCABLE)                   | 10.68      | 120.00    | 64     | CY   | \$ 7,680.00   |

## ADDENDUM NO. 07

| ITEM                                    | DESCRIPTION   | SPEC. REF. | UNIT COST | QTY.    | UNIT | AMOUNT        |
|---|---|------------|-----------|---------|------|---------------|
| 63                                      | METAL HEADER  | 10.63      | 26.00     | 40      | LF   | \$ 1,040.00   |
| 64                                      | BENCHES   | 10.70      | 2,600.00  | 3       | EA   | \$ 7,800.00   |
| 65                                      | BIKE RACKS  | 10.72      | 810.00    | 3       | EA   | \$ 2,430.00   |
| 66                                      | TREE GRATE  | 10.74      | 3,700     | 1       | EA   | \$ 3,700      |
| 67                                      | LANDSCAPE MAINTENANCE (1 YEAR)                      | 10.73      | 65,000.00 | 1       | LS   | \$ 65,000.00  |
| 68                                      | SLOW RELEASE WATERING BAG - TREES                   | 10.52      | 69.00     | 122     | EA   | \$ 8,418.00   |
| 69                                      | ADJUST MANHOLE LID (SS/SD) TO GRADE                 | 10.38      | 1,100.00  | 6       | EA   | \$ 6,600.00   |
| 70                                      | CONNECT TO EXISTING STORM SYSTEM                    | 10.35      | 3,000.00  | 16      | EA   | \$ 48,000.00  |
| 71                                      | STORM DRAIN AREA DRAIN                              | 10.36      | 725.00    | 25      | EA   | \$ 18,125.00  |
| 72                                      | SOLID DRAIN LINE, 8" PVC                            | 10.37      | 110.00    | 576     | LF   | \$ 63,360.00  |
| 73                                      | TRAFFIC SIGNAL MODIFICATION (THIRD ST/RAMP)         | 10.50      | 3,900.00  | 1       | LS   | \$ 3,900.00   |
| 74                                      | TRAFFIC SIGNAL MODIFICATION (POGGI ST/RAMP)         | 10.50      | 13,300.00 | 1       | LS   | \$ 13,300.00  |
| FUNDING PACKAGE #3 (ACTC Discretionary) |   |            |           |         |      |               |
| 75                                      | MOBILIZATION (2.5% of Base Bid)                     | 10.04      | 45,000    | 1       | LS   | \$ 45,000     |
| 76                                      | TRAFFIC CONTROL                                     | 10.04      | 65,000    | 1       | LS   | \$ 65,000     |
| 77                                      | TEMPORARY CONSTRUCTION FENCING                      | 10.05      | 7.00      | 2,429   | LF   | \$ 17,003.00  |
| 78                                      | INSTALL PROJECT SIGNS                               | 10.06      | 1,100.00  | 1       | LS   | \$ 1,100.00   |
| 79                                      | CONSTRUCTION STAKING                                | 10.34      | 20,000    | 1       | LS   | \$ 20,000     |
| 80                                      | CONSTRUCTION SURVEYING (CAP VERIFICATION)           | 10.30      | 10,000    | 1       | LS   | \$ 10,000     |
| 81                                      | SWPPP/EROSION CONTROL                               | 10.08      | 50,000    | 1       | LS   | \$ 50,000     |
| 82                                      | CLEARING AND GRUBBING                               | 10.16      | 0.90      | 149,388 | SF   | \$ 134,449.20 |
| 83                                      | TREE REMOVAL  | 10.18      | 1200.00   | 3       | EA   | \$ 3,600.00   |
| 84                                      | REMOVE CONCRETE CURB AND GUTTER                     | 10.19      | 12.00     | 450     | LF   | \$ 5,400.00   |
| 85                                      | REMOVE CONCRETE PAVING                              | 10.19      | 3.00      | 2,985   | SF   | \$ 8,955.00   |
| 86                                      | REMOVE ASPHALT CONCRETE PAVING                      | 10.19      | 3.00      | 6,732   | SF   | \$ 20,196.00  |
| 87                                      | SALVAGE SIGNS                                       | 10.16      | 300.00    | 8       | EA   | \$ 2,400.00   |
| 88                                      | REMOVE BOLLARDS                                     | 10.21      | 150.00    | 18      | EA   | \$ 2,700.00   |
| 89                                      | DEMOLISH EXISTING LIGHT POLE BASES & CAP ELECTRICAL | 10.23      | 6400.00   | 1       | LS   | \$ 6,400.00   |
| 90                                      | TEMPORARY CONTAINMENT                               | 10.27      | 7.40      | 1,480   | CY   | \$ 10,952.00  |
| 91                                      | GEOTEXTILE SEPARATION BARRIER                       | 10.33      | 0.35      | 143,740 | SF   | \$ 50,309.00  |
| 92                                      | REUSE EXISTING MULCH                                | 10.54      | 0.70      | 21,100  | SF   | \$ 14,770.00  |
| 93                                      | EROSION CONTROL LAYER / HYDROSEED                   | 10.53      | 0.70      | 84,410  | SF   | \$ 59,087.00  |
| 94                                      | EARTHWORK - EXCAVATION (CUT TO BURIAL)              | 10.32      | 14.00     | 2,200   | CY   | \$ 30,800.00  |

## ADDENDUM NO. 07

| ITEM | DESCRIPTION  | SPEC. REF. | UNIT COST | QTY.   | UNIT | AMOUNT       |
|------|--|------------|-----------|--------|------|--------------|
| 95   | FULL DEPTH RECLAMATION (REVOCABLE)                                       | 10.31      | 0.70      | 56,800 | SF   | \$ 39760.00  |
| 96   | FINE GRADING   | 10.29      | 0.20      | 56,800 | SF   | \$ 11360.00  |
| 97   | CEMENT APPLICATION (REVOCABLE)   | 10.31      | 245.00    | 100    | TON  | \$ 24500.00  |
| 98   | IMPORT AND PLACE CLEAN FILL (REVOCABLE)                                  | 10.28      | 32.00     | 3,400  | CY   | \$ 108800.00 |
| 99   | CLASS II RECYCLED AGGREGATE BASE - 8" BIKE & JOG, 4" WALKING             | 10.45      | 32.00     | 2,450  | TON  | \$ 78400.00  |
| 100  | WALKING PATH - 2" ASPHALT  | 10.45      | 205.00    | 160    | TON  | \$ 32800.00  |
| 101  | JOGGING PATH - 4" DECOMPOSED GRANITE                                     | 10.47      | 153.00    | 262    | TON  | \$ 40086.00  |
| 102  | 3" ASPHALT AT INTERSECTIONS  | 10.45      | 216.00    | 11     | TON  | \$ 2376.00   |
| 103  | CONCRETE PAVING (PLAZAS)   | 10.44      | 25.00     | 5,500  | SF   | \$ 137500.00 |
| 104  | 4" CONCRETE AT INTERSECTIONS & ACCESS PATHS                              | 10.44      | 0         | 0      | SF   | \$0          |
| 105  | BICYCLE PATH - 3" ASPHALT  | 10.45      | 108.00    | 580    | TON  | \$ 62640.00  |
| 106  | AGGREGATE BASE SERVICE ROAD FOR MH ACCESS                                | 10.45      | 94.00     | 90     | TON  | \$ 8190.00   |
| 107  | PEDESTRIAN CURB RAMP   | 10.44      | 60.00     | 310    | SF   | \$ 18600.00  |
| 108  | 2" by 4' CDF CAP (INSTALLED ADJACENT TO TRAVEL WAY)                      |            | 325.00    | 55     | CY   | \$ 17875.00  |
| 109  | BICYCLE CURB RAMP  | 10.44      | 16.66     | 254    | SF   | \$ 4231.64   |
| 110  | CONCRETE CURB AND GUTTER   | 10.48      | 125.00    | 88     | LF   | \$ 11,000.00 |
| 111  | STRIPING: 12" SOLID WHITE LINE   | 10.48      | 5.50      | 120    | LF   | \$ 660.00    |
| 112  | STRIPING: 4" SOLID YELLOW  | 10.48      | 2.00      | 567    | LF   | \$ 1134.00   |
| 113  | STRIPING: 4" SOLID WHITE   | 10.48      | 2.00      | 690    | LF   | \$ 1380.00   |
| 114  | STRIPING: 4" BROKEN YELLOW   | 10.48      | 2.00      | 1,440  | LF   | \$ 2880.00   |
| 115  | STRIPING: 6" DOTTED WHITE  | 10.48      | 3.00      | 300    | LF   | \$ 900.00    |
| 116  | STRIPING: 6" SOLID WHITE LINE  | 10.48      | 1.50      | 1,200  | LF   | \$ 1800.00   |
| 117  | PAVEMENT MARKINGS  | 10.48      | 160.00    | 101    | EA   | \$ 16160.00  |
| 118  | NEW SIGNAGE  | 10.65      | 500.00    | 29     | EA   | \$ 14500.00  |
| 119  | GREEN THERMOPLASTIC PAVEMENT MARKING                                     | 10.48      | 14.00     | 240    | SF   | \$ 3360.00   |
| 120  | IRRIGATION (WEBSTER PLAZA)   | 10.58      | 90,000    | 1      | LS   | \$ 90,000    |
| 121  | LANDSCAPE SOIL PREPARATION (INCLUDES COMPOST AT 6CY/1000SF AT 95,200 SF) | 10.59      | 89.00     | 571    | CY   | \$ 50819.00  |
| 122  | SHRUBS 1 GALLON  | 10.59      | 16.00     | 538    | EA   | \$ 8608.00   |
| 123  | TREE - 15 Gallon   | 10.60      | 265.00    | 71     | EA   | \$ 18815.00  |
| 124  | CONCRETE SEAT WALLS  | 10.49      | 2,500.00  | 37     | CY   | \$ 92500.00  |
| 125  | CONCRETE BAND  | 10.62      | 68.00     | 56     | LF   | \$ 3808.00   |
| 126  | BRICK PAVERS - SAND SET  | 10.62      | 19.00     | 545    | SF   | \$ 10555.00  |
| 127  | BRICK PAVERS - MORTAR SET WITH CONCRETE BASE                             | 10.62      | 31.00     | 415    | SF   | \$ 12865.00  |

