



DOCUMENT 00001

**PUBLIC WORKS DEPARTMENT
10300 TORRE AVENUE
CUPERTINO, CALIFORNIA 95014**

PROJECT MANUAL

FOR THE

**2015 CONTRACTUAL CROSSING GUARD
SERVICES - REBID**

Bid Date:

Tuesday, JULY 30, 2015

Project Number: 2015-25

DOCUMENT 00002

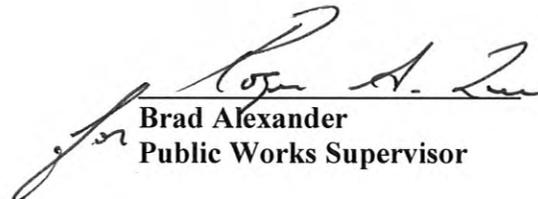
SIGNATURE PAGE

PROJECT MANUAL FOR

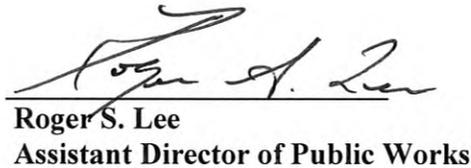
**2015 CONTRACTUAL
CROSSING GUARD SERVICES- Rebid**

PROJECT NO.

REVIEWED BY:


Brad Alexander
Public Works Supervisor

REVIEWED BY:


Roger S. Lee
Assistant Director of Public Works

APPROVED BY:


Timm Borden
Director of Public Works

DOCUMENT 00003

PROJECT DIRECTORY

Project Name: **2015 CONTRACTUAL CROSSING GUARD SERVICES - Rebid**

Project Number:

Location: **Public Street of the City of Cupertino**

City Representative:

Roger S. Lee
Assistant Director of Public Works
City of Cupertino
Public Works Department
10555 Mary Avenue
Cupertino, CA 95014
PH: 408-777-3269
FX: 408-777-3399
e-mail: rogerl@cupertino.org

Address for Stop Notices/Lien Notices:

City of Cupertino
Public Works Department - Maintenance
10555 Mary Avenue
Cupertino, CA 95014

DOCUMENT 00010

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| 00320 | Geotechnical Data, Hazardous Materials Surveys and Existing Conditions (Not Used) |
| 00400 | Bid Form |
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CONTRACTING DOCUMENTS

| Document | Title |
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| 00510 | Notice of Award |
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GENERAL CONDITIONS DOCUMENTS

| Document | Title |
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| 00700 | General Conditions |
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ADVERTISEMENT FOR BIDS

NOTICE: THE CITY OF CUPERTINO, a Municipal Corporation of the State of California ("City") hereby gives notice that it will accept Bids for the following:

CITY PROJECT NUMBER 2015-25 2015 CONTRACTUAL CROSSING GUARD SERVICES - REBID

1. **BID SUBMISSION:**
The City uses a two-part Bid process with Bids in Envelope "A" and Statements of Qualification and Financial information in Envelope "B". City will accept Envelope "A" and Envelope "B" no later than 2:00 P.M. on July 30, 2015 in the City Clerks Office. Bids will be publicly read at 2:00 P.M. in the City Community Hall at 10350 Torre Avenue (adjacent to City Hall). City's representative will call out the designated time in the Office of the City Clerk, 10300 Torre Avenue, stating that the period for accepting Bids is closed. The Bid opening will be in accordance with procedures set forth in Document 00200 (Instructions to Bidders).
2. **CONTACT INFORMATION:**
Roger S. Lee, Asst. Director of Public Works
408 777 3350 general
408 777 3399 fax
rogerl@cupertino.org
Service Center, 10555 Mary Avenue
Cupertino, CA 95014
3. **STATEMENT OF QUALIFICATIONS:** Each Bidder shall be required to submit a "Statement of Qualifications" in accordance with Document 00200 (Instructions to Bidders) and Document 00450 (Statement of Qualifications for Crossing Guard Services).
4. **DESCRIPTION OF THE WORK:** Crossing guard contractor is to provide fully trained and equipped adult crossing guards, during designated times and at specific locations, throughout the City of Cupertino. The contractor shall administer and coordinate the program meeting the requirements of the latest edition of the Manual on Uniform Traffic Control Devices California Supplement, Section 7E.02 and as detailed in the 2015 Contractual Crossing Guard Service - rebid contract documents.
5. **CONTRACT TIME:** The term of this agreement shall be three (3) years from the start date of the agreement. The City shall retain the option to extend the term of the agreement for an additional two (2) years, for a possible total of five (5) years.
6. **REQUIRED CONTRACTOR'S LICENSE:** A California Contractors License is not required to Bid this Contract. Joint ventures must secure a joint venture license prior to award of this Contract.
7. **PREVAILING WAGE LAWS:** The successful Bidder is not required to comply with all prevailing wage laws applicable to the Project.
8. **INSTRUCTIONS:** Bidders shall refer to Document 00200 (Instructions to Bidders) for required documents and items to be submitted in sealed envelopes to City Clerk's office, as well as applicable times for submission.
9. **SUBSTITUTION OF SECURITIES:** City will permit successful Bidder to substitute securities for retention monies withheld to ensure performance of Contract, as set forth in Document 00680 (Escrow Agreement for Security Deposits in Lieu of Retention), in accordance with California Public Contract Code, Section 22300. By this reference, Document 00680 (Escrow Agreement for Security Deposits in Lieu of Retention) is incorporated in full in this Document 00100.

11. **PROCUREMENT OF BIDDING DOCUMENTS:** Bidders may examine a hard-copy set of bid documents at the City's Public Works Department, City Hall, 10300 Torre Ave in Cupertino.

To obtain a copy of the bid documents, Bidders must download a set of bid documents from the City of Cupertino Web site at: <http://www.cupertino.org/index.aspx?page=119>, or from a plan room or trade journal site that carries them. The City will post all addendums to the project on the City web site and it is the Contractor's sole responsibility to download the addendums for the project. If a Contractor wishes to be on the plan holders list for the project the Contractor must send an email to: pavementprojects@cupertino.org containing the following information: Contractor's name, address, phone and fax number, an e-mail address for future communication. The plan holders list will be updated daily. Bidder is responsible for printing all bidding documents.

12. **BID PREPARATION COST:** Bidders are solely responsible for the cost of specification printing and preparing their Bids.
13. **RESERVATION OF RIGHTS:** City specifically reserves the right, in its sole discretion, to reject any or all Bids, or re-bid, or to waive inconsequential deviations from Bid requirements not involving time, price, or quality of the Work.
14. **PORTION OF WORK PERFORMED BY THE CONTRACTOR:** The Contractor shall perform no less than 95% of the Work, excluding Specialty Items, with its own organization. Specialty Items will be identified on the Bid Form.

CITY OF CUPERTINO

For By. Gersten Sgaracia
City Clerk

To be published in Cupertino Courier on July 10, 2015.

END OF DOCUMENT

DOCUMENT 00200

INSTRUCTIONS TO BIDDERS

Bids are requested for a service contract, or work described in general, as follows:

SPECIFICATION for CONTRACTUAL CROSSING GUARD SERVICES RE-BID

1. **RECEIPT OF BIDS.** Sealed Bids will be received by the City at City's office (see paragraph 2 below) on July 30, 2015. City will receive Bids in two separate opaque sealed 10" x 13" envelopes, labeled **Envelope "A" and Envelope "B"** each containing the respective items described in paragraphs 4 and 5 below. All Bid envelopes will be time stamped to reflect their submittal time. **Envelope "A" and Envelope "B" shall be due by 2:00 P.M.** as determined by the clock on the wall of the office of the City Clerk. Bids will be publicly read at 2:00 p.m. in the City Community Hall at 10350 Torre Avenue (adjacent to City Hall). City will reject all Bids received after the specified time and will return such Bids to Bidders unopened. Bidders must submit Bids in accordance with this Document 00200.

2. **CONTACT INFORMATION.**

Mailing address:
City of Cupertino
10555 Mary Avenue
Cupertino, CA 95014

City's Authorized Representative:
Roger S. Lee
Assistant Director of Public Works
Telephone:
(408) 777-3350

Emails:
rogerl@cupertino.org

Fax:
(408) 777-3399

3. **BID SUBMISSION.** Bidder should mark its Bid envelopes as **BID FOR THE CITY, PROJECT NUMBER 2015-25, 2015 CONTRACTUAL CROSSING GUARD SERVICES REBID**, Envelope "A" or "Envelope "B," as appropriate. Bids shall be deemed to include the written responses of the Bidder to any questions or requests for information of City made as part of Bid evaluation process after submission of Bid. Bidder's failure to submit all required documents strictly as required entitles City to reject the Bid as non-responsive.

4. **CONTENTS OF ENVELOPE "A" - BID PRICE.** Envelope "A" shall include:
 - a. Document 00400 (Bid Form) completed in accordance with paragraph 6 of this Document 00200.
 - b. Bid security supplied and completed in accordance with paragraph 7 of this Document 00200.
 - c. Document 00430 (Subcontractors List) in accordance with paragraph 8 of this Document 00200.
 - d. Document 00460 (Schedule of Crossing Guard Services Equipment). Bidder must complete this form as indicated.
 - e. Document 00481 (Non-Collusion Affidavit).

5. **CONTENTS OF ENVELOPE "B" – BIDDER STATEMENT OF QUALIFICATIONS.** Envelope "B" shall include:
 - a. Document 00450 (Statement of Qualifications for Crossing guard services) submitted in accordance with paragraph 9 of this Document 00200.
 - b. Document 00457 Proposed Crossing Guard Hours

- c. Document 00482 (Bidder Certifications). Bidder must complete this form as indicated.
- d. Financial Statement as required in Document 00450 (Statement of Qualifications for Crossing guard services)

6. REQUIRED BID FORMS. All Bidders must submit Bids using, where applicable, documents supplied in this Project Manual, including without limitation Document 00400 (Bid Form), Document 00430 (Subcontractors List), Document 00450 (Statement of Qualifications for Crossing guard services), Document 00457 Proposed Crossing Guard Hours, Document 00460 (Schedule of Crossing Guard Services Equipment), Document 00481 (Non-Collusion Affidavit), and Document 00482 (Bidders Certifications). City will reject as non-responsive any Bid not submitted on the required forms. Bids must be full and complete. Bidders must complete all Bid items and supply all information required by Bidding Documents. City reserves the right in its sole discretion to reject any Bid as non-responsive as a result of any error or omission in the Bid. Bidders may not modify the Bid Form or qualify their Bids. Bidders must submit clearly and distinctly written Bids. Bidders must clearly make any changes in their Bids by crossing out original entries, entering new entries, and initialing new entries. City reserves the right to reject any Bid not clearly written.

7. REQUIRED BID SECURITY. Bidders must submit with their Bids either cash, a cashier's check, or certified check from a responsible bank in the United States, or corporate surety bond furnished by a surety authorized to do business in the State of California, of not less than ten percent of amount of Bid, payable to City. All Bidders choosing to submit a surety bond must submit it on the required form, Document 00411 (Bond Accompanying Bid). City will reject as non-responsive any Bid submitted without the necessary Bid security.

City may retain Bid securities and Bid bonds of other than the Apparent Low Bidder for a period of 90 Days after award or full execution of the Contract, whichever first occurs. Upon full execution of the Contract, and upon request by Bidder, City will return to the respective unsuccessful Bidders their Bid securities and Bid bonds.

8. REQUIRED SUBCONTRACTORS LIST. All Bidders must submit with their Bids the required information on all Subcontractors in Document 00430 (Subcontractors List) for those Subcontractors who will perform any portion of Work, including labor, rendering of service, or specially fabricating and installing a portion of the Work or improvement according to detailed drawings contained in the plans and specifications, in excess of one half of one percent of total Bid or ten thousand dollars (\$10,000), whichever is greater. Violation of this requirement may result in Bid being deemed non-responsive and being rejected.

9. REQUIRED STATEMENT OF QUALIFICATIONS. In order for a Bidder to be eligible to Bid on this Contract, it must submit a Statement of Qualifications responsive to the requirements identified in Document 00450 (Statement of Qualification for Crossing Guard Work) ("SOQ"), including without limitation qualification information for Subcontractors and schedulers, if any. Except as otherwise provided in paragraphs 20 and 21 of this Document 00200 or in Document 00450 (Statement of Qualification for Crossing Guard Work), City will make final determinations regarding Bidder responsibility based solely upon the SOQ submitted as part of Envelope "B" on Bid day. Information in the SOQ shall be current.

10.

11. OTHER REQUIREMENTS PRIOR TO BIDDING. Submission of Bid signifies Bidder's careful examination of Bidding Documents and complete understanding of the nature, extent, and location of Work to be performed. As a condition to Bidding, Bidder must complete tasks listed in Document 00520 (Contract), Article 5. Submission of Bid shall constitute Bidder's express representation to the City that Bidder has fully completed these tasks.

12. EXISTING DRAWINGS AND GEOTECHNICAL DATA. Bidders may examine any available existing conditions information (e.g., record documents, specifications, studies, drawings of previous work) by giving City reasonable advance notice, as well as applicable environmental assessment information (if any) regarding the Project. Copies on a CD will be available for a fee.

13. ADDENDA. Bidders must direct all questions about the meaning or intent of Bidding Documents to City (Attention: Roger Lee, Assistant Director of Public Works) in writing. Letters, faxes or emails are acceptable forms of written questions. Interpretations or clarifications considered necessary by City in response to such questions will

be issued by Addenda mailed, faxed, or delivered to all “Bid List” parties, recorded by City as having received a Bidding Documents CD. Addenda will be written and will be issued to each Bidder to the address or fax number supplied City by Bidder. City may not answer questions received less than ten Days prior to the date for opening Bids. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

- a. Addenda may be issued to modify the Bidding Documents as deemed advisable by City.
- b. Addenda shall be acknowledged by number with signature in Document 00400 (Bid Form) and shall be part of the Contract Documents. A complete listing of Addenda may be secured from City.

14. SUBSTITUTIONS. Bidders must base their Bids on products and systems specified in Contract Documents or Addenda.

- a. Except as provided in paragraph 14.c below, City will consider substitution requests only for “or equal items.” Bidders wanting to use “or equal” item(s) may submit Document 00660 (Substitution Request Form) no later than 35 Calendar Days after the due date for City receiving Bids. To assess “or equal” acceptability of product or system, substitution requests shall contain the information required in Document 00660 (Substitution Request Form) and set forth in Document 00700 (General Conditions). Insufficient information will be grounds for rejection of substitution. City shall, within a reasonable period of time after having received a request for substitution, issue in writing its decision as to whether the proposed substitute item is an “equal” item. City’s decision shall be conclusive on all Bidders.
- b. Approved substitutions shall be listed in Addenda and become part of the Contract Documents.
- c. Substitutions may be requested after submitting Bids and the Award of Contract only in accordance with requirements specified in Document 00700 (General Conditions).

15. WAGE RATES. The California Department of Industrial Relations has determined that crossing guard services of routine recurring or usual nature is excluded from prevailing wage requirements. The Contractor shall keep fully informed of all existing and future State and Federal laws and City ordinances and regulations, which in any manner affect those engaged or employed in the work. Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

16. EQUAL EMPLOYMENT OPPORTUNITY. Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions, disability, or any other reason.

17. BID OPENING. City will open all Bidders’ Envelopes “A,” at the time and on the date specified in paragraph one above, initially evaluate them for responsiveness, and determine an Apparent Low Bidder as specified herein. City will not open Envelopes “B” publicly, and except for the Apparent Low Bidder’s Envelope “B” (or as otherwise provided in this Document 00200), they will remain unopened.

18. DETERMINATION OF APPARENT LOW BIDDER (Envelope “A”). Apparent Low Bid will be based solely on the total amount of all Bid items (excluding alternates) based on assumptions contained in Document 00400 (Bid Form). All Bidders are required to submit Bids on all Bid items (including any alternates).

19. EVALUATION OF BIDDER RESPONSIBILITY (Envelope “B”).

- a. City will open Apparent Low Bidder’s Envelope “B” and check its contents for compliance with paragraph 5 above and this paragraph 19. City will notify Apparent Low Bidder in writing of any deficiencies found and will provide Bidder the opportunity to respond in writing with reasonable clarifications but will not allow any changes in the nature of Bidder as a business entity.
- b. If any Apparent Low Bidder is determined to be non-responsive or non-responsible, City may open the next Apparent Low Bidder’s Envelope “B” pursuant to any procedures determined in its reasonable discretion, and proceed for all purposes as if this Apparent Low Bidder were the original Apparent Low Bidder. City

- shall use reasonable efforts to make the responsive responsible Apparent Low Bidder's Envelope "B" public on the fifth Day following opening of the Bidders' Envelope "A's, subject to paragraph 27 below.
- c. Document 00450 sets forth certain minimum criteria for a Bidder to be found responsible. Bidder's attention is called to the following minimum requirements for a Bidder to be found responsible to perform the Work:
1. Sufficient financial strength, stability and resources as measured by Bidder's equity, debt-to-assets ratio, and capability to finance the Work to be performed.
 2. Ability to secure, in accordance with the Contract Documents, the required form of Performance Bond. Ability to obtain required insurance with coverage values that meet minimum requirements.
 3. Subcontracting Prior Experience. Satisfactory experience on crossing guard projects, including without limitation, no history of default termination, excessively delayed completion or excessive defective work.
 4. Public Crossing Guard Experience. Evidence that Bidder and its team, including without limitation its Subcontractors (hereafter, including Bidder if Bidder performs such Work itself, "designated Subcontractor(s)"), have the human and physical resources of sufficient quantity and quality to perform the Work under Contract Documents in a timely and Specification-compliant manner, to include:
 - i. Crossing guard management organizations with sufficient personnel and requisite disciplines, licenses, skills, experience, and equipment for the Project.
 - ii. The contractor shall perform previous employment checks and background checks for all crossing guards prior to assigning to the City of Cupertino.
 - iii. Sufficiency of proposed quality assurance plan to meet the requirements of the Contract Documents.
 - iv. Bidder's safety record.
 - v. Minimum experience requirements of the prime contractor including the completion of a suitable number of crossing guard projects of similar nature and complexity for contract dollar amounts equal to what is specified in Document 00450 (Statement of Qualification).
 - vi. A field organization with skills, experience, and equipment sufficient to perform all on-Site work and necessary scheduling. Expertise of Key Personnel to accomplish the duties and responsibilities required to perform the Work under the Contract Documents. Minimum experience requirements of Key Personnel including the completion of crossing guard services projects of similar nature and complexity and having the number of years of experience on projects of similar nature and complexity as specified in Document 00450 (Statement of Qualifications).
 - vii. Bidder shall expressly indicate which, if any, of the designated Subcontractor(s)' functions it will perform itself.
 5. The following are general requirements for the designated Subcontractor(s) to be found responsible to perform the Work. (Unless the designated Subcontractor(s) is found responsible, Bidder will be found non-responsible.) See specific requirements in Document 00450.
 - i. Evidence that Bidder's named Subcontractor has the human and physical resources of sufficient quantity and quality to perform those aspects of the Contract in a timely and Specification-compliant manner.
 - ii. Crossing guard organizations with sufficient personnel and requisite disciplines, licenses, skills, experience, and equipment for the Project.
 - iii. A field organization with skills, experience, and equipment sufficient to perform all crossing guard services and necessary scheduling.
 - iv. Completion of a minimum number of crossing guard services projects over a period of several years for crossing guard services projects similar in nature and complexity to this Project.
 - v. The crossing guard services supervisor shall have worked in a similar capacity on a number of projects similar in nature and complexity to this Project.