## ADDENDUM NO. 07

| ITEM                                  | DESCRIPTION   | SPEC. REF. | UNIT COST | QTY.   | UNIT | AMOUNT       |
|---------------------------------------|---|------------|-----------|--------|------|--------------|
| 128                                   | BOULDER   | 10.64      | 400.00    | 29     | TON  | \$ 11600.00  |
| 129                                   | TRAFFIC SIGNS/POSTS/WAYFINDING SIGNAGE-NOT SHOWN IN PLANS | 10.65      | 600.00    | 2      | EA   | \$ 1200.00   |
| 130                                   | SHEET MULCH (2 LAYERS OF RECYCLED CARDBOARD)              | 10.67      | 1.00      | 11,000 | SF   | \$ 11,000.00 |
| 131                                   | RECYCLED WOOD MULCH (2 INCH DEPTH/11,000 SF)(REVOCABLE)   | 10.68      | 115.00    | 68     | CY   | \$ 7820.00   |
| 132                                   | BIORETENTION AREA ROCK MULCH (3" DEEP, 300SF)             | 10.69      | 700.00    | 3      | CY   | \$ 2100.00   |
| 133                                   | METAL HEADER  | 10.63      | 27.00     | 54     | LF   | \$ 1458.00   |
| 134                                   | BENCHES   | 10.70      | 2500.00   | 1      | EA   | \$ 2500.00   |
| 135                                   | BIKE RACKS  | 10.72      | 800.00    | 4      | EA   | \$ 3200.00   |
| 136                                   | RELOCATE BIKE LOCKERS                                     | 10.71      | 1800.00   | 3      | EA   | \$ 5400.00   |
| 137                                   | LANDSCAPE MAINTENANCE (1 YEAR)                            | 10.73      | 48,300    | 1      | LS   | \$ 48,300    |
| 138                                   | SLOW RELEASE WATERING BAG - TREES                         | 10.52      | 72.00     | 86     | EA   | \$ 6192.00   |
| 139                                   | CONNECT TO EXISTING STORM SYSTEM                          | 10.35      | 2700      | 18     | EA   | \$ 48600.00  |
| 140                                   | ADJUST MANHOLE LID (SS/SD) TO GRADE                       | 10.38      | 1300.00   | 8      | EA   | \$ 10400.00  |
| 141                                   | STORM DRAIN AREA DRAIN                                    | 10.36      | 800.00    | 23     | EA   | \$ 18400.00  |
| 142                                   | STORM DRAIN CLEANOUT                                      | 10.36      | 700.00    | 1      | EA   | \$ 700.00    |
| 143                                   | SOLID DRAIN LINE, 6" PVC                                  | 10.37      | 106.00    | 363    | LF   | \$ 38478.00  |
| 144                                   | PERFORATED DRAIN LINE, 6" PVC                             | 10.37      | 30.00     | 32     | LF   | \$ 960.00    |
| 145                                   | BIORETENTION SOIL   | 10.41      | 159.00    | 26     | TON  | \$ 4134.00   |
| 146                                   | CLASS II AB, PERMEABLE                                    | 10.42      | 114.00    | 22     | TON  | \$ 2508.00   |
| 147                                   | (2) - 2" PVC LIGHTING CONDUIT                             | 10.76      | 107.00    | 24     | LF   | \$ 2568.00   |
| 148                                   | ELECTRICAL PULL BOXES                                     | 10.78      | 320.00    | 1      | EA   | \$ 320.00    |
| 149                                   | REMOVE CONCRETE CURB AND GUTTER                           | 10.19      | 0         | 0      | LF   | \$ -         |
| 150                                   | RELOCATION OF BUS STOP ENCLOSURE                          | 10.16      | 5400.00   | 1      | LS   | \$ 5400.00   |
| 151                                   | ADJUST LIGHT POLE TO GRADE                                | 10.39      | 8,000     | 1      | EA   | \$ 8,000     |
| 152                                   | RELOCATE TRASH CANS                                       | 10.25      | 500.00    | 2      | EA   | \$ 1,000.00  |
| 153                                   | ADJUST MANHOLES TO GRADE                                  | 10.38      | 1100.00   | 2      | EA   | \$ 2200.00   |
| 154                                   | ADJUST UTILITY BOX TO GRADE                               | 10.38      | 600.00    | 2      | EA   | \$ 1200.00   |
| 155                                   | TREES REMOVAL   | 10.18      |           | 0      | EA   | \$ -         |
| 156                                   | CONCRETE CURB AND GUTTER                                  | 10.44      | 73.00     | 140    | LF   | \$ 10220.00  |
| 157                                   | NEW SIGNAGE   | 10.67      | 450.00    | 2      | EA   | \$ 900.00    |
| 158                                   | RETAINING CURB  | 10.44      | 132.00    | 15     | LF   | \$ 1980.00   |
| 203                                   | TRAFFIC SIGNAL MODIFICATION (FIFTH ST/RAMP)               | 10.50      | 64,000    | 1      | LS   | \$ 64,000    |
| FUNDING PACKAGE #4 (No Grant Funding) |   |            |           |        |      |              |