- 20. BID EVALUATION.** City may reject any or all Bids and waive any informalities or minor irregularities in the Bids. City also reserves the right, in its discretion, to reject any or all Bids and to re-Bid the Project. City reserves the right to reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids, and to reject the Bid of any Bidder if City believes that it would not be in the best interest of Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by City. For purposes of this paragraph, an “unbalanced Bid” is one having nominal prices for some work items and enhanced prices for other work items.
- a. In evaluating Bids, City will consider Bidders’ qualifications, whether or not the Bids comply with the prescribed requirements, unit prices and other data, as may be requested in Document 00400 (Bid Form) or prior to the Notice of Award.
 - b. City may conduct reasonable investigations and reference checks of Bidder, proposed Subcontractors, suppliers and other persons and organizations as City deems necessary to assist in the evaluation of any Bid and to establish Bidder’s responsibility, qualifications, financial ability, proposed Subcontractors, suppliers, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to City’s satisfaction within the prescribed time. Submission of a Bid constitutes Bidder’s consent to the foregoing. City shall have the right to consider information provided by sources other than Bidder. City shall also have the right to communicate directly with Bidder’s surety regarding Bidder’s bonds.
 - c. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between written words and figures will be resolved in favor of the words.
 - d. Quantities stated in the Bidding Documents are approximate only and are subject to correction upon final measurement of the Work, and are subject further to the rights reserved by the City to increase or diminish the amount of work under any classification.
 - e. City may determine whether a Bidder is qualified in its sole discretionary judgment.
- 21. AWARD.** If the Contract is to be awarded, it will be awarded to the lowest responsible responsive Bidder. Following completion of all required City procedures and receipt of all City approvals, City will issue Document 00510 (Notice of Award) to successful Bidder.
- 22. BID PROTEST.** Any Bid protest must be submitted in writing to the City’s offices (Attention: Roger Lee, Assistant Director of Public Works), before 3:30 p.m. of the third Calendar Day following opening of Bidders’ Envelope “A”s.
- a. The initial protest document must contain a complete statement of the basis for the protest.
 - b. The protest must refer to the specific portion of the document that forms the basis for the protest.
 - c. The protest must include the name, address, and telephone number of the person representing the protesting party.
 - d. Only Bidders who the City otherwise determines are responsive and responsible are eligible to protest a Bid; protests from any other Bidder will not be considered. In order to determine whether a protesting Bidder is responsive and responsible, City will open and evaluate information contained in any protesting Bidder’s Envelope “B”, and conduct the same investigation and evaluation as City is entitled to take regarding an Apparent Low Bidder. Any such opened Envelope “B” shall also be subject to all provisions of paragraph 27.
 - e. The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
 - f. The procedure and time limits set forth in this paragraph are mandatory and are Bidder’s sole and exclusive remedy in the event of Bid protest. Bidder’s failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings. A Bidder may not rely on a protest submitted by another Bidder, but must timely pursue its own protest.
- 23. POST-NOTICE OF AWARD REQUIREMENTS.** After Notice of Award, the successful Bidder must execute and submit the following documents as indicated below.

- a. Submit the following documents to City before 3:30 p.m. of the third Calendar Day following opening of Bidders' Envelope "A". Execution of Contract by City depends upon approval of these documents:
 1. Document 00520 (Contract): To be executed by successful Bidder. Submit four originals, each bearing an original signature.
 2. Document 00610 (Performance Bond): To be executed by successful Bidder and surety, in the amount set forth in Document 00610 (Performance Bond). Submit one original.
 3. Insurance certificates and endorsements required by Document 00700 (General Conditions). Submit one original set.
- b. City shall have the right to communicate directly with Apparent Low Bidder's proposed performance bond surety, to confirm the performance bond. City may elect to extend the time to receive faithful performance bond.
- c. Successful Bidder's failure to submit the documents required herein, in a proper and timely manner, entitles City to rescind its award, and to cause Bidder's Bid security to be forfeited as provided herein.

24. FAILURE TO EXECUTE AND DELIVER DOCUMENTS. If Bidder, to whom Contract is awarded shall, within the period described in paragraph 23a of this Document 00200, fail or neglect to execute and deliver all required Contract Documents and file all required bonds, insurance certificates, and other documents, City may, in its sole discretion, foreclose on Bidder's deposit surety bond, or deposit Bidder's cashier's check or certified check for collection, and retain the proceeds thereof as liquidated damages for Bidder's failure to enter into the Contract Documents. Bidder agrees that calculating the damages City may suffer as a result of Bidder's failure to execute and deliver all required Contract Documents would be extremely difficult and impractical and that the amount of Bidder's required Bid security shall be the agreed and presumed amount of City's damages. In addition, upon such failure City may determine the next Apparent Low Bidder and proceed accordingly.

25. MODIFICATION OF COMMENCEMENT OF WORK. City expressly reserves the right to modify the date for the Commencement of Work under the Contract and to independently perform and complete work related to the Project. City accepts no responsibility to Contractor for any delays attributed to its need to complete independent work at the Site.

26. WITHDRAWAL OF BIDS. Bidders may withdraw their Bids at any time prior to the Bid opening time fixed in this Document 00200, only by written request for the withdrawal of Bid filed with the City at the City's office. Bidder or its duly authorized representative shall execute request to withdraw Bid. The submission of a Bid does not commit the City to award a contract for the Project, to pay costs incurred in the preparation of a Bid, or to procure or contract for any goods or services.

27. PUBLIC RECORDS ACT REQUESTS.

- a. Per the Public Records Act, City will make available to the public, Bidder's SOQ (if Bidder's Envelope "B" is opened), all correspondence and written questions submitted during the Bid period, all Bid submissions opened in accordance with the procedures of this Document 00200, and all subsequent Bid evaluation information. All submissions not opened will remain sealed and will eventually be returned to the submitter. Except as otherwise required by law, City will not disclose trade secrets or proprietary financial information submitted that has been designated confidential by Bidder (including but not limited to the SOQ). Any such trade secrets or proprietary financial information that a Bidder believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.
- b. Upon a request for records regarding this Bid, City will notify Bidder involved within ten Days from receipt of the request of a specific time when the records will be made available for inspection. If the Bidder timely identifies any "proprietary, trade secret, or confidential commercial or financial" information that Bidder determines is not subject to public disclosure, and requests City to refuse to comply with the records request, Bidder shall take all appropriate legal action and defend City's refusal to produce the information in all forums; otherwise, City will make such information available to the extent required by applicable law, without restriction.
- c. Information disclosed in the SOQ (if Envelope "B" is opened) and the attendant submissions are the property of City unless Bidder makes specific reference to data that is considered proprietary. Subject to

the requirements in the Public Records Act, reasonable efforts will be made to prevent the disclosure of information except on a need-to-know basis during the evaluation process.

28. **CONFORMED CONTRACT DOCUMENTS.** Following Award of Contract, City may prepare a conformed set of Contract Documents reflecting Addenda issued during bidding, which will, failing objection, constitute the approved set of Contract Documents.
29. **DEFINITIONS.** All abbreviations and definitions of terms used in this Document 00200 are set forth in Section 00700.

END OF DOCUMENT

DOCUMENT 00210

INDEMNITY AND RELEASE AGREEMENT

Dated _____

POTENTIAL BIDDER: _____

CITY: THE CITY OF CUPERTINO

SITE:

PROJECT: 2015 Contractual Crossing guard Services - Rebid

In consideration of the above-referenced City's permitting the undersigned potential bidder ("Bidder") to have access to, and to conduct investigations, tests and/or inspections on, the Site, Bidder hereby agrees as follows:

1. To the greatest extent permitted by law, Bidder hereby releases, and shall defend, indemnify and hold harmless City, and its officers, employees, consultants (including without limitation Consulting Engineer), representatives, and agents, and all other parties having any other interest in the Site, against any claim or liability, including attorney's fees, arising from or relating to any Site-related access, investigation, test, inspection and/or other activity conducted by Bidder or any of Bidder's officers, employees, consultants, representatives, and/or agents, regardless of whether claim or liability is caused in part by the negligence of City or by any released and indemnified party.
2. Bidder hereby waives the provisions of California Civil Code Section 1542 which provides as follows:

A general release does not extend to claims that the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the debtor.
3. Bidder shall repair any damage to the Site or adjacent property resulting from activities authorized hereunder, and comply with and be subject to all other requirements and obligations.
4. Attached hereto (or to be delivered separately before Bidder's visit to the Site) is a certificate for comprehensive general liability insurance satisfying the requirements of Document 00700 (General Conditions).
5. Although this Indemnity and Release Agreement is not a Contract Document (see Document 00520 Contract), it shall be fully effective and binding regardless of whether Bidder submits a Bid for the subject Project, is awarded a contract for the Project, or otherwise.

Name of Bidder

By: _____
Signature

By: _____
Signature

Its: _____
Title (If Corporation: Chairman, President or Vice President)

Its: _____
Title (If Corporation: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer)

DOCUMENT 00320

**GEOTECHNICAL DATA, HAZARDOUS MATERIALS SURVEYS AND
EXISTING CONDITIONS**

**NOT USED
(PAGE LEFT INTENTIONALLY BLANK)**

END OF DOCUMENT

DOCUMENT 00400

BID FORM

To be submitted as part of Envelope "A" by the time and date specified in Document 00200 (Instructions to Bidders).

TO THE HONORABLE CITY COUNCIL OF THE CITY OF CUPERTINO

THIS BID IS SUBMITTED BY:

(Firm/Company Name)

**Re: PROJECT NUMBER 2015-25
2015 CONTRACTUAL CROSSING GUARD SERVICES - REBID**

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a contract with the City of Cupertino ("City") in the form included in the Contract Documents, Document 00520 (Contract), to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Bid and in accordance with all other terms and conditions of the Contract Documents. All portions of this Bid Form must be completed and signed before the bid is submitted. Failure to do so will result in the bid being rejected as non-responsive.
2. Bidder accepts all of the terms and conditions of the Contract Documents, Document 00100 (Advertisement for Bids), and Document 00200 (Instructions to Bidders), including, without limitation, those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for 90 Days after the day of Bid opening.
3. Bidder has visited the Site and performed all tasks, research, investigation, reviews, examinations, and analysis and given notices, regarding the Project and the Site, as set forth in Document 00520 (Contract), Article 5.
4. Bidder has given City prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by City is acceptable to Contractor.
5. Subcontractors for work included in all Bid items, in accordance with the criteria in the Public Contract Code, are listed on the attached Document 00430 (Subcontractors List).
6. The undersigned Bidder understands that City reserves the right to reject this Bid.
7. If written notice of the acceptance of this Bid, hereinafter referred to as Notice of Award, is mailed or delivered to the undersigned Bidder within the time described in paragraph 2 of this Document 00400 or at any other time thereafter before it is withdrawn, the undersigned Bidder will execute and deliver the documents required by Document 00200 (Instructions to Bidders) within the times specified therein. These documents include, but are not limited to, Document 00520 (Contract) and Document 00610 (Performance Bond).
8. Notice of Award or request for additional information may be addressed to the undersigned Bidder at the address set forth below on the signature page.
9. The undersigned Bidder herewith encloses cash, a cashier's check, or certified check of or on a responsible bank in the United States, or a corporate surety bond furnished by a surety authorized to do a surety business in the State of

California, in form specified in Document 00200 (Instructions to Bidders), in the amount of ten percent (10%) of the total of Bid and made payable to the "City of Cupertino".

10. The undersigned Bidder agrees to commence Work under the Contract Documents on the date established in Document 00700 (General Conditions) and to complete all work within the time specified in Document 00520 (Contract). The undersigned Bidder acknowledges that City has reserved the right to delay or modify the commencement date. The undersigned Bidder further acknowledges City has reserved the right to perform independent work at the Site, the extent of such work may not be determined until after the opening of the Bids, and that the undersigned Bidder will be required to cooperate with such other work in accordance with the requirements of the Contract Documents.
11. The undersigned Bidder agrees that, in accordance with Document 00700 (General Conditions), liquidated damages for failure to complete all Work in the Contract within the time specified in Document 00520 (Contract) shall be as set forth in Document 00520 (Contract).

SCHEDULE OF BID PRICES

Only the shaded column "A" – HOURLY RATE and column "A" x "B" - TOTAL EXTENDED PRICE PER SCHOOL MONTH are to be completed for each bid item location. Quote in figures only, unless words are specifically requested.

| ITEM | DESCRIPTION | HOURLY RATE (Rate to be the same for all sites) | HOURS PER SITE PER DAY | HOURS PER SITE PER SCHOOL MONTH (20days/month) | TOTAL EXTENDED PRICE PER SCHOOL MONTH |
|----------|-------------------------------------------------------|-------------------------------------------------|------------------------|------------------------------------------------|---------------------------------------|
| | | "A" | | | "A" x "B" |
| 1 | Adult Crossing Guard (locations 1-10) | | | | |
| | 1. Collins Elementary - Blaney & Forest | _____ | 4 | 80 | _____ |
| | 2. Eaton Elementary - Blaney & Suisun | _____ | 4 | 80 | _____ |
| | 3. Garden Gate Elementary -Greenleaf & Stelling | _____ | 4 | 80 | _____ |
| | 4. Kennedy Middle - Bubb & Hyannisport | _____ | 4 | 80 | _____ |
| | 5. Lawson Middle - De Anza Blvd & Mariani | _____ | 4 | 80 | _____ |
| | 6. Lawson Middle -Vista & Merritt | _____ | 4 | 80 | _____ |
| | 7. Lawson Middle -Vista & Stevens Creek Blvd | _____ | 4 | 80 | _____ |
| | 8. Lincoln Elementary -McClellan @ Lincoln Elementary | _____ | 4 | 80 | _____ |
| | 9. Regnart Elementary - Bubb & Regnart | _____ | 4 | 80 | _____ |
| | 10. Sedgwick Elementary - Barnhart & Tantau | _____ | 4 | 80 | _____ |
| 2 | Adult Crossing Guard (locations 11 & 12) | | | | |
| | 11. Kennedy Middle - Hyannisport & Fort Baker | _____ | 4 | 80 | _____ |
| | 12. Lincoln Elementary - Orange & McClellan | _____ | 4 | 80 | _____ |

| ITEM | DESCRIPTION | HOURLY RATE (Rate to be the same for all sites) “A” | HOURS PER SITE PER DAY | HOURS PER SITE PER SCHOOL MONTH (20days/month) “B” | TOTAL EXTENDED PRICE PER SCHOOL MONTH “A” x “B” |
|----------------------------------------------------------------------------------------|-----------------------------------------------|---------------------------------------------------------------|------------------------|--------------------------------------------------------------|-----------------------------------------------------------|
| 3 | Adult Crossing Guard (locations 13-16) | | | | |
| | 13. Location of intersection not known | | 4 | 80 | |
| | 14. Location of intersection not known | | 4 | 80 | |
| | 15. Location of intersection not known | | 4 | 80 | |
| | 16. Location of intersection not known | | 4 | 80 | |
| TOTAL MONTHLY BID PRICE (sum of “A” x “B” for Bid Items 1-3; all 16 locations): | | | | | |
| TOTAL SCHOOL YEAR BID PRICE (Total monthly bid price x 9): | | | | | |

Total School Year Bid Price:

(Words)

Bid item no. 3 may be deleted in its entirety or by individual location with no payment from the City and no penalty to the City.

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDUMS

Bidder hereby acknowledges receipt and examination of all Contract Documents and the following Addenda:

| Addendum No. | Addendum Date |
|--------------|---------------|
| | |
| | |
| | |

Bidder proposes and agrees to fully perform the Work within the time stated and in strict accordance with the Contract Documents for the sums of money listed in this Bid Form.

NAME OF BIDDER: _____

licensed in accordance with an act for the registration of Contractors, and with license number: _____

Expiration Date: _____

_____ Where incorporated, if applicable

Principals

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Bidder

NOTE: If Bidder is a corporation, set forth the legal name of the corporation, state where incorporated, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business Address: _____

Officers authorized to sign contracts: _____

Telephone Number(s): _____
Typed Full Name: _____

Fax Number(s): _____

E-Mail Address: _____

END OF DOCUMENT

DOCUMENT 00411

BOND ACCOMPANYING BID

KNOW ALL BY THESE PRESENTS:

That the undersigned _____ as Principal, and the undersigned as Surety, are held and firmly bound unto the CITY OF CUPERTINO, a Municipal Corporation of the State of California ("City"), as obligee, in the penal sum of _____ Dollars (\$ _____) lawful money of the United States of America being at least ten percent (10%) of the aggregate amount of said Principal _____'s base Bid, for the payment of which, well and truly to be made, we bind ourselves, our successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal is submitting a Bid for City Project Number 2015-25 ,

2015 CONTRACTUAL CROSSING GUARD SERVICES - REBID

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Bid submitted by the said Principal be accepted and the Contract be awarded to said Principal and said Principal shall within the required periods enter into the Contract so awarded and provide the required Performance Bond, insurance certificates, and all other endorsements, forms, and documents required under Document 00200 (Instructions to Bidders), then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument this _____ day of _____, 2015.

(Corporate Seal)

By

Principal

Surety

(Corporate Seal)

By

Attorney in Fact

END OF DOCUMENT

DOCUMENT 00430

SUBCONTRACTORS LIST

Bidder submits the following information as to the subcontractors Bidder intends to employ if awarded the Contract.

| Full Name of Subcontractor and Address | Description of Work: Reference To Bid Items | Subcontractor's License No. |
|----------------------------------------|------------------------------------------------|-----------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

(Bidder to attach additional sheets if necessary)

END OF DOCUMENT

DOCUMENT 00450

**STATEMENT OF QUALIFICATIONS FOR
2015 CONTRACTUAL CROSSING GUARD SERVICES - REBID**

Bidder's Full Corporate Name: _____

Bidder's Legal Structure

- _____ Sole Proprietor
- _____ Partnership
- _____ Non-Profit 501 C3
- _____ Corporation
- _____ other, please explain _____

Bidder's Contract License Number _____

Bidder's Federal I.D. Number _____

Bidder's Mailing Address _____

Bidder's Street Address _____

Owner of Bidder's Company _____

Bidder's Contact Person _____

Bidder's Phone _____, Fax _____, Email _____

(Bidder shall identify each partner and/or member of the Joint Venture, and their roles and responsibilities, if a Joint Venture is proposed.)