| ITEM | DESCRIPTION                           | SPEC. REF. | UNIT COST | QTY.  | UNIT | AMOUNT       |
|------|---------------------------------------|------------|-----------|-------|------|--------------|
| 159  | MOBILIZATION (2.5% of Base Bid)       | 10.04      | 21,000    | 1     | LS   | \$ 21,000    |
| 160  | TEMPORARY CONSTRUCTION FENCING        | 10.05      | 7.00      | 1,028 | LF   | \$ 7,196.00  |
| 161  | INSTALL PROJECT SIGNS                 | 10.06      | 1100.00   | 1     | LS   | \$ 1,100.00  |
| 162  | CONSTRUCTION STAKING                  | 10.34      | 10,000    | 1     | LS   | \$ 10,000    |
| 163  | EROSION CONTROL LAYER / HYDROSEED     | 10.53      | 33.00     | 275   | SF   | \$ 9,075.00  |
| 164  | CLEARING AND GRUBBING (LANDSCAPE)     | 10.18      | 17.00     | 580   | SF   | \$ 9,860.00  |
| 165  | REMOVE CONCRETE CURB AND GUTTER       | 10.19      | 18.00     | 440   | LF   | \$ 7,920.00  |
| 166  | REMOVE CONCRETE CURB (MEDIAN)         | 10.19      | 13.00     | 1,650 | SF   | \$ 21,450.00 |
| 167  | REMOVE ASPHALT CONCRETE PAVING        | 10.19      | 6.00      | 2,305 | SF   | \$ 13,830.00 |
| 168  | REMOVE STRIPING                       | 10.17      | 37,400    | 1     | LS   | \$ 37,400    |
| 169  | SALVAGE NEWSSTAND                     | 10.26      | 8.00      | 1     | LS   | \$ 8.00      |
| 170  | TREE REMOVAL                          | 10.18      | 1,000     | 2     | EA   | \$ 2,000     |
| 171  | TREE PROTECTION                       | 10.18      | 1,000     | 1     | LS   | \$ 1,000     |
| 172  | RELOCATE IRRIGATION SYSTEM            | 10.51      | 13,000    | 1     | LS   | \$ 13,000    |
| 173  | REPLACE AC ROAD SECTION (17' ASPHALT) | 10.46      | 26.00     | 150   | TON  | \$ 3,900.00  |
| 174  | NEW CONCRETE SIDEWALK                 | 10.44      | 13.00     | 3,695 | SF   | \$ 48,035.00 |
| 175  | CONCRETE MEDIAN (ROADWAY MEDIAN)      | 10.44      | 20.00     | 175   | SF   | \$ 3,500     |
| 176  | RETAINING CURB                        | 10.44      | 202.00    | 320   | LF   | \$ 64,640    |
| 177  | PEDESTRIAN CURB RAMP                  | 10.44      | 35.00     | 440   | SF   | \$ 15,400.00 |
| 178  | BICYCLE CURB RAMP                     | 10.44      | 17.00     | 560   | SF   | \$ 9,520.00  |
| 179  | CONCRETE CURB AND GUTTER              | 10.44      | 115.00    | 360   | LF   | \$ 41,400.00 |
| 180  | CONCRETE CURB                         | 10.44      | 74.00     | 120   | LF   | \$ 8,880.00  |
| 181  | MOUNTABLE TRUCK APRON                 | 10.44      | 60.00     | 90    | SF   | \$ 5,400.00  |
| 182  | COMMERCIAL DRIVEWAY                   | 10.44      | 15.00     | 780   | SF   | \$ 11,700.00 |
| 183  | 48" HIGH LANE DELINEATORS             | 10.66      | 192.00    | 26    | EA   | \$ 4,992.00  |
| 184  | NEW SIGNAGE                           | 10.65      | 500.00    | 11    | EA   | \$ 5,500.00  |
| 185  | 6" DETECTABLE WARNING STRIP           | 10.44      | 125.00    | 125   | SF   | \$ 15,625.00 |
| 186  | TRUNCATED DOMES                       | 10.44      | 39.00     | 115   | SF   | \$ 4,485.00  |
| 187  | STRIPING: 24" SOLID WHITE LINE        | 10.48      | 6.00      | 1,580 | LF   | \$ 9,480.00  |
| 188  | STRIPING: 12" SOLID WHITE LINE        | 10.48      | 5.00      | 60    | LF   | \$ 300.00    |
| 189  | STRIPING: 4" BROKEN YELLOW LINE       | 10.48      | 2.00      | 650   | LF   | \$ 1,300.00  |
| 190  | STRIPING: 4" BROKEN WHITE LINE        | 10.48      | 2.00      | 600   | LF   | \$ 1,200.00  |
| 191  | STRIPING: 4" SOLID WHITE              | 10.48      | 2.00      | 530   | LF   | \$ 1,060     |

RWB

## ADDENDUM NO. 07

| ITEM           | DESCRIPTION   | SPEC. REF. | UNIT COST | QTY.   | UNIT | AMOUNT        |
|----------------|---|------------|-----------|--------|------|---------------|
| 192            | PAVEMENT MARKINGS   | 10.48      | 160.00    | 66     | EA   | \$ 10560.00   |
| 193            | NON REFLECTIVE MARKERS  | 10.48      | 6.00      | 40     | EA   | \$ 240.00     |
| 194            | GREEN THERMOPLASTIC PAVEMENT MARKING                              | 10.48      | 14.00     | 3,150  | SF   | \$ 44100.00   |
| 195            | DRAIN INLETS  | 10.39      | 4000.00   | 5      | EA   | \$ 20,000.00  |
| 196            | 6" PVC STORM DRAIN PIPE   | 10.37      | 52.00     | 120    | LF   | \$ 6240.00    |
| 197            | 12" RCP STORM DRAIN PIPE  | 10.37      | 200.00    | 136    | LF   | \$ 27200.00   |
| 198            | ADJUST UTILITY BOX TO GRADE                                       | 10.38      | 700.00    | 2      | EA   | \$ 1400.00    |
| 199            | CONNECT TO EXISTING STORM SYSTEM                                  | 10.35      | 2,700.00  | 3      | EA   | \$ 8100.00    |
| 200            | TRAFFIC SIGNAL MODIFICATION (WEBSTER ST/ATLANTIC AVE)             | 10.50      | 135,000   | 1      | LS   | \$ 135,000    |
| 201            | TRAFFIC SIGNAL MODIFICATION (ATLANTIC AVE/CONSTITUTION WAY)       | 10.50      | 139,000   | 1      | LS   | \$ 139,000    |
| 202            | ATLANTIC AVENUE RECTANGULAR RAPID FLASHING BEACON (RRFB) ASSEMBLY | 10.50      | 43,000    | 1      | LS   | \$ 43,000     |
| BID ALTERNATES |   |            |           |        |      |               |
| BID ALT #1     |   |            |           |        |      |               |
| 211            | IMPORT AND PLACE CLEAN FILL                                       | 10.28      | 27.00     | 13,000 | CY   | \$ 351,000.00 |
| BID ALT #2     |   |            |           |        |      |               |
| 204            | LIGHT FIXTURE, POLE, AND FOUNDATION                               | 10.81      | 11,500    | 42     | EA   | \$ 483,000.00 |
| 205            | 1.5" PVC LIGHTING CONDUIT   | 10.76      | 1.00      | 4135   | LF   | \$ 37,215.00  |
| 206            | LIGHTING IN-GRADE PULL BOX  | 10.76      | 525.00    | 42     | EA   | \$ 22,050.00  |
| 207            | #10 THWN CONDUCTORS   | 10.76      | 1.25      | 4,680  | LF   | \$ 5,825.00   |
| 208            | #8 THWN CONDUCTORS  | 10.76      | 1.75      | 22,760 | LF   | \$ 39,830.00  |
| 209            | TRENCHING   | 10.77      | 27.00     | 4,135  | LF   | \$ 111,645.00 |
| 210            | UTILITY PAD MOUNT   | 10.80      | 2,000     | 1      | EA   | \$ 2,000      |

TOTAL BASE BID: Items 1 through 203 inclusive (IN WORDS):

TOTAL ADD ALTERNATE BID #1 (IN WORDS):

TOTAL ADD ALTERNATE BID #2 (IN WORDS):

BIDDER NAME: McGuire and Hester

Refer to Attachment P "Funding Package Exhibit" for breakdown of funding packages.

This Bid Schedule must be completed in ink and must be included with the sealed Bid Proposal. The unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the extended total "Amount" column must be identical to the Base Bid price.

## ALTERNATE BID ITEMS

If and when Alternate bid items are called for in the Contract Documents, the lowest responsive bid will be determined on the basis of a total lump sum, equal to the sum of the Base Bid Schedule work only, unless otherwise provided in the Notice Inviting Bids. (Note: Bid Alternates will NOT be part of the determination of lowest responsive bids.)

City may elect to include one or more of the Alternate bid items in the Project scope of work. Accordingly, the City reserves the right to hold the Awarded Contractor to its Bid Alternate bids for no less than 90 days from the award of Contract, and each bidder must ensure that each bid item (Base Bid or Alternate) is balanced and contains a proportionate share of profit, overhead and other costs or expenses which will be incurred by the Bidder. The time required for completion of the Alternate bid items has been factored into the Contract Time and no additional time will be allowed for performing any of the alternate bid items.

END BID PROPOSAL

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

**The award of contract, if awarded, shall be based on budget requirements and shall be made to the lowest responsible, responsive bidder based on the Total Base Bid amount alone. (Note: Bid Alternates will not be part of the determination of lowest responsive bids.)**

In case of discrepancy between prices and totals, the unit prices shall prevail.

It is understood and agreed that the quantities of work under each item are approximate only, being given for a basis of comparison of proposals, and the right is reserved to the City to increase or decrease the amount of work under any item as may be required, in accordance with provisions set forth in the specifications for this project.

It is further understood and agreed that the total amount of money set forth for each item of work or as the total amount bid for the project does not constitute an agreement to pay a lump sum for the work unless it specifically so states.

No person, firm or corporation shall be allowed to make, file or be interested in more than one (1) bid for the same project unless such alternate bids are called for. However, a person, firm or corporation who has submitted a sub-proposal to one bidder is not hereby disqualified from submitting a sub-proposal or quoting prices to other bidders.

If this proposal is accepted and the undersigned shall fail to contract as aforesaid and to give the two bonds in the sums to be determined as aforesaid with surety satisfactory to the Director of Public Works within three (3) working days of notice of award, the City Manager may, at his option, determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the City.

It is hereby agreed that the undersigned, as bidder, shall furnish a faithful performance bond of the total amount of this proposal and a labor and materials bond in the amount of one hundred percent (100%) of the total amount of this proposal to the City and at no expense to said City, in the event that this proposal is accepted by the City.

SUBCONTRACTS

The following "Specialty Item" of work is hereby exempted from percentage requirements of work performed by the Contractor's own organization and workmen under his immediate supervision:

NONE

Attention is directed to the provisions in Section 5-1.13, "Subcontracting," of the Standard Specifications, and Section B.

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

### DESIGNATION OF SUBCONTRACTORS

[Public Contract Code Section 4104]

List all Subcontractors who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the Plans and Specifications, in an amount in excess of one-half percent (0.5%) of the Contractor's total Bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half percent (0.5%) of the Contractor's total Bid or \$10,000, whichever is greater. If all Subcontractors do not fit on this page, attach another page listing all information for all other Subcontractors.

| Name under which Subcontractor is Licensed and Registered | CSLB License Number(s) and Class(es) | DIR Contractor Registration Number | Address and Phone Number                                | Type of Work (e.g. Electrical)    | Percentage of Total Bid (e.g. 10%) <sup>1</sup> |
|---|--------------------------------------|------------------------------------|---|-----------------------------------|---|
| Mountain F Enterprises                                    | 842929                               | 1000005328                         | 1180 Iron point RD Ste. 350 (530) Folsom, CA 95626-4127 | Tree Removal (BWD)                | 0.65%   |
| Stripping Graphics (BWD)                                  | 576756                               | 1000006495                         | 501 RARON Cotati, LA (707) - 793-9425                   | Stripping (BWD)                   | 3.85%   |
| Griffin Soil  | 791232                               | 10000064572                        | 248 Industrial Dr Stockton CA 95206 (707) - 793-9425    | Pulverized cement treatment (BWD) | 2.81%   |
| European Paving design                                    | 445163                               | 100000559                          | 1474 Berger Dr San Jose, CA 95112 (408) - 293-5230      | Pavers                            | 1.56%   |
| Freedman Hydroseeding inc (BWD)                           | 740810                               | 1000003273                         | 516 Baywood Ct Vacaville, CA, 95688 707-448-9423        | Hydroseeding                      | 0.86%   |
| dynamic generator service                                 | 1013977                              | 1000054116                         | P.O. BOX 3201 San Leandro CA, 94538 204-650-0085        | Electrical                        | 7.24%   |
|   |                                      |                                    |   |                                   |   |
|   |                                      |                                    |   |                                   |   |

<sup>1</sup> The percentage of the total Bid shall represent the "portion of the work" for the purposes of Public Contract Code Section 4104(b).

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

**NONCOLLUSION DECLARATION FORM**  
**TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID**  
**[Public Contract Code Section 7106]**

The undersigned declares:

I am the Exec. VP/Treasurer of McGuire and Hester, the party making the foregoing Bid.

The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other Bidder. All statements contained in the Bid are true. The Bidder has not, directly or indirectly, submitted his or her Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, Bid depository, or to any member or agent thereof, to effectuate a collusive or sham Bid, and has not paid, and will not pay, any Person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

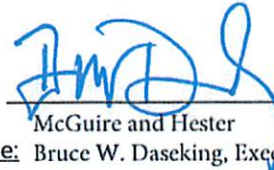
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 8/30/18 [date], at Alameda [city], CA [state].

Signature: N/A

Printed Name:

Date: N/A

Signature:

  
McGuire and Hester

Printed Name: Bruce W. Daseking, Exec. VP/Treasurer

Date: 8/30/18

**This form must be notarized.**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT****CIVIL CODE § 1189**

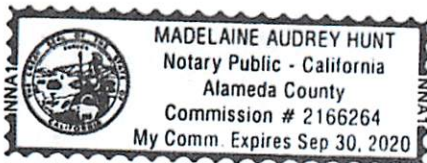
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Alameda )

On 8/29/18 before me, Madelaine Audrey Hunt, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared Bruce W. Daseking  
Name(s) of Signer(s)

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

Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Non-Collusion Alameda CAT/RAMP Document Date: 8/30/18

Number of Pages: 1 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Bruce W. Daseking

☒ Corporate Officer — Title(s): Exec. VP/Treasurer

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: McGuire and Hester

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

*(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL  
ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS  
WHICH ARE A PART OF THIS PROPOSAL)*

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

The bidder McGuire and Hester, proposed subcontractor  
\_\_\_\_\_, hereby certifies that he has X, has not \_\_\_, participated in a  
previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925,  
11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the  
Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former  
President's Committee on Equal Employment Opportunity, all reports due under the applicable filing  
requirements.

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of  
Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in  
connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts  
and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5.  
(Generally only contracts or subcontracts of \$10,000.00 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their  
implementing regulations.

Proposed prime Contractors and subcontractors who have participated in a previous contract or  
subcontract subject to the Executive Orders and have not filed the required reports should note that 41  
CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such Contractor submits a  
report covering the delinquent period or such other period specified by the Federal Highway  
Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

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CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

**DEBARMENT AND SUSPENSION CERTIFICATION**  
**TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29**

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, and manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three (3) years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

If there are any exceptions to this certification, insert the exceptions in the following space.

None.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

N/A

**Notes:** Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

**SUBCONTRACTOR DEBARMENT AND SUSPENSION CERTIFICATION**  
**TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29**

The Subcontractor, under penalty of perjury, certifies that, except as noted below, he/she or any other person including subcontractors associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three (3) years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

If there are any exceptions to this certification, insert the exceptions in the following space.

None

Authorized Representative

Bruce W. Daseking  
Name (typed)

  
Signature

Exec. VP/Treasurer  
Title

8/30/18  
Date

McGuire and Hester  
Name of Company

CROSS ALAMEDA TRAIL RALPH APPEZZATO MEMORIAL  
Project Name PARKWAY IMPROVEMENTS

**BIDDER SHALL SUBMIT A SIGNED "SUBCONTRACTOR DEBARMENT AND SUSPENSION CERTIFICATION" NO LATER THAN 4:00 P.M. ON THE 4TH BUSINESS DAY AFTER BID OPENING FOR EACH SUBCONTRACTOR LISTED IN THE BID. FAILURE TO SUBMIT SUBCONTRACTOR CERTIFICATION MAY DEEM A BID NON-RESPONSIVE.**

Notes: The certification of this provision is a material representation of fact upon which reliance was place. Providing false information may result in criminal prosecution or administrative sanctions and the termination of the contract for default.

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

## CONTRACTOR'S LICENSE

### NOTICE

Section 7028.15 of the Business and Professions Code provides that it is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a Contractor within the state without having a license therefor except in certain cases. Therefore you must sign one of the following two statements:

1. ~~I am familiar with the provisions of Section 7028.15 of the California Business and Professions Code and in my opinion the following exceptions contained within the Code section apply:~~

~~I declare under penalty of perjury that the foregoing is true and correct.~~

~~Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, California.~~

\_\_\_\_\_  
N/A

(Signature)

2. I am a licensed Contractor possessing the following license, A, B, C21, C27, C31, HAZ

the number of which is 95879, the license expiration date is 11/30/19.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of August, 2018, at Alameda, California.