INSTRUCTIONS FOR THE SUBMITTAL OF THE STATEMENT OF QUALIFICATIONS

- Place the Statement of Qualifications Section with all required materials in a separate envelope labeled "STATEMENT OF QUALIFICATIONS" (SOQ) with the project title and Contractors name and address. **Do Not place the SOQ in the same envelope as the Bid Proposal.**
- Submittal of the Statement of Qualifications envelope is required at the same time as the Bid Proposal. The Bid Proposal envelope will not be opened if the Statement of Qualifications envelope is not received at the same time. **The two envelopes containing the sealed Bid Proposals and sealed Statement of Qualifications will be received in the City Clerk's office, 2:00pm July 30, 2015.**
- The City will open only Bid Proposal envelopes at the public bid opening. The Statement of Qualifications envelope for the apparent low bidder will be opened by the City and check its contents for compliance with the requirements. City will notify Apparent Low Bidder of any deficiencies found and will provide Bidder the opportunity to respond in writing with reasonable clarifications but will not allow any changes in the nature of Bidder as a business entity.
- If any Apparent Low Bidder is determined to be non-responsive or non-responsible, City may open the next Apparent Low Bidder's Statement of Qualification envelope pursuant to any procedures determined in its reasonable discretion, and proceed for all purposes as if this Apparent Low Bidder were the original Apparent Low Bidder. City shall use reasonable efforts to make the responsive responsible Apparent Low Bidder's Statement of Qualifications public by the fifth day following opening of the Bid Proposals.

GENERAL BIDDER EXPERIENCE

Any explanation requested by a Bidder regarding the meaning or interpretation of this Document must be requested in writing and with sufficient time allowed for a reply to reach Bidder before the submission of its SOQ. Oral explanations or instructions will not be binding. Any information provided to any prospective Bidder concerning this Document will be furnished to all prospective Bidders as an Addendum to the Bidding Documents.

Bidders shall complete the entire Statement of Qualification and submit it with the bid proposal documents. Failure to complete the questionnaire or inclusion of any false statement(s) shall be grounds for immediate disqualification.

The SOQ shall be clear and concise to enable management-oriented personnel to make a thorough evaluation and arrive at a sound determination as to whether the SOQ meets City's requirements. To this end, the SOQ should be so specific, detailed and complete as to demonstrate clearly and fully that the Bidder has a thorough understanding of and has demonstrated knowledge of the requirements to perform the Work (or applicable portion thereof).

Bidder's compliance with the minimum qualification requirements of this Document, will also be measured by the experience of the supervisory personnel who will have responsible charge of the various major components of the Work.

If Bidder subcontracts portions of the Work, City, in its determination of whether the minimum qualification requirements have been met, will consider the qualifications of the Subcontractor's supervisory personnel.

The Contract will require Bidder to provide crossing guard services, all in accordance with the scope of Work set forth in the Contract. City will accept Bids only from Bidders duly licensed in accordance with the California Business & Professions Code. Additionally, Bidder must meet the following general requirements, at a minimum, in order to be considered by City to be qualified for award of the Contract:

PART A

BIDDER'S GENERAL QUALIFICATIONS

1. Does Bidder have at least three years of experience as a continuously operating entity engaged in the performance of similar work? Yes _____ No _____
2. Has Bidder, within the past 3 years, completed 3 projects of a similar nature and complexity with an annual contract amount of at least \$175,000 each? Yes _____ No _____
3. Does Bidder employ crossing guards that will successfully pass a Department of Justice criminal background check? Yes _____ No _____
4. Does Bidder have a minimum of \$4,000,000 in the aggregate for liability insurance coverage? Yes _____ No _____
5. Has any of Bidder's crossing guards been removed from employment due to criminal activity associated with children, drugs or sex offences within the last five years while performing crossing guard services operations? Yes _____ No _____
6. Has Bidder been "default terminated" by an owner (i.e. not for convenience), or has a Surety completed a contract for Bidder within the last five years? Yes _____ No _____
7. Has Bidder been determined to have violated any environmental or safety laws giving rise to civil or criminal penalties at any time during the last four years? Yes _____ No _____

Bidder will be immediately disqualified if any answer to questions 1, 2, 3 or 4 is No.

Bidder will be immediately disqualified if any answer to questions 5, 6, or 7 is Yes.

DISPUTES

Has Bidder had any claims, litigation, or disputes ending in mediation or arbitration, or termination for cause associated with any project in the past 10 years? If yes, attach description of each such instance including details of total claim amount, settlement amount, and owner’s name and phone number.

Yes _____ No _____

BONDS

Demonstrate Ability to Provide Required Performance Bonds. Bidder shall include a letter from a surety duly licensed to do business in the State of California, having a financial rating from A. M. Best Company of A, Class 7 or better or that is otherwise acceptable to the City and that the surety has agreed to provide Bidder with the required performance bonds in accordance with the requirements set forth in the Contract Documents. Such performance bonds shall be in the minimum penal sums provided therein. Bidder shall include authorization that gives the City the right to verify with the surety that the surety, based upon the Bid prices, will issue the required bonds under the conditions stated.

Bonding Capacity - Provide documentation from Bidder’s surety identifying the following:

Name of bonding company/surety: _____

Name of Surety Agent: _____

Surety Agent address: _____

Surety Agent phone number: _____

Is surety a California-admitted surety? Yes _____ No _____

Is surety listed in the current edition of the California Department of the Treasury’s Listing of approved sureties? Yes _____ No _____

List surety’s A.M. Best Rating: _____

What is Bidder’s total bonding capacity? _____

What percentage rate does Bidder pay for bonds? _____

Surety Letter Attached? YES _____ NO _____

INSURANCE

Demonstrate Ability to Provide Required Insurance. Bidder shall complete this form providing required insurance companies having a financial rating from A. M. Best Company of **A, Class 7** or better or that is otherwise acceptable to the City and the coverages and amounts specified in the Contract Documents. Insurers must be licensed to do business in the State of California.

In order to register to undertake work for the City of Cupertino, Bidder must provide the following:

Fill out this registration form completely.

Workers’ Compensation:

Carrier: _____

Address: _____

Phone and Fax: _____

Policy Number: _____

Policy Limits: \$ _____

Coverage Amount: Per Occurrence: \$ _____ A.M. Best Rating: _____

General Liability:

Carrier: _____

Address: _____

Phone and Fax: _____

Policy Number: _____

Policy Limits: \$ _____

A.M. Best Rating: _____

Coverage Amount: Per Occurrence: _____ Per Aggregate: _____

Automotive Liability:

Carrier: _____

Address: _____

Phone and Fax: _____

Policy Number: _____

Policy Limits: \$ _____

A.M. Best Rating: _____

Coverage Amount Per Occurrence: _____

If Bidder has had the general liability carrier identified in this Document (Bidder Registration and Safety Experience Form) for less than 5 years, please provide additional information below for balance of the past 5 years

Agency Name: _____

Contact Name: _____

Phone Number: _____

Carrier: _____ A.M. Best Rating _____

Carrier: _____ A.M. Best Rating _____

Carrier: _____ A.M. Best Rating _____

Has Bidder ever had insurance terminated by a carrier? Yes _____ No _____

If yes, explain on separate signed sheet marked with correlating cross-reference to this paragraph of the questionnaire.

PART C

DETAILED BIDDER EXPERIENCE

The unique nature of this Project requires prior similar crossing guard experience by the firm and the Key Personnel assigned. Summarize similar project experience below and provide the detailed project information requested:

PROJECT NO. 1, OF SIMILAR NATURE AND COMPLEXITY, AT OR ABOVE \$175,000 IN ANNUAL CROSSING GUARD SERVICES COST WITHIN LAST 3 YEARS.

| Project name | Crossing guard services Cost (\$) | Year completed | Name of Project Manager | NAME OF PROJECT SCHEDULER |
|--------------|-----------------------------------|----------------|-------------------------|---------------------------|
| | | | | |

Location: _____

Owner: _____

Owner Contact (name and phone number): _____

Contract Manager: _____

Contract Manager (phone number): _____

Description of Project, Scope of Work Performed: _____

Total Crossing Guard Cost: _____

Total Change Order Amount: _____

Original Scheduled Date of Completion: _____

Time Extensions Granted (number of Days): _____

Actual Date of Completion: _____

Number of Stop Notices filed by subcontractors or suppliers: _____

PROJECT NO. 2, OF SIMILAR NATURE AND COMPLEXITY, AT OR ABOVE \$175,000 IN ANNUAL CROSSING GUARD SERVICES COST WITHIN LAST 3 YEARS.

| Project name | Crossing guard services Cost (\$) | Year completed | Name of Project Manager | NAME OF PROJECT SCHEDULER |
|--------------|-----------------------------------|----------------|-------------------------|---------------------------|
| | | | | |

Location: _____

Owner: _____

Owner Contact (name and phone number): _____

Contract Manager: _____

Contract Manager (phone number): _____

Description of Project, Scope of Work Performed: _____

Total Crossing Guard Cost: _____

Total Change Order Amount: _____

Original Scheduled Date of Completion: _____

Time Extensions Granted (number of Days): _____

Actual Date of Completion: _____

Number of Stop Notices filed by subcontractors or suppliers: _____

PROJECT NO. 3, OF SIMILAR NATURE AND COMPLEXITY, AT OR ABOVE \$175,000 IN ANNUAL CROSSING GUARD SERVICES COST WITHIN LAST 3 YEARS.

| Project name | Crossing guard services Cost (\$) | Year completed | Name of Project Manager | NAME OF PROJECT SCHEDULER |
|--------------|-----------------------------------|----------------|-------------------------|---------------------------|
| | | | | |

Location: _____

Owner: _____

Owner Contact (name and phone number): _____

Contract Manager: _____

Contract Manager (phone number): _____

Description of Project, Scope of Work Performed: _____

Total Crossing Guard Cost: _____

Total Change Order Amount: _____

Original Scheduled Date of Completion: _____

Time Extensions Granted (number of Days): _____

Actual Date of Completion: _____

Number of Stop Notices filed by subcontractors or suppliers: _____

DOCUMENT 00455

INSURANCE

- A. At or before the date specified in Document 00200 (Instructions to Bidders), Contractor shall furnish to City satisfactory proof that Contractor has taken out for the entire period covered by the Contract the following classes of insurance in the form and with limits and deductibles specified below:
1. Comprehensive General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a standard Commercial General Liability Insurance policy (“Occurrence Form”). Such insurance shall provide for all operations and include independent contractors, products liability, completed operations for one year after Final Completion of the last Phase to be completed and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse and underground hazards. The limits of such insurance shall not be coverage of less than \$2,000,000 each occurrence, \$4,000,000 general aggregate limit.. The policies shall be endorsed to provide Broad Form Property Damage Coverage.
2. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than \$1,000,000 each person Bodily Injury, \$1,000,000 each occurrence Bodily Injury, and \$1,000,000 each occurrence Property Damage.
3. Workers’ Compensation Insurance for all persons whom the Contractor may employ in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as “Workers’ Compensation Insurance and Safety Act,” approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount, \$1,000,000 each occurrence.
- B. All policies of insurance shall be placed with insurers acceptable to City. The insurance underwriter(s) must have an A. M. Best Company rating of A, 7 or better or otherwise acceptable to the City. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of City, warrant such increase. Contractor shall increase required insurance amounts upon direction by City.
- C. Required Endorsements: The policies required under this Document shall be endorsed as follows:
1. Name the City of Cupertino, a Municipal Corporation of the State of California, its City Council, and their employees, representatives, consultants (including without limitation Consulting Engineer), and agents, and Engineers, as additional insureds, but only with respect to liability arising out of the activities of the named insured.
 2. Each such policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limit of the insurance company’s liability required under this Document.
 3. Insurance shall be primary and no other insurance or self-insured retention carried or held by City shall be called upon to contribute to a loss covered by insurance for the named insured.
 4. Insurance shall contain a provision requiring the insurance carriers to waive their rights of subrogation against City and all additional insureds, as well as other insurance carriers for the Work.
- D. Certificates of insurance and endorsements shall be on forms provided in Document 00530, (Insurance Forms) have clearly typed thereon City Project Number and title of Contract Documents. Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to City (Attention: Roger Lee) at the address listed in Document 00520 (Contract), 30 Days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Contractor shall maintain insurance in full force and effect during entire period of performance of Contract Documents, Contractor shall keep insurance in force during warranty and guarantee periods. At time of making application for extension of time, and during all periods exceeding the Contract Time resulting from any cause, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time. Upon City’s request,

Contractor shall submit to City, within 30 Days, copies of the actual insurance policies or renewals or replacements.

- E. Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, City may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents.
- F. If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from City under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from City, City may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If City is compelled to pay compensation, City may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse City.
- G. Nothing in this shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
- H. Except that Subcontractors need to obtain coverage of not less than \$2,000,000 each occurrence, \$4,000,000 general aggregate limit of Comprehensive General Liability insurance, all Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work, and Contractor shall cause the Subcontractors to furnish proof thereof to City within ten Days of City's request.
- I. The following provisions apply to any licensed professional engaged by Contractor to perform portions of the Work ("Professional").
 - 1. Each Professional shall maintain the following insurance at its sole cost and expense:
 - A. Provided such insurance is customarily required by City when professionals engaged in the profession practiced by Professional directly contract with City, Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's work on the Project, in an amount not less than \$1,000,000 combined single limit for each occurrence. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than two years following Final Completion of the Project.
 - B. All insurance required by paragraphs A.1, A.2 and A.4 of this Document. Professional shall satisfy all other provisions of paragraphs A, B, C, D, E and F of this Document relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) before commencing its Work on the Project.
 - C. If required by City, Contractor shall obtain and maintain Contractor's Pollution Legal Liability Insurance in a form, with limits, and from an insuring entity reasonably satisfactory to City.

END OF DOCUMENT

DOCUMENT 00457**PROPOSED CROSSING GUARD SCHEDULE**

Contractor is to submit the proposed hours of crossing guard services based upon coordination of start and end times with the listed schools. Four (4) hour per site per day minimum. Use 20 days per school month and 9 months per school year.

| CROSSWALK LOCATION | TOTAL PROPOSED HOURS PER SCHOOL YEAR |
|--------------------------------------------------------|---------------------------------------------|
| 1. Blaney & Forest (Collins Elementary) | |
| 2. Blaney & Suisun (Eaton Elementary) | |
| 3. Greenleaf & Stelling (Garden Gate Elementary) | |
| 4. Bubb & Hyannisport (Kennedy Middle) | |
| 5. De Anza Blvd & Mariani (Lawson Middle) | |
| 6. Vista & Merritt (Lawson Middle) | |
| 7. Vista & Stevens Creek Blvd (Lawson Middle) | |
| 8. McClellan @ Lincoln Elementary (Lincoln Elementary) | |
| 9. Bubb & Regnart (Regnart Elementary) | |
| 10. Barnhart & Tantau (Sedgwick Elementary) | |

| | |
|---------------------------------------------|--|
| 11. Bubb & McClellan (Kennedy Middle) | |
| 12. Orange & McClellan (Lincoln Elementary) | |
| 13. Location to be determined | |
| 14. Location to be determined | |
| 15. Location to be determined | |
| 16. Location to be determined | |

END OF DOCUMENT

DOCUMENT 00460

SCHEDULE OF CROSSING GUARD SERVICES EQUIPMENT

The undersigned Bidder represents that, if awarded the Contract, the items of crossing guard materials specified below will be supplied by the manufacturers or suppliers specified below. By so indicating, bidder warrants that the equipment and materials manufacturer and/or supplied by the named manufacturer or supplier will be provided on the Project unless review of submittal information or performance under tests reveals that the equipment or material does not meet Contract requirements. Failure to indicate a manufacturer or supplier listed in the following schedule may render the Bid non-responsive and may be the basis for rejection of the Bid.

Item

Manufacturer or Supplier

Others: _____

Bidder: _____

SIGNATURE

DATE

END OF DOCUMENT

DOCUMENT 00481

Non-Collusion Affidavit
Public Contract Code §7106

NON-COLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

_____, being first duly sworn, deposes and says that he or she is [Office of Affiant] of _____ [Name of Bidder], the party making the foregoing Bid, that the Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or sham; that Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham Bid, and has not directly or indirectly colluded, conspired, connived or agreed with any bidder or anyone else to put in a sham Bid, or that anyone shall refrain from bidding, and that the Bidder has not in any manner, directly or indirectly, sought by contract, communication or conference with anyone to fix the Bid price of 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, or to secure any advantage against the City of Cupertino, or anyone interested in the proposed contract; that all statements contained in the Bid are true; and further, that Bidder has not, directly or indirectly, submitted its Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, Bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid.

Executed under penalty of perjury under the laws of the State of California:

(Name of Bidder)

(Signature of Principal)

Subscribed and sworn before me _____

This _____ day of _____, 2015

Notary Public of the State of _____
In and for the County of _____
My Commission expires _____

(Seal)

(If Bidder is a partnership or a joint venture, this affidavit must be signed and sworn to by every member of the partnership or venture.)

(If Bidder [including any partner or venturer of a partnership or joint venture] is a corporation, this affidavit must be signed by the Chairman, President, or Vice President and by the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.)

(If Bidder's affidavit on this form is made outside the State of California, the official position of the person taking such affidavit shall be certified according to law.)

END OF DOCUMENT

DOCUMENT 00482

BIDDER CERTIFICATIONS

**CITY OF CUPERTINO
2015 CONTRACTUAL CROSSING GUARD SERVICES - REBID**

The undersigned Bidder certifies to the City of Cupertino as set forth in sections 1 through 7 below.

1. STATEMENT OF CONVICTIONS

By my signature hereunder, I hereby swear, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a Federal Court has been issued against Bidder within the past two years because of failure to comply with an order of a Federal Court or to comply with an order of the National Labor Relations Board.

2. CERTIFICATION OF WORKER'S COMPENSATION INSURANCE

By my signature hereunder, as the Bidder, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

3. CERTIFICATION OF PREVAILING WAGE RATES AND RECORDS

Crossing guard services of routine nature are excluded from prevailing wage requirements.

4. CERTIFICATE OF NON-DISCRIMINATION

By my signature hereunder, on behalf of the Bidder making this Bid, the undersigned certifies that there will be no discrimination in employment with regard to race, color, religion, gender, sexual orientation, age or national origin; that all federal, state, and local directives and executive orders regarding non-discrimination in employment will be complied with; and that the principle of equal opportunity in employment will be demonstrated positively and aggressively.

5. CERTIFICATION REGARDING PREVIOUS DISQUALIFICATIONS

By my signature hereunder, I hereby swear, under penalty of perjury, that the below indicated Bidder, any officer of such Bidder, or any employee of such Bidder who has a proprietary interest in such Bidder, has never been disqualified, removed or otherwise prevented from bidding on, or completing a Federal, State, or local government project because of a violation of law or a safety regulation except as indicated on the separate sheet attached hereto entitled "Previous Disqualifications." If such exceptions are attached, please explain the circumstances.

6. CERTIFICATION OF ADEQUACY OF CONTRACT AMOUNT

By my signature hereunder, as the Contractor, pursuant to Labor Code Section 2810(a), I certify that, if awarded the Contract based on the undersigned's Bid, the Contract will include funds sufficient to allow the Contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided. I understand that the City will be relying on this certification if it awards the Contract to the undersigned.