\_\_\_\_\_  
McGuire and Hester (Signature)

Bruce W. Daseking, Exec. VP/Treasurer

ANY BID NOT CONTAINING THE FOREGOING INFORMATION, OR A BID CONTAINING INFORMATION WHICH IS SUBSEQUENTLY PROVEN FALSE, MAY BE CONSIDERED NON-RESPONSIVE AND REJECTED BY THE PUBLIC AGENCY.

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

Accompanying this proposal is Bidder's Bond

(Notice: Insert the words "Cash (\$ 10% )", "Cashier's Check", "Certified Check," or "Bidder's Bond.")

in amount equal to at least ten (10) percent (10%) of the total of the bid.

The names of all persons interested in the foregoing proposal as principals are as follows:

**IMPORTANT NOTICE:** If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a co-partnership, state true name of firm, also names of all individual copartners composing firm; if bidder or other interested person is an individual, state first and last names in full.

SEE ATTACHED

**ADDENDA:** This Proposal is submitted with respect to the changes to the contract included in addenda number(s)

ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN

(Fill in any addenda numbers if addenda have been received.)

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements are true and correct. By my signature on this proposal I further certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Non-collusion Affidavit required by Public Contract Code Section 7106; and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Date: 8/30/18

SIGN HERE: McGuire and Hester

>>>

  
Signature of Bidder Bruce W. Daseking, Exec. VP/Treasurer

Business address: 2810 Harbor Bay Parkway, Alameda, CA 94502

Business phone no. (510) 632-7676

Place of business: 2810 Harbor Bay Parkway, Alameda, CA 94502

Place of residence: 2810 Harbor Bay Parkway, Alameda, CA 94502

McGuire and Hester  
2810 Harbor Bay Parkway  
Alameda, CA 94502  
510-632-7676

---

McGuire and Hester - A California Corporation  
License #95879  
A, B, C21, C27, C31, HAZ

Michael R. Hester, President

Bruce W. Daseking, Executive Vice President Estimating & Treasurer

Brock N. Grunt, Executive Vice President Operations

Kimberly S. Carone, Secretary

[www.McGuireandHester.com](http://www.McGuireandHester.com)

CORPORATE OFFICE 2810 HARBOR BAY PKWY ALAMEDA CA 94502 • OAKLAND OFFICE 9009 RAILROAD AVENUE OAKLAND CA 94603 • PH 510 632 7676

SACRAMENTO OFFICE 1016 N. MARKET BLVD # 20 SACRAMENTO CA 95834 • PH 916 372 8910

Contractors License Numbers: CA: 95879 AZ: 251628 NV: 72399, OR: 18193C DE 1000000033

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

## AGREEMENT TO BE BOUND TO PSA

### PROJECT STABILIZATION AGREEMENT FOR THE CITY OF ALAMEDA AGREEMENT TO BE BOUND

The undersigned party confirms that it agrees and assents to comply with and to be bound by the City of Alameda Project Stabilization Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms. A copy of the Agreement is included as Attachment K.

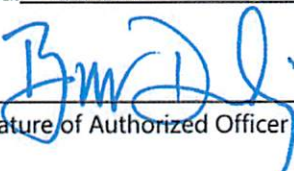
By executing this Agreement To Be Bound, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements, as set forth in section 17, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such Trust Fund(s) and ratifies and accepts the trustees appointed by the parties to such Trust Fund(s) and agrees to execute a separate Subscription Agreement(s) for Trust Funds when such Trust Fund(s) require(s) such document(s).

Such assent and obligation to comply with and to be bound by this Agreement shall extend to all work covered by said Agreement undertaken by the undersigned party. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Agreement To Be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

Dated: 8/30/18

Project: CROSS ALAMEDA TRAIL - RALPH APPEZZATO  
MEMORIAL PARKWAY IMPROVEMENTS

  
\_\_\_\_\_  
Signature of Authorized Officer

Bruce W. Daseking, Exec. VP/Treasurer  
Authorized Officer & Title

McGuire and Hester  
Name of Contractor/Employer(s)

2810 Harbor Bay Parkway, Alameda, CA 94502  
Contractor/Employer(s) Address

95879  
CSLB #  
Email: estimating@mcguireandhester.com  
Fax: (510) 562-5209  
E-mail and/or Fax

(510) 632-7676  
Area Code      Phone  
N/A  
Motor Carrier (CA) Permit Number

1000000033  
DIR Prevailing Wage Registration #



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/25/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|  |   |
|--|---|
| <b>PRODUCER</b><br>RC Fischer Co<br>1301 Ygnacio Valley Rd #100<br>Walnut Creek CA 94596 | <b>CONTACT</b><br>NAME: Amy Gregory<br>PHONE (A/C, No, Ext): 925-627-5471<br>FAX (A/C, No): 925-932-0962<br>E-MAIL ADDRESS: agregory@rcfischer.com  |
| <b>INSURED</b><br>McGuire and Hester<br>2810 Harbor Bay Parkway<br>Alameda CA 94502-3040 | <b>INSURER(S) AFFORDING COVERAGE</b><br>INSURER A : Executive Risk Indemnity Inc<br>INSURER B : Federal Insurance Co<br>INSURER C : Travelers Prop Cas Co of Amer<br>INSURER D : Homeland Insurance Co of NY<br>INSURER E : Starr Indemnity & Liability Co<br>INSURER F : |

**COVERAGES**

CERTIFICATE NUMBER: 349608811

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE  | ADDL INSD | SUBR WVD | POLICY NUMBER                | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS   |
|----------|--|-----------|----------|------------------------------|-------------------------|-------------------------|--|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><input checked="" type="checkbox"/> Contract Liab<br><input checked="" type="checkbox"/> XCU<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br><input checked="" type="checkbox"/> OTHER: GL Ded \$10K | Y         | Y        | 54303064                     | 7/1/2018                | 7/1/2019                | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000<br>\$ |
| B        | <b>AUTOMOBILE LIABILITY</b><br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> NON-OWNED AUTOS  | Y         | Y        | 54303063                     | 7/1/2018                | 7/1/2019                | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$  |
| E        | <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR<br><input checked="" type="checkbox"/> EXCESS LIAB<br>DED <input checked="" type="checkbox"/> RETENTION \$ 10,000   |           |          | 1000585176181                | 7/1/2018                | 7/1/2019                | EACH OCCURRENCE \$ 10,000,000<br>AGGREGATE \$ 10,000,000<br>\$   |
| B        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below  | Y/N       | N/A      | 54303065                     | 7/1/2018                | 7/1/2019                | <input checked="" type="checkbox"/> PER STATUTE<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000  |
| C<br>D   | Builders Risk<br>Pollution Liability   | Y         |          | 6307105P547<br>7930037000001 | 7/1/2018<br>8/23/2017   | 7/1/2019<br>8/23/2019   | Limit<br>Occ Limit<br>10,000,000<br>5,000,000  |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: M&amp;H Job 4336 Cross Alameda Trail Ralph Appezzato

The City of Alameda, its City Council, boards, commissions, officials, employees, and volunteers are named as additional insureds per CA20480299, 100225080715 and OBENVGE3010211. Waiver of subrogation applies per CA04441013 and 100218000917.

**CITY OF ALAMEDA**  
Risk Management

CERTIFICATE HOLDER

Date

Lucretia Akil, City Risk Manager

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

City of Alameda  
950 West Mall Square, Room 110  
Alameda CA 94501

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## DESIGNATED INSURED


This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

|                                   |  |
|-----------------------------------|--|
| Endorsement Effective: 07/01/2018 | Countersigned By:<br><br><br>(Authorized Representative) |
| Named Insured: McGuire and Hester |  |

### SCHEDULE

|   |
|---|
| <b>Name of Person(s) or Organization(s):</b><br><br>Where required by written contract. |
|---|

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

Policy Number: 7930037000001

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement only modifies coverage provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
CONTRACTORS ENVIRONMENTAL LIABILITY COVERAGE PART

### **SCHEDULE**

| <b>Name Of Additional Insured Person(s)<br/>Or Organization(s):</b> | <b>Location And Description Of Completed<br/>Operations:</b> |
|---|--|
| Where required by written contract.                                 |  |

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**SECTION II – WHO IS AN INSURED** is amended to include as an additional insured the person(s) or organization(s) shown in the SCHEDULE above, but only with respect to liability for **bodily injury, property damage or environmental damage** caused, in whole or in part, by **your work** at the location designated and described in the SCHEDULE above performed for that additional insured and included in the **products-completed operations hazard**.