BIDDER:

(Name of Bidder)

Date: _____, 2015

By: _____
(Signature)

Name: _____
(Print Name)

Its: _____
(Title)

END OF DOCUMENT

DOCUMENT 00510

NOTICE OF AWARD

Dated : _____

TO: _____

ADDRESS: _____

CONTRACT NO.: _____

CONTRACT FOR: _____

SPECIFICATION FOR CONTRACTUAL CROSSING GUARD SERVICES 2015

The Contract Sum of your contract is _____ Dollars (\$ _____).

1. Three copies of each of the proposed Contract Documents (except Specifications) accompany this Notice of Award.
2. You must comply with the following conditions precedent by TIME. of the 10th Calendar Day following the date of this Notice of Award, that is, by _____ , _____ .
 - a. Deliver to City three fully executed counterparts of Document 00520 (Contract). Each of the Contract Documents must bear your signature on the cover page.
 - b. Deliver to City three original Document 00610 (Performance Bond), executed by you and your surety.
 - c. Deliver to City three original set of the insurance certificates from Document 00530 (Insurance Forms) with endorsements required under Document 00700 (General Conditions).
 - d. Deliver to City four original copies of Document 00630 (Guaranty), each executed by you
3. Failure to comply with these conditions within the time specified will entitle City to consider your Bid abandoned, to annul this Notice of Award, and to declare your Bid security forfeited.
4. Within 21 Days after you comply with the conditions in paragraph 2 of this Document 00510, City will return to you one fully signed counterpart of Document 00520 (Contract) with the Contract Documents.
5. Upon commencement of the Work, you and each of your Subcontractors shall certify and make available for inspection payroll records on forms provided by the Division of Labor Standards Enforcement, in accordance with Section 1776 of the California Labor Code.

THE CITY OF CUPERTINO, a Municipal Corporation of the State of California ("City")

BY: _____

ITS: _____

AWARDED _____, 2015

by City Council of the City of Cupertino.

END OF DOCUMENT

DOCUMENT 00520

CONTRACT

THIS CONTRACT, dated this ____ day of _____, 2015, by and between _____
[Name of Contractor] whose place of business is located at _____, _____ [Address of Contractor] (“Contractor”), and the CITY OF CUPERTINO, a Municipal Corporation of the State of California (“City”) acting under and by virtue of the authority vested in the City by the laws of the State of California.

WHEREAS, City, on the ____ day of _____, 2015 awarded to Contractor the following Project:

**PROJECT NUMBER 2015-25
2015 CONTRACTUAL CROSSING GUARD SERVICES - REBID**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and City agree as follows:

ARTICLE 1. WORK

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications and all other terms and conditions of the Contract Documents.

ARTICLE 2. AGENCY AND NOTICES TO CITY

- 2.1 City has designated Roger Lee, Assistant Director of Public Works to act as City’s Authorized Representative(s), who will represent City in performing City’s duties and responsibilities and exercising City’s rights and authorities in Contract Documents. City may change the individual(s) acting as City’s Authorized Representative(s), or delegate one or more specific functions to one or more specific City’s Representatives, including without limitation engineering, architectural, inspection and general administrative functions, at any time with notice and without liability to Contractor. Each City’s Representative is the beneficiary of all Contractor obligations to City, including without limitation, all releases and indemnities.
- 2.2 All notices or demands to City under the Contract Documents shall be to City’s Authorized Representative at:
10555 Mary Avenue, Cupertino, California 95014 or to such other person(s) and address(es) as City shall provide to Contractor.

ARTICLE 3. CONTRACT TIME AND LIQUIDATED DAMAGES

- 3.1 Contract Time.

The Contract Time will commence to run on the date indicated in the Notice to Proceed. City may give a Notice to Proceed at any time within 30 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

With satisfactory performance by the contractor, the term of this agreement shall be three (3) years from the start date of the agreement. The City shall retain the option to extend the term of the agreement for an additional two (2) years, for a possible total of five (5) years. Contractor performance will be documented

weekly by the Street / Fleet Supervisor, with deficiencies communicated to the contractor. An annual review of contractor performance will be completed by March 31st of each year. Satisfactory performance will be achieved if annual liquidated damages are less than \$1,500 for missed crossing guard events and \$200 for improper staging of pedestrian flow.

Any such renewal after the first three years shall be accomplished by the City providing a written notice of renewal to the Contractor at least 30 days prior to expiration of the term. Any such renewal shall contain the same provisions as the original agreement, including an increase or decrease in compensation paid to the Contractor. Any increase or decrease in the previous contract price shall be based on the annual percentage change in the Consumer Price Index (CPI) as of June of the year the adjustment is being made. The CPI shall be the San Francisco/Oakland/San Jose Consumer Price Index for all urban wage earners. There will be no CPI adjustment during the first one-year term of the agreement.

At the end of the initial twelve months of the contract period, and each anniversary thereafter for the duration of the contract, the unit prices on the Schedule of Bid Prices will be increased or decreased in direct proportion to the increase or decrease in the Consumer Price Index (CPI). The most recent CPI for June San Francisco/Oakland/San Jose area for all urban wage earners shall be used.

The City shall have the authority to suspend this agreement, wholly or in part, for such period as deems necessary due to unfavorable conditions or to the failure on the part of the Contractor to perform any provisions of this agreement.

3.2 Liquidated Damages.

City and Contractor recognize that time is of the essence of this Contract and that City will suffer financial loss in the form of contract administration expenses (such as project management and consultant expenses), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Document 00700 (General Conditions), Contractor and City agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by City because of a delay in completion of all or any part of the Work. Accordingly, City and Contractor agree that as liquidated damages for delay Contractor shall pay City:

- 3.2.1 \$500 for each and every day that services are not completed on time and/or designated crosswalk areas are omitted.
- 3.2.2 \$50 for each event where it is observed over a 30 minute time period that the crossing guard is not properly staging pedestrians in a manner consistent with these contract documents.

Liquidated damages shall apply cumulatively and, except as provided below, shall be presumed to be the damages suffered by City resulting from delay in completion of the Work.

- 3.3 Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by City as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from City (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

ARTICLE 4. CONTRACT SUM

- 4.1 City shall pay Contractor the Contract Sum for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto: See Exhibit "A" attached

ARTICLE 5. CONTRACTOR'S REPRESENTATIONS

In order to induce City to enter into this Contract, Contractor makes the following representations and warranties:

- 5.1 Contractor has toured the City streets and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of crossing guards to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00700 (General Conditions); and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 5.3 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 5.4 Contractor has given City prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and actual conditions and the written resolution thereof through Addenda issued by City is acceptable to Contractor.
- 5.5 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.
- 5.6 Contractor has duly authorized the execution, delivery and performance of this Contract, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, contract, order or decree binding on Contractor.
- 5.7 Contractor has listed Subcontractors pursuant to the Subcontractor Listing Law, California Public Contracting Code §4100 *et seq.* in document 00340 (Subcontractors List)

ARTICLE 6. CONTRACT DOCUMENTS

- 6.1 Contract Documents consist of the following documents, including all changes, addenda, and modifications thereto:

- Document 00400 Bid Form
- Document 00430 Subcontractors List
- Document 00450 Statement of Qualifications
- Document 00455 Insurance
- Document 00460 Schedule of Crossing Guard Services Equipment
- Document 00481 Non-Collusion Affidavit
- Document 00482 Bidder Certifications
- Document 00510 Notice of Award
- Document 00520 Contract
- Document 00530 Insurance Forms

Document 00550 Notice to Proceed
Document 00610 Performance Bond
Document 00650 Agreement and Release of Any and All Claims
Document 00700 General Conditions
Document 00800 Special Conditions
Addenda(s)

- 6.2 There are no Contract Documents other than those listed in this Document 00520, Article 6. Document 00320 (Geotechnical Data, Hazardous Material Surveys and Existing Conditions), and the information supplied therein, are not Contract Documents. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

ARTICLE 7. MISCELLANEOUS

- 7.1 Terms used in this Contract are defined in Document 00700 (General Conditions) and will have the meaning indicated therein.
- 7.2 It is understood and agreed that in no instance are the persons signing this Contract for or on behalf of City or acting as an employee, agent, or representative of City, liable on this Contract or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the City is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 7.3 Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contracting Code §4100 *et seq.*
- 7.4 The Contract Sum includes all allowances (if any).
- 7.5 In entering into a contract or a subcontract to supply goods, services or materials, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the contract or the subcontract. This assignment shall be made and become effective at the time City tenders final payment to Contractor, without further acknowledgment by the parties.
- 7.6 Should any part, term or provision of this Contract or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Contract and the Contract Documents may be deemed valid and binding contracts, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference(or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 7.7 This Contract and the Contract Documents shall be deemed to have been entered into in the County of Santa Clara, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in Santa Clara County. Both parties hereby waive their rights under California Code of Civil Procedure Section 394 to file a motion to transfer any action or proceeding arising out of the Contract Documents to another venue. Contractor

accepts the Claims Procedure in Document 00700, Article 12, established under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.

- 7.8 Contractor and all subcontractors shall comply with the Uniform Administrative Requirements for State and Local Governments set forth in the Code of Federal Regulations (CFR), Title 49, Part 18. In addition, the Contractor agrees to comply with the cost principles and procedures set forth in Office of Management and Budget Circular A-87. The Contractor agrees that a reference to either Office of Management and Budget (OMB) Circular A-87 of the Code of Federal Regulations, Title 49, Chapter 1, Part 31, whichever is applicable, and the Code of Federal Regulations, Title 49, Part 18, will be included in any subcontracts entered into as a result of this contract.

IN WITNESS WHEREOF the parties have executed this Contract in quadruplicate the day and year first above written.

2015 CONTRACTUAL CROSSING GUARD SERVICES - REBID

CITY:
**CITY OF CUPERTINO, a Municipal Corporation of
the State of California**

CONTRACTOR:
[_ Contractor's name_]

Attest:

By: _____
[Signature]

City Clerk: Grace Schmidt

[Please print name here]

Approved as to form by City Attorney:

Title: _____
[If Corporation: Chairman, President, or Vice President]

City Attorney:

By: _____
[Signature]

I hereby certify, under penalty of perjury, that David Brandt, City Manager of the City of Cupertino was duly authorized to execute this document on behalf of the City of Cupertino by a majority vote of the City Council on:

[Please print name here]

Title: _____
[If Corporation: Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer]

Dated: _____

State Contractor's License No. Classification

David Brandt, City Manager of the City of Cupertino, a Municipal Corporation of the State of California

Expiration Date

Designated Representative:

Taxpayer ID No. _____

Name: Roger S. Lee

Name: _____

Title: Assistant Director of Public Works

Title: _____

Address: 10555 Mary Ave., Cupertino, CA 95014

Address: _____

Phone: 408-777-3350

Phone: _____

Facsimile: 408-777-3399

Facsimile: _____

AMOUNT: \$
ACCOUNT NUMBERS:
FILE NO.:

**NOTARY ACKNOWLEDGEMENT IS
REQUIRED. IF A CORPORATION,
CORPORATE SEAL AND CORPORATE
NOTARY ACKNOWLEDGEMENT AND**

**FEDERAL TAX ID ARE REQUIRED. IF NOT A
CORPORATION SOCIAL SECURITY NO. IS
REQUIRED**

END OF DOCUMENT

DOCUMENT 00530

INSURANCE FORMS

INSURANCE FORMS INSTRUCTIONS

FOR ITEMS 3, 4 AND 5, THE FORMS PROVIDED BY THE CITY OF CUPERTINO MUST BE USED. FORMS OTHER THAN THESE WILL NOT BE ACCEPTED.

ALL DOCUMENTS MUST BE ORIGINALS - SUBMIT IN TRIPLICATE

1. Insurance Agreement - **Must** be signed by Contractor.
2. Certificate of Insurance to the City of Cupertino - **must** be completed by the insurance agent **or must** provide a certificate on the company's form. They **must** contain the same information.
3. Endorsement of Additional Insured and Primary Insurance and Notice of Cancellation - **must** be signed by the insurance agent for general liability and automobile liability only.
4. Comprehensive general liability/commercial general liability endorsement of aggregate limits of insurance per project - **must** be signed by the insurance agent for general liability only.
5. Waiver of subrogation endorsement worker's compensation insurance - **must** be signed by the insurance agent for worker's compensation only.

INSURANCE AGREEMENT

- A. Contractor is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for worker's compensation or undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Contract.
- B. Contractor and all subcontractors will carry worker's compensation insurance for the protection of its employees during the progress of the work. The insurer shall waive its rights of subrogation against the City, the City's officers, agents and employees and shall issue an endorsement to the policy evidencing same.
- C. Contractor shall carry at all times, on all operations hereunder, commercial general liability insurance, automobile liability insurance and builder's all risk insurance. All insurance coverage shall be in amounts required by the City and shall be evidenced by the issuance of a certificate in a form prescribed by the City and shall be underwritten by insurance companies satisfactory to the City for all operations, sub-contract work, contractual obligations, product or completed operations, all owned vehicles and non-owned vehicles. Said insurance coverage obtained by the Contractor, excepting worker's compensation coverage, shall name the City, its engineer, and each of its directors, officers, agents and employees, as determined by the City, as additional insureds on said policies. Insurers must be licensed to do business in the State of California. The Insurers must also have an "A" policyholder's rating and a financial rating of at least Class VII in accordance with the current Best's Guide Rating or that is otherwise acceptable to the City.
- D. Before Contractor performs any work at, or prepares or delivers materials to the site, Contractor shall furnish certificates of insurance evidencing the foregoing insurance coverages and such certificates shall provide the name and policy number of each carrier and policy and that the insurance is in force and will not be canceled or modified without thirty (30) days written notice to the City. Contractor shall maintain all of the foregoing insurance coverages in force until the work under this Contract is fully completed. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of the City by Contractor under this Contract and for the duration of the warranty period. Notwithstanding nor diminishing the obligations of Contractor with respect to the foregoing, Contractor shall maintain in full force and effect during the life of this Contract, the following insurance in amounts not less than the amounts specified and having a Best's Guide Rating of A, Class VII or better or that is otherwise acceptable to the City.

LIMITS

Worker's Compensation
& Employers' Liability

In accordance with the Worker's Compensation Act of the State of California – Worker's comp "statutory" per CA Law; Employers' Liability \$1,000,000 per occurrence.

General Liability - commercial general liability; including provisions for contractual liability, personal injury, independent contractors and products – completed operations hazard.

Combined single limit of \$2.0 million per occurrence; \$4.0 million in the aggregate

Automobile Liability - comprehensive covering owned, non-owned and hired automobiles.

Combined single limit of \$1.0 million per occurrence.

(Contractor's Name)

By: _____

Dated: _____ 20__

CERTIFICATE OF INSURANCE TO THE CITY OF CUPERTINO

This certifies to the City of Cupertino that the following described policies have been issued to the insured named below and are in force at this time.

Insured: _____

Address: _____

Description of operations/locations/products insured (show contract name and/or number, if any):

WORKER'S COMPENSATION * Statutory Min.
 * Employer's
 Liability

 (name of insurer)
 \$ _____ \$ _____ \$ _____

Insurance Company's State License No. _____

Check Policy Type: Each Occurrence \$ _____
COMPREHENSIVE GENERAL LIABILITY
 Premises/Operations General Aggregate (if applicable) \$ _____
 Owners & Contractors Protective Aggregate \$ _____
 Contractual for Specific Contract Personal Injury \$ _____
 Products Liability
 XCU Hazards
 Broad Form P.D. Fire Damage (any one fire) \$ _____
 Severability of Interest Clause
 Personal Injury with Employee Exclusion Removed or Self-Insured Medical Expense (any one person) \$ _____
COMMERCIAL GENERAL LIABILITY Retention \$ _____

Policy No. _____ (name of insurer) Expiration Date _____

AUTOMOTIVE/VEHICLE LIABILITY BODILY INJURY PROPERTY DAMAGE
 Commercial Form Each Person Each Accident
 Liability Coverage
 \$ _____ \$ _____
 Each Accident

 (name of insurer) \$ _____ or
 Combined Single Limit \$ _____

Policy No. _____ Expiration Date _____

BUILDER'S RISK "ALL RISK"

This is to certify that the following policy has been issued by the below-stated company in conformance with the requirements of the project documents and is in force at this time.

N/A

(Name of insurer)

Policy No. _____ Expiration Date _____

Limits of Liability: _____ Deductible: _____

(agent's initial) A copy of all Endorsements to the policy(ies) which in any way
limit the above-listed types of coverage are attached to this

Certificate of Insurance.

This Certificate of Insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or any other document with respect to which this Certificate of Insurance 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.

IT IS HEREBY CERTIFIED that the above policy(ies) provide liability insurance as required by the Agreement between the City and the insured.

By: _____ Dated: _____ 20____

Attach Certificate of Insurance and Additional Insured Endorsement on company forms.

**ADDITIONAL INSURED ENDORSEMENT
and
ENDORSEMENT OF PRIMARY INSURANCE
and
NOTICE OF POLICY
CANCELLATION ENDORSEMENT**

Project Title and Number: _____

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

The City of Cupertino ("City") and its directors, officers, engineers, agents and employees, and all public agencies from whom permits will be obtained and their directors, officers, engineers, agents and employees, and the State of California, and its officers, agents and employees, are hereby declared to be additional insureds under the terms of this policy, but only with respect to the operations of the Contractor at or upon any of the premises of the City in connection with the Contract with the City, or acts or omissions of the additional insureds in connection with, but limited to its general supervision or inspection of said operations.

The insurance afforded by this policy is primary insurance, and no additional insurance held or owned by the designated additional insured(s) shall be called upon to cover a loss under said additional policy.

Cancellation Notice. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits, or materially altered, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Cupertino ("City"). Such notice shall be addressed to the City as indicated below.

POLICY INFORMATION

- 1. Insurance Company: _____
- 2. Insurance Policy Number: _____
- 3. Effective Date of this Endorsement: _____ 20____
- 4. Insured: _____

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and these Endorsements, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, _____ (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: _____
(Original signature required on all Endorsements furnished to the District)

Names of Agent/Agency: _____ Title: _____

Address: _____ Telephone: _____

Facsimile: _____

**COMPREHENSIVE GENERAL LIABILITY
COMMERCIAL GENERAL LIABILITY
ENDORSEMENT OF AGGREGATE LIMITS OF
INSURANCE PER PROJECT**

Project Title and Number: _____

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is as follows:

This Endorsement modifies the insurance provided under the General Liability Coverage part of the below-referenced policy of insurance.

The general aggregate limit under LIMITS OF INSURANCE applies separately to the project described as

POLICY INFORMATION

1. Insurance Company: _____
2. Insurance Policy Number: _____
3. Effective Date of this Endorsement: _____ 20__
4. Insured: _____
5. Additional Insured: City of Cupertino, its directors, officers, agents and employees.

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, _____ (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: _____
(Original signature required on all Endorsements furnished to the District)

| | |
|------------------------------|------------------|
| Names of Agent/Agency: _____ | Title: _____ |
| Address: _____ | Telephone: _____ |
| _____ | Facsimile: _____ |

**WAIVER OF SUBROGATION ENDORSEMENT
WORKER'S COMPENSATION INSURANCE**

Project Title and Number: _____

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

It is agreed that with respect to such insurance as is afforded by the policy, the Insurance Company waives any right of subrogation against the City of Cupertino, and each of its directors, officers, agents, consultants and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee of the insured, arising out of the performance of the above-referenced Contract.

POLICY INFORMATION

- 1. Insurance Company: _____
- 2. Insurance Policy Number: _____
- 3. Effective Date of this Endorsement: _____ 20__
- 4. Insured: _____

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, _____ (print/type name)
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: _____
(Original signature required on all Endorsements furnished to the District)

Names of Agent/Agency: _____ Title: _____

Address: _____ Telephone: _____

_____ Facsimile: _____

DOCUMENT 00550
NOTICE TO PROCEED

Dated:

To:

Address:

CONTRACT FOR:

PROJECT NUMBER 2015-25
2015 CONTRACTUAL CROSSING GUARD SERVICES - REBID

You are notified that the Contract Time under the above Contract will commence to run on August 1, 2015. On that date, you are to start performing your obligations with respect to Work at the Site under the Contract Documents. In accordance with Article 3 of Document 00520 (Contract), the date of Final Completion for the entire Work is June 30, 2018 for the first three years or June 30, 2020 if the contract is extended to a five year term.

Before you may start any Work at the Site, you must:

1. Submit certified Safety Program and related information, and comply with all requests of the City's safety officer.
2. Attend "start of service" conference.
3. Provide a complete list of crossing guards assigned to the City of Cupertino along with proof of satisfactory investigation of background

CITY OF CUPERTINO, a Municipal Corporation of the State of California

By : _____

Its: _____

END OF DOCUMENT

DOCUMENT 00610

PERFORMANCE BOND

THIS PERFORMANCE BOND ("Bond") is dated _____, is in the penal sum of _____ [which is four months of the total Contract Price], and is entered into by and between the parties listed below to ensure the faithful performance of the Crossing guard Services Contract listed below. This Bond consists of this page and the Bond Terms and Conditions, paragraphs 1 through 12, attached to this page. Any singular reference to _____ ("Contractor"), _____ ("Surety"), the City of Cupertino, a Municipal Corporation of the State of California ("City") or other party shall be considered plural where applicable.

CONTRACTOR:

SURETY:

Name

Name

Address

Principal Place of Business

City/State/Zip

City/State/Zip

CONTRACT:

**2015 CONTRACTUAL CROSSING GUARD SERVICES - REBID
PROJECT NUMBER 2015-25**

at Cupertino, California.

DATED _____, 20__ in the Amount of \$ _____ (the "Penal Sum")

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____

Signature: _____

Name and Title: _____

Name and Title: _____

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to City for the complete and proper performance of the Contract, which is incorporated herein by reference.
2. If Contractor completely and properly performs all of its obligations under the Contract, Surety and Contractor shall have no obligation under this Bond.
3. If there is no City Default, Surety's obligation under this Bond shall arise after:
 - 3.1 City has declared a Contractor Default under the Contract pursuant to the terms of the Contract; and
 - 3.2 City has agreed to pay the Balance of the Contract Sum:

- 3.2.1 To Surety in accordance with the terms of this Bond and the Contract; or
 - 3.2.2 To a contractor selected to perform the Contract in accordance with the terms of this Bond and the Contract.
4. When City has satisfied the conditions of paragraph 3, Surety shall promptly (within 30 days) and at Surety's expense elect to take one of the following actions:
 - 4.1 Arrange for Contractor, with consent of City, to perform and complete the Contract (but City may withhold consent, in which case the Surety must elect an option described in paragraphs 4.2, 4.3, or 4.4, below); or
 - 4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; provided, that Surety may not select Contractor as its agent or independent contractor without City's consent; or
 - 4.3 Undertake to perform and complete the Contract by obtaining bids from qualified contractors acceptable to City for a contract for performance and completion of the Contract, and, upon determination by City of the most qualified bidder, arrange for a contract to be prepared for execution by City and the contractor selected with City's concurrence, to be secured with performance bonds executed by a qualified surety equivalent to the bonds issued on the Contract; and, if Surety's obligations defined in paragraph 6, below, exceed the Balance of the Contract Sum, then Surety shall pay to City the amount of such excess; or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, and, after investigation and consultation with City, determine in good faith its monetary obligation to City under paragraph 6, below, for the performance and completion of the Contract and, as soon as practicable after the amount is determined, tender payment therefore to City with full explanation of the payment's calculation. If City accepts Surety's tender under this paragraph 4.4, City may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default. If City disputes the amount of Surety's tender under this paragraph 4.4, City may exercise all remedies available to it at law to enforce Surety's liability under paragraph 6, below.
5. If Surety does not proceed as provided in paragraph 4, above, then Surety shall be deemed to be in default on this Bond ten days after receipt of an additional written notice from City to Surety demanding that Surety perform its obligations under this Bond. At all times City shall be entitled to enforce any remedy available to City at law or under the Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, advance critical work to mitigate schedule delay, or coordinate work with other consultants or contractors.
6. Surety's monetary obligation under this Bond is limited by the Amount of this Bond identified herein as the Penal Sum. This monetary obligation shall augment the Balance of the Contract Sum. Subject to these limits, Surety's obligations under this Bond are commensurate with the obligations of Contractor under the Contract. Surety's obligations shall include, but are not limited to:
 - 6.1 The responsibilities of Contractor under the Contract for completion of the Contract and correction of defective work;
 - 6.2 The responsibilities of Contractor under the Contract to pay liquidated damages, and for damages for which no liquidated damages are specified in the Contract, actual damages caused by non-performance of the Contract including, but not limited to, all valid and proper back charges, offsets, payments, indemnities, or other damages;

- 6.3 Additional legal, design professional and delay costs resulting from Contractor Default or resulting from the actions or failure to act of the Surety under paragraph 4 above (but excluding attorney's fees incurred to enforce this Bond).
7. No right of action shall accrue on this Bond to any person or entity other than City or its successors or assigns.
8. Surety hereby waives notice of any change, alteration or addition to the Contract or to related subcontracts, purchase orders and other obligations, including changes of time. Surety consents to all terms of the Contract, including provisions on changes to the Contract. No extension of time, change, alteration, modification, deletion, or addition to the Contract Documents, or of the work required there under, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond.
9. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between City and Contractor regarding the Contract, or in the courts of the County of Santa Clara, or in a court of competent jurisdiction in the location in which the work is located. Communications from City to Surety under paragraph 3.1 of this Bond shall be deemed to include the necessary contracts under paragraph 3.2 of this Bond unless expressly stated otherwise.
10. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to City shall be mailed or delivered as provided in Document 00520 (Contract). Actual receipt of notice by Surety, City or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted here from and provisions conforming to such statutory requirement shall be deemed incorporated herein.
12. Definitions.
- 12.1 Balance of the Contract Sum: The total amount payable by City to Contractor pursuant to the terms of the Contract after all proper adjustments have been made under the Contract, for example, deductions for progress payments made, and increases/decreases for approved modifications to the Contract.
- 12.2 Contract: The contract between City and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.
- 12.3 Contractor Default: Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract including, but not limited to, "default" or any other condition allowing a termination for cause as provided in Document 00700 (General Conditions).
- 12.4 City Default: Material failure of City, which has neither been remedied nor waived, to pay Contractor progress payments due under the Contract or to perform other material terms of the Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Contract.

END OF DOCUMENT

DOCUMENT 00650

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS (“Agreement and Release”), made and entered into this _____ day of _____, 2015, by and between the **City of Cupertino** (“City”), and (**insert contractors name**) (“Contractor”), whose place of business is at ADDRESS, CITY, CA ZIP CODE.

RECITALS

- A. City and Contractor entered into Contract P.O. XXXXXX (the “Contract”).
- B. The Work under the Contract has been completed.

Now, therefore, it is mutually agreed between City and Contractor as follows:

AGREEMENT

- 1. Contractor will not be assessed liquidated damages except as detailed below:

N/A

| | |
|------------------------|---------|
| Original Contract Sum | \$ XXXX |
| Modified Contract Sum | \$ XXXX |
| Payment to Date | \$ XXXX |
| Retention to Date | \$ XXXX |
| Liquidated Damages | \$ XXXX |
| Payment Due Contractor | \$ XXXX |

- 2. Subject to the provisions of this Agreement and Release, City will forthwith pay to Contractor the sum of XXXX Dollars and XXX Cents (\$ XXX) under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with City as of the date of such payment.
- 3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against City arising from the Contract, except for the claims described in paragraph 4 of this Document 00650. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against City, and all if its agents, employees, consultants (including without limitation Consulting Cupertino), inspectors, representatives, assignees and transferees except for the Disputed Claims set forth in paragraph 4 of this Document 00650. Nothing in this Agreement and Release shall limit or modify Contractor’s continuing obligations described in paragraph 6 of this Document 00650.

4. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

| <u>Claim No.</u> | <u>Date Submitted</u> | <u>Description of Claim</u> | <u>Amount of Claim</u> |
|------------------|-----------------------|-----------------------------|------------------------|
|------------------|-----------------------|-----------------------------|------------------------|

NONE

5. Consistent with California Public Contract Code Section 7100, Contractor hereby agrees that, in consideration of the payment set forth in paragraph 2 of this Document 00650, Contractor hereby releases and forever discharges City, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract
6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
7. Contractor shall immediately defend, indemnify and hold harmless the City of Cupertino, Santa Clara County, its Architect, any of their Representatives, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in paragraph 4 of this Document 00650.
8. Contractor hereby waives the provisions of California Civil Code Section 1542, which provides as follows:
- A general release does not extend to claims that the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the debtor.
9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.
11. All rights of City shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

* * * CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING * * *

THE CITY OF CUPERTINO,
a Municipal Corporation of the State of California

By: _____

Its: _____

ATTEST:

City Clerk

[CONTRACTOR]

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

REVIEWED AS TO FORM:

City Attorney

_____, 20_____
Date

END OF DOCUMENT

DOCUMENT 00700

GENERAL CONDITIONS

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ABBREVIATIONS AND DEFINITIONS

Whenever in these Specifications and other Contract Documents the following abbreviations and terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

ABBREVIATIONS--General

| | |
|----------|-----------------------------------------------------------------------------------|
| AA | Aluminum Association |
| AAN | American Association of Nurserymen |
| AAP | Affirmative Action Program |
| AASHTO | American Association of State Highway and Transportation Officials |
| ACI | American Concrete Institute |
| AISI | American Iron and Steel Institute |
| AIEE | American Institute of Electrical Engineers |
| AISC | American Institute of Steel Construction |
| AISI | American Iron and Steel Institute |
| ANSI | American National Standards Institute |
| APA | American Plywood Association |
| APHA | American Public Health Association |
| API | American Petroleum Institute |
| AREA | American Railway Engineering Association |
| ASCE | American Society of Civil Engineers |
| ASHRAE | American Society of Heating, Refrigerating and Air Conditioning Engineers |
| ASME | American Society of Mechanical Engineers |
| ASTM | American Society of Testing and Materials |
| AWG | American Wire Gage |
| AWPA | American Wood-Preservers' Association |
| AWS | American Welding Society |
| AWWA | American Water Works Association |
| BAAQMD | Bay Area Air Quality Management District |
| CAEPA | California Environmental Protection Agency |
| Cal/OSHA | California Occupational Safety and Health Administration |
| Caltrans | State of California, Department of Transportation |
| CBC | California Building Code |
| CD | Change Directive |
| CCR | California Code of Regulations |
| CEC | California Electric Code |
| CFR | Code of Federal Regulations |
| CIH | Certified Industrial Hygienist |
| CLMFI | Chain Link Fence Manufacturers Institute |
| CO | Change Order |
| CPM | Critical Path Method |
| CPUC | California Public Utilities Commission |
| CRSI | Concrete Reinforcing Steel Institute |
| CS | Commercial Standards, U.S. Department of Commerce |
| DHS | California Department of Health Services |
| DSA | Division of State Architect (formerly known as the Office of the State Architect) |
| EIA | Electronic Industries Association |
| EPA | Environmental Protection Agency |
| FS | Federal Specifications |
| HSC | California Health and Safety Code |
| I.D. | Identification |
| IEEE | Institute of Electrical and Electronics Engineers |
| IES | Illuminating Engineering Society |
| JATC | Joint Apprenticeship Training Committee |

| | |
|-------|------------------------------------------------------------------------------------------|
| JV | Joint Venture |
| LBE | Local Business Enterprise |
| M.I. | Middle Initial |
| M/WBE | Minority and/or Woman-Owned Business Enterprise |
| MBE | Minority Business Enterprise |
| MIA | Masonry Institute of America |
| MSDS | Material Safety Data Sheet |
| NBS | National Bureau of Standards |
| NEC | National Electric Code |
| NEMA | National Electrical Manufacturers Association |
| NESC | National Electrical Safety Code |
| NIOSH | National Institute for Occupational Safety and Health |
| NIST | National Institute of Science and Technology (formerly the National Bureau of Standards) |
| NFPA | National Fire Protection Association |
| NSF | National Sanitation Foundation |
| OSHA | Occupational Safety and Health Administration |
| OSHPD | Office of Statewide Health Planning and Department |
| PCA | Portland Cement Association |
| PCI | Prestressed Concrete Institute |
| PG&E | Pacific Gas and Electric Company |
| PM | Preventive Maintenance |
| PR | Proposal Request |
| PS | Product Standard, U. S. Department of Commerce |
| RFI | Request for Information |
| RFIR | Request for Information Reply |
| RFP | Request for Proposals |
| RFS | Request for Substitution |
| RWQCB | California Regional Water Quality Control Council |
| SAE | Society of Automotive Engineers |
| SFM | State of California, Office of State Fire Marshal |
| SJI | Steel Joint Institute |
| SSPC | Steel Structures Painting Council |
| SWRCB | California State Water Resources Control Council |
| TIE | Time Impact Evaluation |
| UBC | Uniform Building Code |
| UFC | Uniform Fire Code |
| UL | Underwriters Laboratories |
| UMC | Uniform Mechanical Code |
| UPC | Uniform Plumbing Code |
| USA | Underground Service Alert |
| USC | United States Code |
| WCLIB | West Coast Lumber Inspection Bureau |
| USEPA | United States Environmental Protection Agency |
| WCLB | West Coast Lumber Inspection Bureau |
| WWPA | Western Wood Products Association |

ABBREVIATIONS—in Specifications

| | |
|--------|--------------------------|
| AWG | American Wire Gauge |
| Accord | Accordance |
| Co. | Company |
| Corp. | Corporation |
| cm. | centimeter (centimeters) |
| cu. | Cubic |
| Div. | Division |
| dia. | Diameter |

| | |
|----------------|--------------------------|
| EA | each |
| ft. | foot (feet) |
| g./gr. | gram (grams) |
| gal. | gallon (gallons) |
| gpd | gallons per day |
| gpm | gallons per minute |
| hr. | hour |
| kg. | kilogram (kilograms) |
| in. | inch (inches) |
| Inc. | Incorporated |
| km. | kilometer (kilometers) |
| Kw | Kilowatt |
| LS | lump sum |
| l. | liter (liters) |
| lbs. | pounds |
| M/m | meter (meters) |
| Mfg. | manufacturing |
| Mg. | milligram (milligrams) |
| ml./mls. | milliliter (milliliters) |
| mm. | millimeter (millimeters) |
| m ² | square meter |
| m ³ | cubic meter |
| No. | number |
| o.c. | on centers |
| O.D. | outside diameter |
| Psi | pounds per square inch |
| Psf | pounds per square foot |
| sq. | square |
| T & G | tongue and groove |
| tonne | metric ton (1000 kg.) |
| U.S. | United States |
| yd. | yard (yards) |

SYMBOLS in Specifications

| | |
|----|-----------------------------------------------------------------------------------------|
| : | “shall be” or “shall” - where used within sentences or paragraphs |
| #1 | Number |
| 1# | Pound |
| & | And |
| % | Percent |
| C | Centigrade |
| F | Fahrenheit |
| ° | Degree |
| / | per, except where used to combine words; example: power/fuel, in that case it means and |
| “ | inch (inches) |
| ‘ | foot (feet) |
| @ | At |

SYMBOLS in Drawings

As indicated therein.

DEFINITIONS

Acceptance: The formal written acceptance by City of a contract that has been completed in all respects in accordance with the Drawings and Specifications and any modifications thereof previously approved.

Addendum or Letter of Clarification: A change in the Specifications or Drawings issued prior to the opening of Bids.

Agency: City.

Alternate: Work added to or deducted from the Base Bid, if accepted by City.

Application for Payment: Written application for monthly or periodic progress or final payment made by Contractor complying with the Contract Documents.

Approved, Directed, Ordered, or Required: Whenever these words or their derivatives are used, it is the intent, unless otherwise clearly stated, that approval or direction by City is indicated.

Approved Equal: **Approved in writing by City as being of equivalent quality, utility and appearance.**

Asbestos: Any material that contains more than one percent asbestosis and is friable or is releasing asbestos fibers into the air above current action levels established by OSHA or Cal/OSHA.

Attorney or Attorney General: The attorney selected by City.

Bid: The offer or proposal of the Bidder submitted on the proscribed forms setting forth the prices for the Work to be performed.

Bidder: Any individual, firm, partnership, corporation or combination thereof, submitting a proposal for the Work contemplated, acting directly or through a duly authorized representative.

Bidding Documents: **All documents comprising the Project Manual (including all documents and specification sections listed on Document 00010 [Table of Contents]), including documents supplied for bidding purposes only and Contract Documents.**

Board or Council: City's governing body, its City Council.

Business Day: **Same as a Calendar Day.**

By City: **Work that will be performed by City or its agents at the City's expense.**

By Others: **Work that is outside scope of Work to be performed by Contractor under this Contract, which will be performed by City, other contractors, or other means.**

Calendar Day: **Any Day of the year, without exception.**

Change Order: **A written instrument prepared by City and signed by City and Contractor, stating their agreement upon all of the following:**

- a. a change in the Work;
- b. the amount of the adjustment in the Contract Sum, if any; and
- c. the amount of the adjustment in the Contract Time, if any.

Certified Hazardous Materials Testing Laboratory: A laboratory certified by the California Department of Health Services to perform specific chemical and physical analysis for hazardous materials.

Certified Industrial Hygienist: A professional who is certified by the American Council of Industrial Hygienists as trained to evaluate safety and health hazards and determine safety measures necessary for personnel working under hazardous conditions.

Chief Engineer: The Program Manager selected by City.

City: City of Cupertino, , a Municipal Corporation of the State of California.

City-Furnished, Contractor-Installed: **Items furnished by City at its cost for installation by Contractor at its cost under Contract Documents.**

City's Representative(s): **See Document 00520 (Contract).**

Claim: As defined in Section 9 of this Document 00700.

Code: Codes of the State of California, including but not limited to, Government Code, Labor Code, etc.