All other terms and conditions remain the same.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement only modifies coverage provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
CONTRACTORS ENVIRONMENTAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Name of Person or Organization:**

Where required by written contract.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. **SECTION II – WHO IS AN INSURED** is amended to include as an insured the person or organization shown in the SCHEDULE above, but only with respect to liability arising out of your ongoing operations performed for that insured.
- B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

**2. Exclusions**

This insurance does not apply to **bodily injury, property damage or environmental damage** occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (b) That portion of **your work** out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

All other terms and conditions remain the same.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

**Named Insured: McGuire and Hester**

**Endorsement Effective Date: 07/01/18**

**SCHEDULE**

**Name(s) Of Person(s) Or Organization(s):**

Where required by written contract.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

**SECTION I – COVERAGES****COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY****1. Insuring Agreement**

- a. We will pay damages that the insured becomes legally obligated to pay for "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages for the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- d. Damages for "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

**2. Exclusions**

This insurance does not apply to:

**a. Expected Or Intended Injury**

"Bodily injury" or "property damage" arising out of an act that:

- (1) Is expected or intended from the standpoint of the insured; or
- (2) Would be expected or intended from the standpoint of a reasonable person in the circumstances of the insured;

to cause "bodily injury" or "property damage", even if the actual "bodily injury" or "property damage" is of a different degree or type than intended or expected.

This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

**c. Liquor Liability**

"Bodily injury" or "property damage" for which any person or organization may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages; or
- (4) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol in connection with any circumstances described in c.(1), (2), or (3) above.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

For the purposes of this exclusion, consumption of alcoholic beverages brought on your premises (whether or not a fee is charged or a license is required for such activity) will not be deemed, in itself, to constitute the business of furnishing, selling or serving alcoholic beverages.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages for "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

#### g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
  - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
  - (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

#### **h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

#### **i. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

#### **j. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

#### **k. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

#### **l. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

#### **m. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**n. Personal And Advertising Injury**

"Bodily injury" arising out of "advertising injury" or "personal injury".

**o. Access To Or Disclosure Of Confidential Or Personal Information And Data-Related Liability**

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Exclusions c. through m. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay damages that the insured becomes legally obligated to pay for "advertising injury" or "personal injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "advertising injury" or "personal injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "advertising injury" or "personal injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

**2. Exclusions**

This insurance does not apply to:

**a. Expected Or Intended Injury**

"Advertising injury" or "personal injury" arising out of an offense committed by or on behalf of the insured, that:

- (1) Is intended by such insured; or
  - (2) Would be expected from the standpoint of a reasonable person in the circumstances of such insured;
- to cause injury.

**b. Publications With Knowledge Of Falsity**

"Advertising injury" or "personal injury" arising out of any electronic, oral, written or other publication of content or material by or with the consent of the insured:

- (1) With knowledge of its falsity; or
- (2) If a reasonable person in the circumstances of such insured would have known such content or material to be false.

**c. Prior Offenses**

"Advertising injury" or "personal injury" arising out of any offense first committed before the beginning of the policy period.

**d. Crime Or Fraud**

"Advertising injury" or "personal injury" arising out of any criminal or fraudulent conduct committed by or with the consent or knowledge of the insured.

**e. Contracts**

"Advertising injury" or "personal injury" for which the insured is obligated to pay damages by reason of assumption of liability in a contract or agreement. This exclusion does not apply to the liability for damages:

- (1) That such insured would have in the absence of such contract or agreement; or
- (2) Assumed in a written contract or agreement that is an "insured contract", provided the "advertising injury" or "personal injury" to which this insurance applies is caused by an offense first committed after the execution of such contract or agreement.

**f. Breach Of Contract**

"Advertising injury" or "personal injury" arising out of breach of contract.

**g. Failure To Conform To Representations Or Warranties**

"Advertising injury" or "personal injury" arising out of the failure of goods, products or services to conform with any electronic, oral, written or other representation or warranty of durability, fitness, performance, quality or use.

**h. Wrong Description Of Prices**

"Advertising injury" or "personal injury" arising out of the wrong description of the price of goods, products or services.

**i. Media Type Businesses**

"Advertising injury" or "personal injury" arising out of an offense committed by or on behalf of an insured whose business is advertising, broadcasting, cablecasting, publishing, telecasting or telemarketing.

This exclusion does not apply to "personal injury" caused by an offense described in Paragraphs 21. a., b. and c. of the definition of "personal injury" under the Definitions Section.

**j. Internet Activities**

"Advertising injury" or "personal injury" arising out of:

- (1) Controlling, creating, designing or developing of another's Internet site;

- (2) Controlling, creating, designing, developing, determining or providing the content or material of another's Internet site;

- (3) Controlling, facilitating or providing, or failing to control, facilitate or provide, access to the Internet or another's Internet site; or

- (4) Publication of content or material on or from the Internet, other than material developed by you to or at your direction.

**k. Continuing Offenses**

"Advertising injury" or "personal injury" that arises out of that part of an offense that continues or resumes after the later of the end of the policy period of:

- (1) This insurance; or

- (2) A subsequent, continuous renewal or replacement of this insurance, that:

- (a) Is issued to you by us or by an affiliate of ours;

- (b) Remains in force while the offense continues; and

- (c) Would otherwise apply to "advertising injury" and "personal injury".

**l. Pollution**

"Advertising injury" or "personal injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**m. Pollution-Related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**n. Access Or Disclosure Of Confidential Or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

## **COVERAGE C MEDICAL PAYMENTS**

### **1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
- provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

### **2. Exclusions**

We will not pay expenses for "bodily injury":

#### **a. Any Insured**

To any insured, except "volunteer workers".

#### **b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

#### **c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

### **d. Workers Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

### **e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

### **f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

### **g. Coverage A Exclusions**

Excluded under Coverage A.

## **COVERAGE FORM EXCLUSIONS**

The following exclusions apply to all Coverages in this Coverage Form and all endorsements attached to it.

### **1. Asbestos, Silica Or Similar Compounds, Including Mixed Dust**

- a. This insurance does not apply to any damages, loss, cost or expense arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of:

- (1) "Asbestos";
- (2) "Silica"; or
- (3) "Mixed dust".

- b. This insurance does not apply to any damages, loss, cost or expense arising, in whole or in part, out of any:

- (1) Demand, order, request or regulatory or statutory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess; or
- (2) Claim or proceeding by or on behalf of a governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing;

the effects of "asbestos", "silica" or "mixed dust".

### **2. Employment-Related Practices**

This insurance does not apply to any damages, loss, cost or expense sustained at any time by:

- a. Any person, whether or not sustained in the course of employment by any insured, arising out of any employment-related act, omission, policy, practice or representation directed at

such person, occurring in whole or in part at any time, including any:

- (1) Arrest, detention or imprisonment;
  - (2) Breach of any express or implied covenant;
  - (3) Coercion, criticism, humiliation, prosecution or retaliation;
  - (4) Defamation or disparagement;
  - (5) Demotion, discipline, evaluation or reassignment;
  - (6) Discrimination, harassment or segregation;
  - (7) (a) Eviction; or  
(b) Invasion or other violation of any right of occupancy;
  - (8) Failure or refusal to advance, compensate, employ or promote;
  - (9) Invasion or other violation of any right of privacy or publicity;
  - (10) Termination of employment; or
  - (11) Other employment-related act, omission, policy, practice, representation or relationship in connection with any insured at any time.
- b. The brother, child, parent, sister or spouse of such person at whom any employment-related act, omission, policy, practice or representation is directed, as described in paragraph a. above, as a consequence thereof.

This exclusion applies:

- i. Whether the insured may be liable as an employer or in any other capacity; and
- ii. To any obligation to share damages with or repay someone else who must pay damages because of any of the foregoing.