Concealed: **Work not exposed to view in the finished Work, including within or behind various construction elements.**

Contract: (Document 00520): Contract is the basic agreement document that binds the parties to crossing guard Work. Contract defines relationships and obligations between City and Contractor and by reference incorporates Standard Provisions, Special Provisions, Drawings and Specifications and contains Addenda and all Modifications subsequent to execution of Contract Documents.

Change Directive (CD): A letter, signed by the City's Director of Public Works, or his designated representative, directing the Contractor to proceed with additive or deductive changes to the contract when that Work or its value is contested by the Contractor. The Work, as directed by a Change Directive, will be completed under the terms of Force Account as explained in Document 00700, General Conditions.

Equipment: Equipment used for the performance of Work but not incorporated into the project.

Construction Manager: **See Document 00520 (Contract) (if this term is used).**

Consulting Engineer: See Document 00520 (Contract) (if this term is used).

Contract or Contract Documents: The written agreement between Contractor and City consisting of the Contract Documents as defined in the Document 00520 (Contract).

Contract Modification: **Either:**

- a. a written amendment to Contract signed by Contractor and City; or
- b. a Change Order.

Contract Prices: The prices for the Work set forth in the Contract. Contract Price (or Contract Sum) shall mean the aggregate price for all Work set forth in the Contract.

Contract Sum: The sum stated in the Contract and, including authorized adjustments, the total amount payable by City to Contractor for performance of the Work and the Contract Documents. The Contract Sum is also sometimes referred to as the Contract Price or the Contract Amount.

Contract Time: The number of days for Substantial Completion and/or Final Completion the Work including any milestones specifically identified in the Contract.

Contractor: The entity or person entering a contract with City.

Contractor's Employees: Persons engaged in execution of Work under Contract as direct employees of Contractor, as Subcontractors, or as employees of Subcontractors.

Controlling Item of Work: Any feature or combination of features of the Work, which if delayed, will delay the time of completion of a contract. Also known as critical work or critical path work.

County: The County of Santa Clara, State of California.

Day: One calendar day of 24 hours measured from midnight to the next midnight, unless the word "day" is specifically modified to the contrary.

Defective: An adjective which, when modifying the word "Work," refers to Work that is unsatisfactory or unsuited for the use intended, faulty, or deficient, that does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents (including but not limited to approval of samples and "or equal" items), or has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by City). City is the judge of whether Work is defective.

Department: City.

Director or Director of the Department of Transportation: City's City Public Works Director.

District: City.

Division: City.

Drawings: The official drawings, Working drawings, detail drawings, and supplemental drawings, or reproductions thereof, which show the location, character, dimensions, and details of the Work to be done, and which are to be considered as part of the Contract.

Engineer or Engineer of the Department of Transportation: City of Cupertino and any designated person or entity by City

Equal: Equal in opinion of City. Burden of proof of equality is responsibility of Contractor.

Equipment: Equipment incorporated or to be incorporated into the project.

Exposed: ***Work exposed to view in the finished Work, including behind louvers, grilles, registers and various other construction elements.***

Field Authorization (FA): ***An authorization issued by City to Contractor to allow additive or deductive work to proceed when Change Order process time may delay the Work.***

Final Acceptance: ***City's acceptance of the Work as satisfactorily completed in accordance with Contract Documents.***

Final Completion: Shall be achieved when the entire work is complete, except for minor punch list items, as determined by City.

Fixed Costs: Any necessary labor, material, and equipment costs directly expended on the item or items under consideration, which remain constant regardless of the quantity of Work done.

Force Account: Work directed to be performed without prior agreement as to lump sum or unit price cost thereof, and which is to be billed at cost for labor, materials, equipment, taxes, and other costs, plus a specified percentage for overhead and profit.

Furnish: ***Supply only, do not install.***

Hazardous Material: (A) Any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to any federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability (including, but not limited to response, removal, and remediation costs) or standards of conduct or performance concerning any hazardous, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or as otherwise dangerous waste, substance or material; (B) any substance, product, waste, or other material of any nature whatsoever whose presence in and of itself may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of a state or federal court; (C) any substance without limitation, which contains petroleum or crude oil, including but not limited to, petroleum and petroleum products.

Hazardous Waste: Any substance or material, as defined in the California Hazardous Waste Control Act, Health and Safety Code Section 25, or the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

Indicated: ***Shown or noted on the Drawings.***

Install: ***Install or apply only, do not furnish.***

Laboratory: The independent testing organization or organizations selected by City.

Latent: ***Not apparent by reasonable inspection, including but not limited to, the inspections and research required as a condition to bidding under the General Provisions.***

Law: ***Unless otherwise limited, all applicable laws including without limitation all federal, state, and local laws, statutes, standards, rules, regulations, ordinances, and judicial and administrative decisions***

Liquidated Damages: The amount stated in Document 00520 (Contract), to be paid to City or to be deducted from any payments due or to become due Contractor as provided in the Contract Documents.

Material: *This word shall be construed to embrace machinery, manufactured articles, materials, and any other classes of material to be furnished in connection with Contract, except where a more limited meaning is indicated by context.*

Milestone: *A principal event specified in Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all Work.*

Modification: *Same as Contract Modification.*

Not in Contract: *Work that is outside the scope of Work to be performed by Contractor under Contract Documents – shown as NIC.*

Notice of Completion: *Shall have the meaning provided in California Civil Code Section 3093, and any successor statute.*

Off Site: *Outside geographical location of the Project.*

Northern Region: City.

Office of Materials and Foundations: Laboratory.

Office of Structure Design: When specifications require working drawings to be submitted to the Office of Structure Design, the drawings shall be submitted to the Resident Engineer.

Owner: City.

Partial Utilization: *Use by City of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all of the Work.*

PCBs: *Polychlorinated byphenyls.*

Personnel Protection: Equipment and procedures, which minimize human exposure to regulated materials, hazardous materials, hazardous wastes, or unsafe situations.

Phase: *A specified portion of the Work (if any) specifically identified as a Phase in Document 00520 (Contract).*

Product Data: *That information (including brochures, catalogue cuts, MSDS, etc.) supplied by the vendor describing the technical and commercial characteristics of the supplier equipment or materials, and accompanying commercial terms such as warranties, instructions and manuals.*

Progress Report: *A periodic report submitted by Contractor to City with progress payment invoices accompanying actual work accomplished to the Progress Schedule. See Document 00700 (General Conditions).*

Project: Contractual crossing guard services.

Project Float: Neither City nor Contractor owns float. The Project owns the float. As such, liability for delay of any Substantial Completion or Final Completion date rests with the party whose actions, last in time, actually cause delay to a Substantial Completion or Final Completion date.

- A. For example, in the event of unexcused delay by Party A and Party B, and if Party A uses some, but not all of the float and Party B later uses remainder of the float as well as additional time beyond the float, Party B shall be liable for the time that represents a delay to the Substantial Completion date.
- B. Under this scenario, Party A would not be responsible for the time since it did not consume all of the float and additional float remained; therefore, the Substantial Completion Date was unaffected.

Project Manual: *Project Manual consists of Bidding Requirements, Contract, Bonds, Certificates, Standard Provisions and Special Provisions, and Specifications.*

Project Record Documents: *All Project deliverables required under Section 00700, including without limitation, as-built drawings, operations and maintenance manuals Installation, Operation, and Maintenance Manuals, and Machine Inventory Sheets.*

Provide: Furnish and install.

Reasonable Accuracy: Within the tolerances as shown on the Drawings or indicated in the Specifications.

Regulated Material: Any substance or combination of substances for which federal, state, or local regulations require special management, storage, disposal or handling practices. This shall include, but not be limited to, materials defined as: Hazardous Materials and Waste; Designated Wastes (CCR, Title 23, Section 23-2522); and Special Waste (CCR, Title 22, Section 22-66195).

Request for Information (“RFI”): A document prepared by Contractor requesting information regarding the Project or Contract Documents. The RFI system is also a means for City to submit Contract Document clarifications or supplements to Contractor.

Request for Proposals (“RFP”): A document issued by City to Contractor whereby City may initiate changes in the Work or Contract Time as provided in Contract Documents.

Request for Substitution (“RFS”): A document prepared by Contractor requesting substitution of materials as permitted and to the extent permitted in Contract Documents.

RFI-Reply: A document consisting of supplementary details, instructions, or information issued by City that clarifies or supplements Contract Documents, and with which Contractor shall comply. RFI-Replies do not constitute changes in Contract Sum or Contract Time except as otherwise agreed in writing by City. RFI-Replies will be issued through the RFI administrative system.

Remediation: Restoration of the contaminated soil, groundwater, or other materials to its pre-contaminated level or to a level acceptable to City and local, state and federal agencies.

Resident Engineer: Authorized representative for the City. Also identified as Engineer.

Responsible Bidder: A bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the Work.

Samples: Physical examples of materials, equipment, or workmanship that is representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

Section: A numbered portion of a title section of the Specifications.

Shop Drawings: All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

Shown: As indicated on Drawings.

Site: The particular geographical location of Work performed pursuant to Contract Documents.

Specifications: The directions, provisions and requirements contained in the Contract Documents, including but not limited to, the State Specifications, Special Provisions, and Technical Provisions.

Standard Plans: The Standard Plans, Metric, of the State of California Department of Transportation, July 2004.

State: City.

State Furnished Materials: Materials furnished by City.

State of California: City except where in the context of the Contract Documents it is clear the reference is to the State of California.

State Specifications (or Standard Specifications): See Section 1.05 in this Document 00700.

Special Conditions or Special Provisions: Document 00800 (Supplemental General Conditions) and Document 00805 (Supplemental Conditions – Hazardous Materials) (if included).

Standard Provisions: Document 00700 (General Conditions)

Subcontractor: An entity or person contracting with Contractor or another subcontractor to perform any portion of Work.

Substantial Completion: The Work (or a specified part thereof) has progressed to the point where, in the opinion of City as evidenced by a Certificate of Substantial Completion and can be utilized for the purpose for which it is intended.

Supplemental Instruction: A written directive from City to Contractor ordering alterations or modifications that do not result in change in Contract Sum or Contract Time, and do not substantially change Drawings or Specifications.

Supplier/Vendor: A person or entity that has a direct contract with the Contractor or a Subcontractor to provide, fabricate, deliver or install materials, products or assemblies.

Technical Provisions: Provisions and or clauses specific to the Work of the Project, generally found in Sections 10 thru 95 of the State Specifications.

Testing and Special Inspection Agency: An independent entity engaged by City to inspect and/or test the workmanship, materials, or manner of crossing guard services, to determine if such crossing guard services complies with the Contract Documents and applicable codes.

Ton: 2,000 pounds avoirdupois.

Underground Facilities: All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities that have been installed underground to furnish any of the following services or materials: Electricity, gases, chemicals, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

Unit Price Work: Shall be the portions of the Work for which a unit price is provided in Document 00520 (Contract).

Work: The entire completed service of the Work or of the various separately identifiable parts thereof required to be furnished under the Contract Documents within the Contract Time. Work includes and is the result of performing or furnishing administrative services, labor and professional services, furnishing and incorporating materials and equipment into the service, and performing or furnishing crossing guard services and furnishing documents, all as required by the Contract Documents including the Specifications. Wherever the word “work” is used, rather than the word “Work”, it shall be understood to have its ordinary and customary meaning.

Work Day: All Days, other than Saturdays, Sundays, and public holidays, unless specifically modified to the contrary.

Wherever words “as directed,” “as required,” “as permitted,” or words of like effect are used, it shall be understood that direction, requirements, or permission of City is intended. Words “sufficient,” “necessary,” “proper,” and the like shall mean sufficient, necessary, or proper in judgment of City. Words “approved,” “acceptable,” “satisfactory,” “favorably reviewed,” or words of like import, shall mean approved by, or acceptable to, or satisfactory to, or favorably reviewed by City.

Wherever the word “may” or “ought” is used, the action to which it refers is discretionary. Wherever the word “shall” or “will” is used, the action to which it refers is mandatory.

SECTION 1. INTERPRETATION OF CONTRACT**1.1 Precedence of Contract**

In resolving conflicting requirements between the Contract Documents order of precedence shall be as follows:

- A Change orders
- B Addenda or Letters of Clarification
- C Document 00520 (Contract)
- D Special Conditions
- E Technical Specifications
- F Drawings
- G General Conditions
- H State Specifications
- I State Standard Plans

With reference to the Drawings:

- A Figures govern over scaled dimensions
- B Detail drawings govern over general drawings

1.2 Clarification of Contract

Should it appear that the work to be done or any of the matters relative thereto is not sufficiently detailed or explained in the Specifications, or if Contractor discovers during the course of the Work any discrepancies between the specifications and conditions in the field, or any errors or omissions in the Contract or in the layout given by stakes, points, or instructions, the bidder or Contractor shall apply in writing to City for such further explanations as may be necessary and shall conform to them as part of the Contract. Any work done after such discovery until authorized by City, will be done at Contractor's risk.

All corrections of readily apparent errors or omissions in the Contract may be made by City when such corrections are necessary for the proper fulfillment of their intention as construed by City. The misplacement, addition, or omission of any word, letter, figure, or punctuation mark which has no substantive legal effect will in no way change the due spirit, intent, or meaning of Contract.

1.3 Contract Documents Complementary

Any part of the Work not shown in these Specifications but which is reasonably or ordinarily implied shall be furnished by Contractor as if fully described in these Specifications. All disputes shall be administered under Section 9 herein.

1.4 Contract Interpretation

In the event of any doubt or questions arising respecting the true meaning of the Contract, reference shall be made in writing to City, whose decision thereon shall be final.

1.5 State Specifications

Not applicable

1.6 Conflicts Involving State Specifications

Not applicable

SECTION 2. SECURITY CLEARANCE, BONDS AND INSURANCE

2.1 Security Clearance

- i. All personnel assigned to work in the City of Cupertino must have successfully passed a background check.
- ii. At least two (2) weeks prior (needed to allow completion of a security background clearance check) to an employee being assigned to work, they must provide one (1) a valid California identification and (2) finger prints to be taken by Santa Clara County Sheriff. No employee who fails the security clearance shall be admitted on the premises. Cost of background check shall be borne by Contractor in the amount of \$50.00 per employee, payable to the City of Cupertino.

2.2 Contractor's Insurance

A General

Contractor shall not perform Work under this Contract unless all insurance required by this Section has been obtained; and such insurance and insurers have been approved by City; and such insurance remains in full force and effect. Approval of insurance by City shall neither relieve nor decrease the liability of Contractor hereunder. Any delay in performing Work caused by Contractor's failure to comply with the insurance requirements specified in these Specifications, is the responsibility of Contractor. Failure by Contractor to maintain all required insurance at all times during the performance of this Contract, and until Final Acceptance by City, shall constitute a material breach of this Contract and shall not be a basis for a time extension.

For insurance requirements and forms see Document 00821 and 00530.

B Workers' Compensation and Liability Insurance

Without limiting any of the other obligations or liabilities of Contractor, Contractor shall, at Contractor's sole cost and expense, keep in force at all times during the performance of this Contract, and until Acceptance by City, the following minimum insurance coverage's, unless otherwise specified in the Special Provisions:

For insurance requirements and forms see Document 00821 and 00530.

C Insurance on Work and Materials

Contractor shall secure and maintain such direct damage insurance against such perils as Contractor may deem necessary to protect the Work called for in this Contract including Work completed, material in place or to be used in the performance of this Contract and such other miscellaneous items as may be necessary to the performance of this Contract.

For insurance requirements and forms see Document 00821 and 00530.

D Certificates of Insurance

Contractor shall furnish certificates of insurance to City for all required insurance coverage's.

For insurance requirements and forms see Document 00821 and 00530.

2.3 Contractor's Bonds

A Filing of Bonds

At or before the date indicated in Document 00200 (Instructions to Bidders), Contractor shall file with City the following bonds:

1. Corporate surety bond, in the form of Document 00610 (Performance Bond), in the penal sum of four months total contract value of Contractor's Bid as accepted, to guarantee faithful performance of the Work; and
2. The Faithful Performance bond shall be reduced by one hundred percent (100%) at the recording of the Notice of Completion.

B Surety Qualifications

Sureties shall be satisfactory to City. Corporate sureties on these bonds and on bonds accompanying Bids shall be duly licensed to do business in the State of California and shall have an A.M. Best Company financial rating of B+,VII or better.

SECTION 3. SCOPE OF WORK

3.1 Work to be Done

The Work to be done consists of providing adult crossing guard services at designated intersections in accordance to this Contract and to the requirements of the latest edition of the Manual on Uniform Traffic Control Devices California Supplement, Section 7E.02. Where the specifications describe portions of the work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail. Bidder should take particular notice that any and all items of Work, called for in the Contract Documents, but not included in a description of any specific bid item, shall be considered as included in one (1) or more of the bid items and that no additional compensation for those items of Work, beyond the Base Bid, will be allowed.

See Document 00800 for more detail of work and requirements.

3.2 Cleaning

Not applicable

3.3 Change in Work

A General

City may, at any time or from time to time, order additions, deletions, or revisions in the Work, any portion of the Work, unit price item, or the Contract Time. These changes will be set forth in a contract change order which will specify, in addition to the work to be done in connection with the change made, the adjustment of Contract Time, if any, and the basis of compensation for that work. A contract change order will not become effective until approved by City. Upon receipt of an approved contract change order, Contractor shall proceed with the ordered work. If ordered in writing by the City, Contractor shall proceed with the work so ordered prior to actual receipt of an approved contract change order therefore. In those cases, City will, as soon as practicable, issue an approved contract change order for the ordered work and, if the parties cannot agree, then the contract claims procedure in Section 9 shall apply. When the compensation for an item of work is subject to adjustment, Contractor shall, furnish City with adequate detailed cost data for that item of work showing actual costs incurred with direct costs, indirect costs, and any overhead claims. If Contractor requests an adjustment in compensation for an item of work as provided herein, the cost data shall be submitted with the request.

Any change in scope of Work or deviation from Contract Documents including, without limitation, extra work, or alterations or additions to or deductions from the original Work, shall not invalidate the original Contract, and shall be performed under the terms of the Contract Documents.

Only Contractor or City may initiate changes in scope of Work or deviation from Contract Documents. Contractor may only initiate changes by submitting RFIs, Notice of Concealed or Unknown Conditions, or Notice of Hazardous Waste Conditions. RFIs shall be submitted to seek clarification of or request changes in the Contract Documents. Notices of Concealed or Unknown Conditions shall be submitted in accordance with Document 00700 (General Conditions). Notices

of Hazardous Waste Conditions shall be submitted in accordance with Document 00700 (General Conditions).

Contractor shall be responsible for its costs to implement and administer RFIs throughout the Contract duration. Regardless of the number of RFIs submitted, Contractor shall not be entitled to additional compensation. Contractor shall be responsible for both City and its Engineers administrative costs for answering RFIs where the answer could reasonably be found by reviewing the Contract Documents, as determined by City; at City's discretion, such costs may be deducted from progress payments or final payment. City may initiate changes by issuing a Supplemental Instruction, which may revise, add to or subtract from the Work. City may initiate changes in the Work or Contract Time by issuing RFPs to Contractor. Such RFPs will detail all proposed changes in the Work and request a quotation of changes in Contract Sum and Contract Time from Contractor. City may also, by Change Directive ("CD"), order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly. A CCD shall be used in the absence of total agreement on the terms of a Change Order and may, upon notice, consist of a Change Order executed by City only.

B Procedures

1 Cost Proposal and Procedures:

Whenever Contractor is required to prepare a Cost Proposal, and whenever Contractor is entitled to submit a Cost Proposal and elects to do so, Contractor shall prepare and submit to City for consideration a Cost Proposal using the forms approved by the City. All Cost Proposals must contain a complete breakdown of costs of credits, deducts and extras; itemizing materials, labor, taxes, overhead and profit. All Subcontractor Work shall be so indicated. Individual entries on the Cost Proposal form shall be determined as provided in this section. After receipt of a Cost Proposal with a detailed breakdown, City will act promptly thereon.

If City accepts a Cost Proposal, City will prepare Change Order for City and Contractor signatures.

If Cost Proposal is not acceptable to City because it does not agree with cost and/or time included in Cost Proposal, City will submit in a response what it believes to be a reasonable cost and/or adjustment, if any. Except as otherwise provided in this Document, Contractor shall have seven Days in which to respond to City with a revised Cost Proposal.

When necessity to proceed with a change does not allow the City sufficient time to conduct a proper check of a Cost Proposal (or revised Cost Proposal), City may order Contractor to proceed on basis to be determined at earliest practical date. In this event, value of change, with corresponding equitable adjustment to Contract, shall not be more than increase or less than decrease proposed.

2 Request for Information (RFI):

Whenever Contractor requires information regarding the Project or Contract Documents, or receives a request for information from a Subcontractor, Contractor may prepare and deliver an RFI to City. Contractor shall use RFI format provided by the City. Contractor must submit time critical RFI's at least 30 days before scheduled start date of the affected Work activity. Contractor shall reference each RFI to an activity of Progress Schedule and shall note time criticality of the RFI, indicating time within which a response is required. Contractor's failure to reference RFI to an activity on the Progress Schedule and note time criticality on the RFI shall constitute Contractor's waiver of any claim for time delay or interruption to the Work resulting from any delay in responding to the RFI.

City will respond within seven Days from receipt of RFI with a written response to Contractor. Contractor shall distribute response to all appropriate Subcontractors. RFI received after 12:00 pm will be considered as received the following day, for Fridays, the following day will be considered to be Monday.

If Contractor is satisfied with the response and does not request change in Contract Sum or Contract Time, then the response shall be executed without a change.

If Contractor believes the response is incomplete, Contractor shall issue another RFI (with the same RFI number with the letter "A" indicating if it is a follow-up RFI) to City clarifying original RFI. Additionally, City may return RFI requesting additional information should original RFI be inadequate in describing condition.

If Contractor believes that the response results in change in Contract Sum or Contract Time, Contractor shall notify City in writing within seven Days after receiving the response. If City disagrees with Contractor, then Contractor may give notice of intent to submit a Claim as described in this Document and submit its Claim within 30 days. If City agrees with Contractor, then Contractor must submit a Cost Proposal within 21 Days of receiving the response to the RFI. Contractor's failure to deliver either the foregoing notice and Claim or Cost Proposal by the respective deadlines stated in the foregoing sentences shall result in waiver of the right to file a Cost Proposal or Claim.

3.34 Field Authorization (FA):

A letter issued and signed by the City's Director of Public Works, or his designated representative, authorizing the Contractor to proceed with additive or deductive changes to the contract, exclusive of time extensions, which value does not exceed \$50,000, which will become a part of a subsequent Contract Change Order. The Field Authorization is issued during the course of crossing guard when it is known or believed that the changes in the Work being requested cannot be processed in a timely way as a Contract Change Order without risk of causing a delay to the project. The contractor cannot include work performed under a Field Authorization in an Application for Payment until the Field Authorization is fully incorporated into an approved Contract Change Order.

3.35 Supplemental Instruction:

City may issue Supplemental Instruction to Contractor. If Contractor is satisfied with Supplemental Instruction and does not request change in Contract Sum or Contract Time, then Supplemental Instruction shall be executed without a Change Order. If Contractor believes that Supplemental Instruction results in change in Contract Sum or Contract Time, then Contractor must submit a Cost Proposal to City within 21 Days of receiving the Supplemental Instruction.

3.36 Change Directives (CD):

If at any time City believes in good faith that a timely Change Order will not be agreed upon using the foregoing procedures, City may issue a CD with its recommended cost and/or time adjustment. Upon receipt of CD, Contractor shall promptly proceed with the change of Work involved and concurrently respond to City's CD within 10 Days.

Contractor's response must be any one of following:

- Return CD signed, thereby accepting City's response, time and cost.
- Submit a (revised if applicable) Cost Proposal with supporting documentation (if applicable, reference original Cost Proposal number followed by letter A, B, etc. for each revision), if City so requests.
- Give notice of intent to submit a Claim as described in this Document and submit its Claim with 30 days. If the CD provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
- Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
- Unit prices stated in the Contract Documents or subsequently agreed upon.
- Cost to be determined in a manner agreed.

CD signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by City on the basis of reasonable expenditures and savings of those performing the Work attributable to the change including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. If the parties still do not agree on the price for a CD, Contractor may file a Claim. Contractor shall keep and present, in such form as City may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this paragraph shall be limited to those provided in this Section.

Pending final determination of cost to City, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by Contractor to City for a deletion or change, which results in a net decrease in the Contract Sum, shall be actual net cost as confirmed by City. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

3.37 City Requested RFP:

Contractor shall furnish a Cost Proposal within 21 Business Days of City's RFP. Upon approval of RFP, City will issue a Change Order directing Contractor to proceed with extra Work. If the parties do not agree on the price for an RFP, City may either issue a CD or decide the issue per the claims section of this Document. Contractor shall perform the changed Work notwithstanding any claims or disagreements of any nature.

3.38 Differing Site Conditions:

Contractor shall submit Notices of Differing Site Conditions to resolve problems regarding differing Site conditions encountered in the execution of the Work pursuant to section 3 of this Document, which shall govern. If City determines that a change in Contract Sum or Contract Time is justified, City will issue RFP or CD.

3.39 Hazardous Waste Conditions:

Contractor shall submit Notices of Hazardous Waste Conditions to resolve problems regarding hazardous materials encountered in the execution of the Work pursuant to this Document, which shall govern. If City determines that a change in Contract Sum or Contract Time is justified, City will issue RFP or CD.

3.391 All Changes:

Documentation of Change in Contract Sum and Contract Time:

Contractor shall maintain detailed records of Work performed on a time-and-material basis. Contractor shall document each proposal for a change in cost or time with sufficient data to allow evaluation of the proposal. Contractor shall, on request, provide additional data to support computations for:

- a. Quantities of products, materials, labor and equipment.
- b. Taxes, insurance, and bonds.
- c. Overhead and profit.
- d. Justification for any change in Contract Time and new Progress Schedule showing revision due, if any.
- e. Credit for deletions from Contract, similarly documented.
- f. Contractor shall support each claim for additional costs, and for Work performed on a cost-and-percentage basis, with additional information including:
- g. Credit for deletions from Contract, similarly documented.
- h. Origin and date of claim.
- i. Dates and times Work was performed and by whom.
- j. Time records and wage rates paid.
- k. Invoices and receipts for products, materials, equipment and subcontracts, similarly documented.

3.392 Correlation of Other Items:

Contractor shall revise Schedule of Values and Application for Payment forms to record each authorized Change Order or CD as a separate line item and adjust the Contract Sum as shown thereon prior to the next monthly pay period. Contractor shall revise the Progress Schedules prior to the next monthly pay period.

Contractor shall enter changes in Project Record Documents prior to the next monthly pay period.

3.393 Responses:

For all responses for which the Contract Documents, including without limitation this Document, do not provide a specific time period, recipients shall respond within a reasonable time.

3.394 Allowable Quantity Variations

Increases or decreases in the quantity of a Contract item of Work for unit price items will be determined by comparing the actual pay quantity of an item of Work with the approximate quantity in the listing of the bid items contained in the Bid.

If the actual pay quantity of an item of Work varies from the approximate quantity by 25 percent or less, payment will be made for the actual quantity of Work performed at the Contract unit price listed in the Bid.

If the actual pay quantity of an item of Work varies from the approximate quantity by more than 25 percent, in the absence of an executed Contract Change Order specifying the compensation to be paid, the compensation payable to Contractor will be determined in accordance with this Section.

1. **Increases of More Than 25 Percent:** If the actual pay quantity of an item of Work exceeds the approximate quantity by more than 25 percent, the amount of Work in excess of 125 percent of the approximate quantity will be paid for by adjusting the Contract unit price. Such adjustment of the Contract unit price will be the positive or negative difference between the Contract unit price and the actual unit cost of the total pay quantity of the item. At the sole option of City, the actual unit cost of the Work involved in such excess will be determined in accordance with Section 3.4 (by mutual acceptance of a lump sum amount) or Section 3.4 (cost of Work, based on time and materials).

If the cost of an item of Work includes fixed costs or overhead, the fixed costs will be deemed to have been recovered by Contractor by the payments made for 125 percent of the approximate quantity at the Contract unit price for the item and in computing the actual unit cost, the fixed costs will be excluded.

When the compensation payable for the quantity of Work performed in excess of 125 percent of the approximate quantity is less than \$5,000 at the Contract unit price, no adjustment in the Contract unit price will be made unless requested in writing by Contractor within 14 days from the date Contractor became aware, or should have reasonably become aware, of the increase in quantity.

2. **Decreases of More Than 25 Percent:** If the actual pay quantity of an item of Work is less than 75 percent of the approximate quantity, an adjustment in compensation will not be made unless Contractor makes a request in writing within 14 days from the date Contractor became aware, or should have reasonably become aware, of the decrease in quantity. If Contractor makes a request, the actual pay quantity of said item of Work performed will be paid for by adjusting the Contract unit price. Such adjustment of the Contract unit price will be the positive or negative difference between the Contract unit price and the actual unit cost of the total pay quantity of the item, including fixed costs. At the sole option of City, payment for the actual quantity of Work will be made by mutual acceptance of a lump sum amount or cost of Work based on time and materials in accordance with Section 3.4.
3. Payment for the actual pay quantity of such item of Work will in no case exceed the payment which would have been made for the performance of 75 percent of the approximate quantity of such item at the Contract unit price.

3.395 ELIMINATED ITEMS:

If any Contract item of the Work is eliminated in its entirety, payment will be made to Contractor for the actual cost incurred in connection with the eliminated Contract item if incurred prior to the date of notification in writing by City of such elimination.

If acceptable material is ordered by Contractor for an eliminated Contract item prior to the date of notification of such elimination by City, and if orders for such material cannot be canceled, payment for such material will be made at the actual cost to Contractor. In such case, the material shall become the property of City. If the materials can be returned to the vendor and if City so directs, the material shall be returned and Contractor will be paid for the actual cost for returning the material.

The actual costs to be paid by City to Contractor in accordance with this Section will be computed based on Time and Materials in accordance with Section 3.4.

ALTERNATIVE CONTRACT ITEMS

Items identified as Alternative in the Bid may be deleted entirely or in part at the sole discretion of City. The unit price of an Alternative contract item shall not be subject to adjustment due to any increase or decrease in actual quantity.

See Document 00800 for more detail.

CHANGE IN CHARACTER OF WORK

If an ordered change in the specifications materially changes the character of the work of a contract item from that on which the Contractor based the bid price, and if the change increases or decreases the actual unit cost of the changed item as compared to the actual or estimated actual unit cost of performing the work of that item in accordance with the plans and specifications originally applicable thereto, in the absence of an executed contract change order specifying the compensation payable, an adjustment in compensation therefore will be made in accordance with the following.

The basis of the adjustment in compensation will be the difference between the actual unit cost to perform the work of that item or portion thereof involved in the change as originally planned and the actual unit cost of performing the work of the item or portion thereof involved in the change, as changed. Actual unit costs will be determined by the Engineer in the same manner as if the work were to be paid for on a force account basis as provided in Section 3.4; or the adjustment will be as agreed to by the Contractor and the Engineer. The adjustment will apply only to the portion of the work of the item actually changed in character. At the option of the Engineer, the work of the item or portion of item which is changed in character will be paid for by force account as provided in Section 3.4.

If the compensation for an item of work is adjusted under this Section, the costs recognized in determining that adjustment shall be excluded from consideration in making an adjustment for that item of work under the provisions in Section 3.3.

Failure of the Engineer to recognize a change in character of the work at the time the approved contract change order is issued shall in no wise be construed as relieving the Contractor of the duty and responsibility of filing a written protest within the limit as provided in Doc. 00700.

3.4 CHANGE IN CONTRACT PRICE

A General

The Contract Price constitutes the total compensation payable to Contractor for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by Contractor to perform the Work shall be at Contractor's expense without change in the Contract Price.

The Contract Price may only be changed by a change order. Any request for an increase in the Contract Price shall be based on written notice delivered by Contractor to City promptly, but in no event later than 10 days after the date of the occurrence of the event giving rise to the request and stating the general nature of the request. Notice of the amount of the request with supporting data shall be delivered within 45 days after the date of the occurrence, unless City allows an additional period of time to ascertain more accurate data in support of the request, and shall be accompanied by Contractor's written statement that the amount requested covers all amounts (direct, indirect, and consequential) to which Contractor is entitled as a result of the occurrence of the event. No request

for an adjustment in the Contract Price will be valid if not submitted in accordance with this Section.

The value of any Work covered by a change order or of any request for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- A. Where the Work involved is covered by unit prices contained in the Contract documents, by application of unit prices to the quantities of the items involved; or
- B. By mutual acceptance of a lump sum, which may include an allowance for overhead and profit not necessarily in accordance with Section 3.4, provided Contractor submits documentation supporting the direct, indirect, overhead and profit components that compromise the lump sum amounts.

3.5 Change of Contract Time

A General

The term of this agreement shall be three (3) years from the start date of the agreement. The City shall retain the option to extend the term of the agreement for an additional two (2) years, for a possible total of five (5) years.

B Extensions of Time for Delay Due to Excusable Inclement Weather

Not applicable.

3.6 Changed Site Conditions

In the event that a dispute arises between City and Contractor on whether the conditions materially differ or on Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Contract but shall proceed with all work to be performed under the Contract. Contractor shall retain any and all rights provided either by this Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

3.7 Cost Reduction Incentive

The Contractor may submit to the City, in writing, proposals for modifying the specifications or other requirements of the contract for the sole purpose of reducing the total cost of crossing guard services. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards. Cost reduction proposals shall contain the following information:

A description of both the existing contract requirements for performing the work and the proposed changes. An itemization of the contract requirements that must be changed if the proposal is adopted. A detailed estimate of the cost of performing the work under the existing contract and under the proposed change. The estimates of cost shall be determined in the same manner as if the work were to be paid for on a force account basis as provided in Section 3.4, "Cost of Work." A statement of the time within which the City must make a decision thereon. The contract items of work affected by the proposed changes, including any quantity variation attributable thereto.

The provisions of this Section 3.7 shall not be construed to require the City to consider any cost reduction proposal which may be submitted hereunder; proposed changes in basic design of a bridge or of a pavement type will not be considered as an acceptable cost reduction proposal; and the City will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted pursuant to this section nor for any delays to the work attributable to any cost reduction proposal. If a cost reduction proposal is similar to a change in the specifications, under consideration by the City for the project, at the time the proposal is submitted or if the proposal is based upon or similar to Standard Specifications, standard special provisions or Standard Plans adopted by the City after the advertisement for the contract, the City will not accept the

proposal, and the City reserves the right to make the changes without compensation to the Contractor under the provisions of this section

The Contractor shall continue to perform the work in accordance with the requirements of the contract until an executed change order, incorporating the cost reduction proposal has been issued. If an executed change order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision thereon should be made, or such other date as the Contractor may subsequently have specified in writing, the cost reduction proposal shall be deemed rejected.

The City shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in costs from the adoption of all or any part of the proposal. In determining the estimated net savings, the right is reserved to disregard the contract bid prices if in the judgment of the Engineer, those prices do not represent a fair measure of the value of work to be performed or to be deleted.

The City reserves the right where it deems such action appropriate, to require the Contractor to share in the City's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering the proposal. Where this condition is imposed, the Contractor shall indicate acceptance thereof in writing, and that acceptance shall constitute full authority for the City to deduct amounts payable to the City from any moneys due or that may become due to the Contractor under the contract.

If the Contractor's cost reduction proposal is accepted in whole or in part the acceptance will be by a contract change order. The change order shall incorporate the changes in the plans and specifications which are necessary to permit the cost reduction proposal or that part of it as has been accepted to be put into effect, and shall include any conditions upon which the City's approval thereof is based if the approval of the City is conditional. The change order shall also set forth the estimated net savings in service costs attributable to the cost reduction proposal effectuated by the change order, and shall further provide that the Contractor be paid 50 percent of that estimated net savings amount. The Contractor's cost of preparing the cost reduction incentive proposal and the City's costs of investigating a cost reduction incentive proposal, including any portion thereof paid by the Contractor, shall be excluded from consideration in determining the estimated net savings in service costs.

Acceptance of the cost reduction proposal and performance of the work there under shall not extend the time of completion of the contract unless specifically provided for in the contract change order authorizing the use of the cost reduction proposal.

The amount specified to be paid to the Contractor in the change order, which effectuates a cost reduction proposal, shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the work thereof pursuant to the change order.

The City expressly reserves the right to adopt a cost reduction proposal for general use on contracts administered by the City when it determines that the proposal is suitable for application to other contracts. When an accepted cost reduction proposal is adopted for general use, only the Contractor who first submitted that proposal will be eligible for compensation pursuant to this section, and in that case, only as to those contracts awarded to that Contractor prior to submission of the accepted cost reduction proposal and as to which the cost reduction proposal is also submitted and accepted. Cost reduction proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under the provisions of this Section 3.7 if the identical or similar previously submitted proposals were not adopted for general application to other contracts administered by the City. Subject to the provisions contained herein, the City or any other public agency shall have the right to use all or any part of any submitted cost reduction proposal without obligation or compensation of any kind to the Contractor.

Contractor may submit to City, in writing, proposals for modifying the Specifications, or other requirements of the Contract for the sole purpose of reducing the total cost of service.

Prior to preparing a written cost reduction proposal, Contractor shall request a meeting with City to discuss the proposal in concept. Items of discussion will also include permit issues, impact on other projects, impact

on the project schedule, peer reviews, overall merit of the proposal, and review times required by City and other agencies.