### **3. Enhancement, Maintenance Or Prevention Expenses**

This insurance does not apply to any loss, cost or expense incurred by you or others for any:

- a. Enhancement or maintenance of any property; or
- b. Prevention of any injury or damage to any:
  - (1) Person or organization; or
  - (2) Property you own, rent or occupy.

### **4. Fungi Or Bacteria**

This insurance does not apply to:

- a. "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of "fungi" or bacteria.
- b. Any damages, loss, cost or expense arising out of any:
  - (1) Demand, order, request or regulatory or statutory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess; or
  - (2) Claim or proceeding by or on behalf of a governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing;

the effects of "fungi" or bacteria.

### **5. Information Laws, Including Unauthorized Or Unsolicited Communications**

This insurance does not apply to any damages, loss, cost or expense arising out of any actual or alleged violation of:

- a. The United States of America CAN-SPAM Act of 2003 (or any law amendatory thereof) or any similar regulatory or statutory law in any other jurisdiction;
- b. The United States of America Telephone Consumer Protection Act (TCPA) of 1991 (or any law amendatory thereof) or any similar regulatory or statutory law in any other jurisdiction;
- c. The United States of America Fair Credit Reporting Act (FCRA) (or any law amendatory thereof including the Fair and Accurate Credit Transactions Act (FACTA)) or any similar regulatory or statutory law in any other jurisdiction; or
- d. Any other regulatory or statutory law in any jurisdiction that addresses, limits or prohibits the collecting, communicating, disposal, dissemination, distribution, monitoring, printing, publication, recording, sending or transmitting of content, information or material.

### **6. Intellectual Property Laws And Rights**

This insurance does not apply to any damages, loss, cost or expense arising out of, giving rise to or in any way related to any actual, alleged or threatened:

- a. Assertion; or
- b. Infringement or violation;

by any person or organization (including any insured) of any "intellectual property law or right".

Further, this insurance does not apply to the entirety of all allegations in any claim or "suit", if such claim or "suit" includes an allegation of or a reference to an infringement or violation of any "intellectual property law or right", even if this insurance would otherwise apply to any part of the allegations in the claim or "suit".

This exclusion applies unless the only infringement or violation of an "intellectual property law or right" is an offense described in the definition of "advertising injury" to which this insurance applies.

#### **7. Lead**

- a. This insurance does not apply to any damages, loss, cost or expense arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of "lead".
- b. This insurance does not apply to any damages, loss, cost or expense arising, in whole or in part, out of any:
  - (1) Demand, order, request or regulatory or statutory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess; or
  - (2) Claim or proceeding by or on behalf of a governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing;the effects of "lead".

#### **8. War**

This insurance does not apply to any damages, loss, cost or expense, however caused, arising, directly or indirectly, out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- 1. All expenses we incur.
- 2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- 3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- 4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- 5. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- 6. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- 7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

#### **SECTION II – WHO IS AN INSURED**

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury", "advertising injury" or "personal injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages for the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
- (1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However, coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

No person or organization is an insured with respect to the:

- a. Ownership, maintenance or use of any assets; or
- b. Conduct of any person or organization whose assets, business or organization;

you acquire, either directly or indirectly, for any:

- a. "Bodily injury" or "property damage" that occurred; or
- b. "Advertising injury" or "personal injury" arising out of an offense first committed;

in whole or in part, before you, directly or indirectly, acquired such assets, business or organization.

**SECTION III – LIMITS OF INSURANCE**

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C; and
- b. Damages under Coverage A, except damages for "bodily injury" or "property damage" included in the "products-completed operations hazard".

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages for "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. The Personal and Advertising Injury Aggregate Limit is the most we will pay for the sum of damages under Coverage B.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C
 for all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages for "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

##### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and

- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured for injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

##### **3. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

##### **4. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

###### **a. Primary Insurance**

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

## **b. Excess Insurance**

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

## **c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

## **5. Premium Audit**

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. We may audit your books and records as they relate to this insurance at any time during the term of this policy and up to three years afterwards.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

## **6. Representations**

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

## **7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

## **8. Transfer Or Waiver Of Rights Of Recovery Against Others To Us**

We will waive the right of recovery we would otherwise have had against another person or organization, for loss to which this insurance applies, provided the insured has waived their rights of recovery against such person or organization in a contract or agreement that is executed before such loss.

To the extent that the insured's rights to recover all or part of any payment made under this Coverage Part have not been waived, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

This condition does not apply to Coverage C.

#### **9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

#### **SECTION V – DEFINITIONS**

1. "Advertisement" means an electronic, oral, written or other notice, about goods, products or services, designed for the specific purpose of attracting the general public or a specific market segment to use such goods, products or services.

"Advertisement" does not include any e-mail address, Internet domain name or other electronic address or metalanguage.

2. "Advertising injury" means injury, other than "bodily injury", "property damage" or "personal injury", sustained by a person or organization and caused by an offense of infringing, in that particular part of your "advertisement" about your goods, products or services, upon their:

- a. Copyrighted "advertisement"; or
- b. Registered collective mark, registered service mark or other registered trademarked name, slogan, symbol or title.

3. "Asbestos" means asbestos in any form, including its presence or use in any alloy, by-product, compound or other material or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

4. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;

- b. Sickness; or

- c. Disease;

sustained by a person, including resulting death, humiliation, mental anguish, mental injury or shock at any time. All such loss shall be deemed to occur at the time of the physical injury, sickness or disease that caused it.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:

- (1) Goods or products made or sold by you in the territory described in Paragraph a. above;

- (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or

- (3) "Advertising injury" or "personal injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

7. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

8. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

9. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

**12. "Insured contract" means:**

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

**13. "Intellectual property law or right" means any:**

- a. Certification mark, copyright, patent or trademark (including collective or service marks);
- b. Right to, or judicial or statutory law recognizing an interest in, any trade secret or confidential or proprietary non-personal information;
- c. Other right to, or judicial or statutory law recognizing an interest in, any expression, idea, likeness, name, slogan, style of doing business, symbol, title, trade dress or other intellectual property; or
- d. Other judicial or statutory law concerning piracy, passing off or similar practices.

**14. "Lead" means the element lead in any form, including its presence or use in any alloy, by-product, compound or other material or waste. Waste includes materials to be recycled, reconditioned or reclaimed.**

**15. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".**

**16. "Loading or unloading" means the handling of property:**

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

**17. "Mixed dust" means any combination or mixture of "asbestos" or "silica" and any other dust, fibers or particles, in any form, including any presence or use in any alloy, by-product, compound or other material or waste. Waste includes materials to be recycled, reconditioned or reclaimed.**

**18. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:**

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

- (1) Power cranes, shovels, loaders, diggers or drills; or
- (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

19. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

20. "Personal and advertising injury" means:

- a. "Advertising injury"; or
- b. Personal injury".

21. "Personal injury" means injury, other than "bodily injury", "property damage" or "advertising injury", caused by an offense of:

- a. False arrest, false detention or other false imprisonment;
- b. Malicious prosecution;
- c. Wrongful entry into, wrongful eviction of a person from or other violation of a person's right of private occupancy of a dwelling, premises or room that such person occupies, if committed by or on behalf of its landlord, lessor or owner; or
- d. Electronic, oral, written or other publication of material that:
  - (1) Libels or slanders a person or organization (which does not include disparagement of goods, products, property or services); or
  - (2) Violates a person's right of privacy.

22. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

23. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

**24. "Property damage" means:**

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 25. "Silica" means silica in any form (including silicates or other similar silicon compounds), including its presence or use in any alloy, by-product, compound or other material or waste. Waste includes materials to be recycled, reconditioned or reclaimed.**
- 26. "Suit" means a civil proceeding in which damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:**
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 27. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.**

**28. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.**

**29. "Your product":**

**a. Means:**

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a) You;
  - (b) Others trading under your name; or
  - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**b. Includes:**

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

**30. "Your work":**

**a. Means:**

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

**b. Includes:**

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: that

McGuire and Hester ✓

(Name of Contractor)

2810 Harbor Bay Parkway, Alameda, CA 94502

(Address of Contractor)

a Corporation, hereinafter called Principal, and  
(Corporation, Partnership, or Individual)Western Surety Company

(Name of Surety)

555 Mission Street, Suite 200, San Francisco, CA 94105

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto City of Alameda ✓

(Name of Owner)

950 West Mall Square, Room 110, Alameda, CA 94501-7575

(Address of Owner)

hereinafter called OWNER, in the penal sum of Four Million Eight Hundred Forty Nine Thousand Seven Hundred Forty and no/100 Dollars. (\$ \$4,849,740.00) ✓

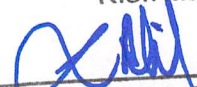
in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the 9th day of October 2018 a copy of which

is hereto attached and made a part hereof for the construction of:

Cross Alameda Trail, Ralph Appezzato Memorial Parkway Improvements Project

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

CITY OF ALAMEDA  
Risk Management

 Date 10-17-18  
 Lucretia Akil, City Risk Manager

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

**PERFORMANCE BOND FORM**

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed on 2 counterparts, each one  
(Number)

of which shall be deemed an original, this the 9th day of October, 2018

ATTEST:

See attached notary  
Principal Secretary

(SEAL)

[Signature]  
(Witness as to Principal)  
2810 Harbor Bay Parkway  
(Address)  
Alameda, CA 94502

McGuire and Hester

By: [Signature]  
Principal  
Bruce W. Dawkins  
Exec VP/Treasurer

2810 Harbor Bay Parkway

(Address)  
Alameda, CA 94502

Western Surety Company

(Surety)

ATTEST:

Refer to Attached Power of Attorney

Surety Secretary

(SEAL) [Signature]

(Witness as to Surety) Nerissa S. Bartolome  
50 California St., 12th Floor  
(Address)  
San Francisco, CA 94111

By: [Signature]  
Attorney-in-fact, Yvonne Roncagliolo  
555 Mission Street, Suite 200  
(Address)  
San Francisco, CA 94105

NOTE: Date of BOND must not be prior to date of Contract.

If the CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT****CIVIL CODE § 1189**

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

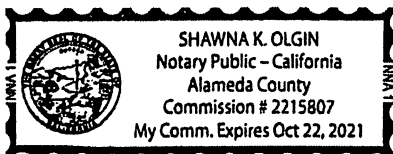
State of California )

County of Alameda )On 10/10/18 before me, Shawna Kay Olgin, Notary Public  
Date Here Insert Name and Title of the Officerpersonally appeared Bruce W. Daseking  
Name(s) of Signer(s)

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 [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**Title or Type of Document: Performance Bond Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**Signer's Name: Bruce W. Daseking☒ Corporate Officer — Title(s): Exec VP/Treasurer☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_Signer Is Representing: McGuire and Hester

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**Bond No. 30041448**

**CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT****CIVIL CODE § 1189**

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

State of California )

County of San Francisco )On 10/9/2018 before me, Nancy Hamilton, Notary Public,

Date

Here Insert Name and Title of the Officer

personally appeared Yvonne Roncagliolo

Name(s) of Signer(s)

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 Nancy Hamilton  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended 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(s)**Signer's Name: Yvonne Roncagliolo☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☒ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner — ☒ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

# 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

**Charles R Shoemaker, Nancy L Hamilton, Roger C Dickinson, Stanley D Loar, Mark M Munekawa, Joan DeLuca, Kelly Holtemann, Nerissa S Bartolome, Alicia Dass, Patrick R Diebel, Yvonne Roncagliolo, Thomas E Hughes, Individually**

of San Francisco, 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 By-Law printed on the reverse hereof, 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 7th day of August, 2018.



WESTERN SURETY COMPANY

*Paul T. Bruflat*

Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 7th day of August, 2018, before me personally came Paul T. Bruflat, 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 the 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

June 23, 2021



*J. Mohr*

J. Mohr, 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 of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 9th day of October, 2018.



WESTERN SURETY COMPANY

*L. Nelson*

L. Nelson, Assistant Secretary

**Authorizing By-Law**

**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.



CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

**PAYMENT BOND FORM**

KNOW ALL MEN BY THESE PRESENTS: that

McGuire and Hester ✓

a \_\_\_\_\_ Corporation \_\_\_\_\_, hereinafter called Principal, and

Western Surety Company

hereinafter called Surety, are held and firmly bound unto City of Alameda ✓

hereinafter called OWNER, in the penal sum of \*see below Dollars. (\$ 4,849,740.00— ) ✓

\*Four Million Eight Hundred Forty Nine Thousand Seven Hundred Forty and no/100  
in lawful money of the United States, for the payment of which sum well and truly to be made,  
we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a  
certain contract with the OWNER, dated the 9th day of October 2018 a copy of

which is hereto attached and made a part hereof for the construction of:  
Cross Alameda Trail, Ralph Appezzato Memorial Parkway Improvements Project

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms,  
SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the  
prosecution of the WORK provided for in such contract, and any authorized extension or  
modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and  
coke, repairs on machinery, equipment and tools, consumed or used in connection with the  
construction of such WORK, and all insurance premiums on said WORK, and for all labor,  
performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation  
shall be void; otherwise to remain in full force and effect.

CITY OF ALAMEDA  
Risk Management

CROSS ALAMEDA TRAIL  
RALPH APPEZZATO MEMORIAL PARKWAY IMPROVEMENTS

**PAYMENT BOND FORM**

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed on 2 counterparts, each one (Number)

of which shall be deemed an original, this the 9th day of October, 2018

ATTEST:

See attached notary  
Principal Secretary

(SEAL) [Signature]  
(Witness as to Principal)  
2810 Harbor Bay Parkway  
(Address)  
Alameda, CA 94502

McGuire and Hester  
Principal  
By: [Signature]  
Brady W. Dasek  
Exec VP / Treasurer  
2810 Harbor Bay Parkway  
(Address)  
Alameda, CA 94502  
Western Surety Company  
(Surety)

ATTEST:

Refer to Attached Power of Attorney

Surety Secretary  
(SEAL) [Signature]  
(Witness as to Surety) Nerissa S. Bartolome  
50 California St., 12th Floor  
(Address)  
San Francisco, CA 94111

By: [Signature]  
Attorney-in-fact, Yvonne Roncagliolo  
555 Mission St., Suite 200  
(Address)  
San Francisco, CA 94105

NOTE: Date of BOND must not be prior to date of Contract.

If the CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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

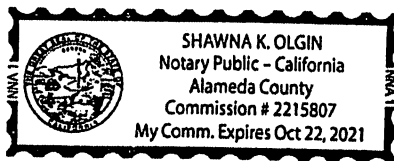
State of California )  
County of Alameda )

On 10/10/18 before me, Shawna Kay Olgin, Notary Public,  
Date Here Insert Name and Title of the Officer  
personally appeared Bruce W. Daseking  
Name(s) of Signer(s)

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 [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Payment Bond Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Bruce W. Daseking  
☒ Corporate Officer — Title(s): Exec VP/Treasurer  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
Signer Is Representing: McGuire and Hester

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

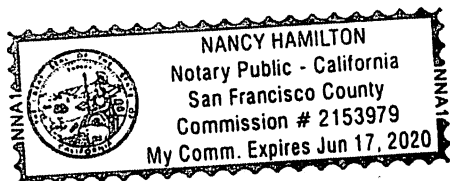
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of San Francisco )  
 On 10/9/2018 before me, Nancy Hamilton, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared Yvonne Roncagliolo  
 Name(s) of Signer(s)

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 Nancy Hamilton  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended 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(s)**

Signer's Name: Yvonne Roncagliolo  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☒ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☒ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

# 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

**Charles R Shoemaker, Nancy L Hamilton, Roger C Dickinson, Stanley D Loar, Mark M MuneKawa, Joan DeLuca, Kelly Holtemann, Nerissa S Bartolome, Alicia Dass, Patrick R Diebel, Yvonne Roncagliolo, Thomas E Hughes, Individually**

of San Francisco, 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 By-Law printed on the reverse hereof, 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 7th day of August, 2018.



WESTERN SURETY COMPANY

Paul T. Bruflat  
Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 7th day of August, 2018, before me personally came Paul T. Bruflat, 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 the 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

June 23, 2021



J. Mohr

J. Mohr, 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 of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 9th day of October, 2018



WESTERN SURETY COMPANY

L. Nelson  
L. Nelson, Assistant Secretary

**Authorizing By-Law**

**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.