- 3.8 Dust Control**
Not applicable
- 3.9 Excavation Safety Plans**
Not applicable
- 3.10 Asbestos-Related Work**
Not applicable.
- 3.11 Substitutions**
No substitutions are allowed in crossing guard services.
- 3.12 Hazardous Materials / Waste**
Not applicable.
- 3.13 Inert Solids and Plant Materials Recycling**
Not applicable

SECTION 4. CONTROL OF WORK

- 4.1 Authority of City**
City shall decide all questions, which may arise as to the quality or acceptability of crossing guard services furnished and Work performed and rate of progress of the Work, all questions that may arise as to the interpretation of the Specifications, and all questions as to the acceptable fulfillment of the Contract on the part of Contractor. City's decision shall be final. City shall have authority to enforce and make effective such decisions and orders which Contractor fails to carry out promptly.
- 4.2 Submittals**
Submit, at Contractor's expense, in duplicate sets, the following items ("Submittals") required by the Contract :
 - Safety Plans
 - Crossing guard Training
 - Crossing guard Replacement in Event of Absence

Submit these Submittals to City for review and approval. Submittals shall include all information requested by each Specification Section. (No partial Submittals.) Incomplete Submittals will be returned not reviewed by City. The data shown on the Submittals shall be complete with respect to performance, materials and similar data to show City the materials Contractor proposes to provide and to enable City to review the information for the limited purposes specified in this Document. Submittals shall be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which it is intended and otherwise as City may require to enable City to review the Submittal. The quantity of each Submittal to be submitted will be as required by individual Specification Documents or this Document. At the time of each submission, give City specific written notice of all variations, if any, that the submitted Submittal may have from the requirements of the Contract Documents, and the reasons therefore. This written notice shall be in a written communication attached to the Submittal transmittal form. In addition, cause a specific notation to be made on each Submittal submitted to City, for review and approval of each such variation. If City accepts deviation, City will note its acceptance on the returned Submittal transmittal form and, if necessary, issue appropriate Contract Modification. Submittal coordination and verification is responsibility of Contractor; this responsibility shall not be delegated in whole or in part to Subcontractors or suppliers.

Contractor's submission to City of a Submittal shall constitute Contractor's representation that it has satisfied its obligations under the Contract Documents, and as set forth immediately above in this paragraph, with respect to Contractor's review and approval of that Submittal.

Designation of work "by others," if shown in Submittals, shall mean that work will be responsibility of Contractor rather than Subcontractor or supplier who has prepared Submittals.

After review by City of each of Contractor's Submittals, one (1) set of material will be returned to Contractor with actions defined as follows:

- A. NO EXCEPTIONS TAKEN - Accepted subject to its compatibility with future Submittals and additional partial Submittals for portions of the Work not covered in this Submittal. Does not constitute approval or deletion of specified or required items not shown on the Submittal.
- B. MAKE CORRECTIONS NOTED (NO RESUBMISSIONS REQUIRED) - Same as item 1 above, except that minor corrections as noted shall be made by Contractor.
- C. REVISE AS NOTED AND RESUBMIT - Rejected because of major inconsistencies or errors that shall be resolved or corrected by Contractor prior to subsequent review by City.
- D. REJECTED - RESUBMIT - Submitted material does not conform to Drawings and/or Specifications in major respect, i.e.: wrong size, model, capacity, or material.

Make a complete and acceptable Submittal at least by second submission. City reserves the right to deduct monies from payments due Contractor to cover additional costs of review beyond the second submission. Illegible Submittals will be rejected and returned to Contractor for resubmission. Contractor shall be in breach of the Contract if Contractor's first resubmittal, following a Submittal which City determines falls within categories C or D above, does not fall within categories A or B above. Favorable review will not constitute acceptance by City of any responsibility for the accuracy, coordination and completeness of the Submittals. Accuracy, coordination, and completeness of Submittals shall be sole responsibility of Contractor, including responsibility to back-check comments, corrections, and modifications from City's review before fabrication. Contractor, Subcontractors, or suppliers may prepare Submittals, but Contractor shall ascertain that Submittals meet requirements of Contract Documents. City's review will be only to assess if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible concept of the completed Project as indicated by the Contract Documents. Favorable review of Submittal, method of work, or information regarding materials and equipment Contractor proposes to furnish shall not relieve Contractor of responsibility for errors therein and shall not be regarded as assumption of risks or liability by City or any officer or employee thereof, and Contractor shall have no claim under Contract Documents on account of failure or partial failure or inefficiency or insufficiency of any plan or method of work or material and equipment so accepted. Favorable review shall be considered to mean merely that City has no objection to Contractor using, upon Contractor's own full responsibility, plan or method of work proposed, or furnishing materials and equipment proposed. City's review will not extend the means, methods, techniques, sequences or procedures of safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

Submit complete initial Submittal for those items where required by individual Specification Sections. Complete submittal shall contain sufficient data to demonstrate that items comply with Specifications. Meet minimum requirements for submissions cited in Specification Sections, shall include motor data and seismic anchorage certifications, where required, and shall include necessary revisions required for equipment other than first named. If Contractor submits incomplete initial Submittal when complete Submittal is required, Submittal may be returned to Contractor without review.

Copy, conform, and distribute reviewed Submittals in sufficient numbers for Contractor's files, Subcontractors, and vendors.

After City's review of Submittal, revise as noted and resubmit as required. Identify changes made since previous Submittal.

Begin no work that requires Submittals until return of Submittals not requiring resubmittal. Do not extrapolate from Submittals covering similar work.

Normally, Submittals will be processed and returned to Contractor within 21 Days of receipt. Submittals received after 12:00 pm will be considered as received on the following Day. For Fridays, the following day will be considered to be Monday.

Distribute copies of reviewed Submittals to concerned persons. Instruct recipients to promptly report any inability to comply with provisions.

All Submittals shall be number-identified by Contractor, prior to submission to City, in accordance with the following:

Sequentially number each Submittal (i.e., “1”, “2”, “3”, etc.) as the basis for number identification of Submittals.

Affix the Submittal number under which each Submittal is made on every copy of product data, sample, certification, etc.

If the Submittal is a resubmittal (including without limitation after an initial Submittal is rejected, returned without review or marked ‘Revise as Noted and Resubmit’), add the suffix designation “A” (i.e., a resubmittal of Submittal 1 would be numbered 1A). Subsequent re-submittals would be identified by the Submittal number and sequential letters (i.e., “B”, “C”, “D”, etc.).

All Submittals shall include all information requested by each Specification Section. No partial Submittals will be accepted unless previously authorized by City. In the event a partial Submittal is authorized, each subsequent different Submittal (as opposed to resubmittal) is given a new number.

Deliver Submittals to City at least 30 Days before dates reviewed Submittals will be needed.

The following table lists the number of initial Submittals required from Contractor for each type of submission, to whom Contractor shall distribute the information, and City’s distribution of reviewed submissions. If Contractor needs more copies of reviewed Submittals returned to it, then either submit additional copies or make copies from the returned transparency submittal. Submittals requiring resubmission will require the same quantity and distribution as an initial Submittal.

| SUBMITTAL | Contractor Initial Submittal | City Submittal Return |
|------------------------------------------------|-------------------------------------|-------------------------------------|
| | # of Copies/ Prints/ Samples | # of Copies/ Prints/ Samples |
| Safety Plans | 3 | 1 |
| Crossing guard Training | 3 | 1 |
| Crossing guard Replacement in Event of Absence | 3 | 1 |
| | | |
| | | |
| | | |
| | | |

Submittal transmittal form, in duplicate, shall contain the following:

- A. Date, revision date, and Submittal log number.
- B. Project name and City’s Project number.
- C. Contractor’s name, address, and job number.
- D. Specification Section number clearly identified.
- E. The quantity of Product Data, or Samples submitted.
- F. Notification of deviations from Contract Documents.
- G. Other pertinent data.

Submittal shall contain the following:

- A. Date and revision dates.
- B. Revisions, if any, identified.
- C. Project Name and Project Number.
- D. The names of:
- E. Contractor, Subcontractor, Supplier, Manufacturer, and separate detailer, when pertinent.
- F. Identification of product material by location within the Project.
- G. Specification Section number.
- H. Applicable reference standards.
- I. Identification of deviations from Contract Documents.
- J. Contractor's stamp, initialed or signed, with language certifying the review of Submittals, verification of field measurements, service criteria and technical standards in compliance with Contract Documents.

RESUBMISSION REQUIREMENTS:

- A. Revise as required and resubmit as specified for initial Submittals.
- B. Indicate any changes that have been made other than those requested by City.
- C. Submit new Product Data and Samples as required for initial Submittals.

NUMBER OF RESUBMISSIONS:

One (1) reexamination of Contractor's Submittals that have been returned for correction or replacement will be included in City's budget. Any additional reexamination of Contractor's Submittals will be considered additional scope services to be paid by Contractor through City. Contractor shall pay City (or City may deduct from any progress or final payment), for engineering personnel, on an hourly basis at 2.5 times direct payroll expenses, and for consultant personnel time at 1.25 times the amount billed City.

Schedule of Shop Drawing and Sample Submittals

Not applicable

Safety Program

Prior to the issuance of a Notice to Proceed, submit three (3) copies of Safety Program specific to these Contract Documents to the City.

Progress Schedule

Not applicable

Product Data

Not applicable

PRODUCT OR CATALOG DATA:

Not applicable

SUPPLEMENTAL DATA:

- 1. Submit number of copies that Contractor requires, plus two (2) copies that will be retained by City.
- 2. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturer's standard data to provide information unique to Project.

Shop Drawings

Not applicable

Samples

Not applicable

Quality Assurance Control Submittals

Not applicable

Project Record Documents

Not applicable

Delay of Submittals

Delay of Submittals by Contractor is considered avoidable delay. Liquidated damages incurred because of late Submittals will be assessed to Contractor.

Optional Review Meeting

At the Contractor's request, in order to facilitate the timeliness of the review process, the City may schedule a meeting to review the materials submitted. If this option is exercised, the following requirements apply:

Request a meeting date with the City at least ten (10) Business Days in advance.

Provide the complete package of Submittal information at least five (5) Business Days in advance of the meeting.

The meeting shall take place at City's office. City will provide the authorized staff to review and respond on the Submittal information during the meeting. Make available for this meeting the project manager, Contractor's safety officer, and someone knowledgeable of all the items submitted and authorized to make substitutions or changes.

4.3 Conformity with Contract Documents and Allowable Deviations

Work shall conform to the requirements indicated in the specifications. City shall be the sole judge as to whether the work deviates from the specifications, and City's decision as to any allowable deviations there from shall be final.

4.4 Order of Work

Contractor is required to following the established days of crossing guard services indicating in contract documents.

4.5 Drawings and Data to be Furnished by City

Not applicable

4.6 Superintendence

Contractor shall designate, in writing before starting Work, an authorized representative who shall have complete authority to represent and act for Contractor. Said authorized representative of Contractor shall normally be available by phone at all times while Work is actually in progress on the Contract. During any period when Work is suspended, arrangements acceptable to City shall be made for any emergency work, which may be required.

Whenever Contractor or an authorized representative is not available on any part of the Work where it may be desired to give direction, orders will be given by City, which shall be received and obeyed by the crossing guard who may have charge of the particular work in reference to which the orders are given. Any order given by City, not otherwise required by the Specifications to be in writing, will, on request of Contractor, be given or confirmed by City in writing.

Contractor shall designate, in writing, the names and telephone numbers of at least three representatives who could be contacted at any time in the event that an emergency occurs.

4.7 Character of Workers

Any subcontractor, or person employed by Contractor or subcontractor, who fails or refuses to carry out the directions of City, or appears to City to be incompetent or to act in a disorderly or improper manner, shall be removed from the Work immediately on the written request of City, and such person shall not again be employed on the Work.

4.8 Layout of Work and Surveys

Not applicable

4.9 Warranty and Inspection

General Representations and Warranties: Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with the terms of Contract Documents. Contractor warrants that all crossing guard services shall be performed in accordance with generally accepted professional standards of good and sound crossing guard practices and all requirements of Contract Documents.

Inspection. City shall at all times have access to the Work for ascertaining the quality of performance is in accordance with the requirements and intentions of the Specifications. All Work done shall be subject to City's inspection and approval.

The day-to-day inspection performed by the various inspectors employed by City shall not constitute approval or ratification of Work improperly done by Contractor. The Director of Public Works, or his/her designee, is the only person authorized to recommend acceptance or rejection of Work.

The presence or absence of an inspector during performance of the Work shall not relieve Contractor of any obligation to fulfill the Contract. It shall be the duty of Contractor to see that all provisions are complied with in detail, irrespective of the inspection given the Work during its progress by City or representatives of City. Any plan or method suggested to Contractor by City or an inspector, but not specified or required, if adopted or followed in whole or in part, shall be used at the risk and responsibility of Contractor; and City and City will assume no responsibility therefore.

4.10 Defective and Unauthorized Work

All Work, which has been rejected, shall be remedied promptly in an acceptable manner at no additional cost to City.

Payment will not be made for any extra work done without written authority, and such Work will be - considered as unauthorized.

If Contractor should fail to comply promptly with any order of City made under the provisions of this, City may cause rejected or unauthorized Work to be remedied, removed, or replaced, and the costs thereof to be deducted from any moneys due or to become due Contractor.

4.11 Construction Equipment and Plant

Not applicable

4.12 Substantial Completion, Final Completion and Final Acceptance

Not applicable

SECTION 5. CONTROL OF MATERIALS

5.1 Source of Supply and Quality of Materials.

Not applicable

5.2 City-Furnished Materials.

The City will not furnish any materials for this Contract.

5.3 Storage of Materials

Not applicable

5.4 Defective Materials

Not applicable.

5.5 Plant Inspection

Not applicable.

5.6 Certificates of Compliance

Not applicable

5.7 State Specification Numbers

Not applicable

5.8 Testing

Not applicable

SECTION 6. LEGAL RELATIONS AND RESPONSIBILITY

6.1 Laws to be Observed

Contractor shall remain informed of and in compliance with all applicable existing and future federal, state, county, and municipal laws, codes, ordinances, rules and regulations, including but not limited to, those cited herein.

6.2 Labor Discrimination

In the performance of the Contract, Contractor shall not discriminate against an employee or applicant for employment because of race, color, religious creed, ancestry, sex, age, national origin, physical handicap, medical condition, or marital status. Section 1735 of the Labor Code and Sections 12990 et seq. of the Government Code are incorporated herein in full by this reference.

6.3 Employment of Labor

In the employment of labor in the performance of the Contract, City desires that Contractor and all subcontractors shall, wherever possible, give first consideration to residents of the County.

6.4 Prevailing Wages

In accordance with provisions of Section 1773 of the Labor Code, the Director of the California Department of Industrial Relations has determined that crossing guard services of routine recurring or usual nature, is excluded from prevailing wage requirements. The Contractor shall keep fully informed of all existing and future State and Federal laws and City ordinances and regulations, which in any manner affect those engaged or employed in the work.. Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

6.5 Hours of Labor and Work

Eight hours' labor constitutes a legal day's work. Contractor shall forfeit as a penalty to City, \$25 for each worker employed in the execution of the Contract by Contractor or by any subcontractor for each day during which such worker is required or permitted to labor more than 8 hours in violation of Labor Code Sections 1810 to 1815, inclusive, except as provided for under Labor Code Section 1815.

Crossing guard services shall be per Attachment A, unless otherwise authorized by the City.

6.6 Apprentices

Not applicable

6.7 Permits and Licenses

Not applicable

6.8 Patents and Copyrights

Contractor shall assume all costs including any costs of defense arising from the use of any copyrighted composition, secret process, patented or unpatented invention, Section, equipment, device, or appliance manufactured, furnished, or used in the performance of the Contract, including their use by City, unless otherwise specifically stipulated in the Specifications.

6.9 Public Safety

Contractor shall furnish all personal equipment for each crossing guard per the Special Provisions of these contract documents.

The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the traveling and pedestrian public.

6.10 Accident Prevention

Contractor shall comply with the California Occupational Safety and Health Act (Labor Code Section 6300 et seq.) and Title 8 of the Code of Regulations, and will also take, or cause to be taken, such additional measures as may be necessary for the prevention of accidents.

Designate one of Contractor's staff as "Site Safety Officer" whose duties shall include the responsibility for enforcing the safety and health requirements of the Occupational Safety and Health Act, and other applicable federal, state and local standards. Submit for review by City the Contractor's safety and health plan. After review by City, the implementation and enforcement of these plans shall become the responsibility of the Site Safety Officer. Any changes in the plans shall be requested by Contractor through the Site Safety Officer for written concurrence by City.

Prior to commencement of Work Contractor shall (1) submit proposals in writing for effectuating provisions for accident prevention, and (2) meet in conference with City to discuss and develop mutual understandings relative to administration of an overall safety program.

During the performance of Work under the Contract, Contractor shall institute controls and procedures for the control and safety of persons visiting the job-Site.

Contractor shall maintain an accurate record of, and shall report to City in writing, all accidents resulting in death, traumatic injury, or damage to property incident to Work performed under the Contract.

City will notify Contractor of any noncompliance with the foregoing provisions. Contractor shall, after receipt of such notice, immediately take corrective action. If Contractor fails or refuses to comply immediately, the matter will be referred to the proper authority. No part of the time lost due to any stop order issued by proper authority shall be made the subject or claim for extension of time or for extra costs or damages by Contractor.

Compliance with the provisions of this Section by Subcontractors will be the responsibility of Contractor.

6.11 Explosives and Stream Pollution

Not applicable.

6.12 Fire Protection Plan

Not applicable

6.13 Interference with Fire Hydrants, Highways, and Fences

Not applicable

6.14 Preservation of Property

Not applicable

6.15 Contractor's Responsibility for Work

Not applicable

6.16 Indemnification

City, and each of their officers, employees, consultants and agents, shall not be liable or accountable in any manner for:

- A Loss or damage that may happen to the Work or any part thereof;
- B Loss or damage to materials, equipment, tools or other things used or employed in performing the Work;
- C Injury, sickness, disease, or death of any person, including, but not limited to, workers and the public; or
- D Damage to property;
- E Resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.

To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Contractor shall assume defense of, and indemnify, and hold harmless City, and each of their officers, employees, consultants and agents, including, but not limited to, the Council, City and each City representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorneys' fees and consultants' fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, any one directly or indirectly employed by any of them or any one for whose acts any of them may be liable, regardless of whether it is caused in part by the negligence of City or by any person or entity required to be indemnified hereunder.

With respect to third party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against City, and each of their officers, employees, consultants and agents, including, but not limited to, the Council, City representative.

Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.

To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the party[s] indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, or completion of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, City may in its discretion back charge Contractor for its costs and damages resulting there from and withhold such sums from progress payments or other contract monies which may become due.

The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to City to the extent of its active negligence.

6.17 Payment of Taxes

Except as otherwise specifically provided in the Special Provisions, the Contract Prices shall include full compensation for all current and future taxes of any type which Contractor is required to pay, whether imposed by federal, state, or local government, and no tax exemption certificate or any other document designed to exempt Contractor from payment of tax will be furnished to Contractor by City.

6.18 Cooperation with Others

City of Cupertino
2015 Contractual

DOCUMENT 00700-31

Crossing guard Services - Rebid

City reserves the right to do other work on or near the Project. Contractor shall cooperate with others and conduct Work so as to facilitate work by City or others and prevent delay, additional expense, or hindrance thereto. Contractor shall request from, and exchange with others, data, and information as necessary to insure proper completion of the project and work of others. Contractor shall furnish copies of correspondence exchanged with other contractors to City.

Contractor shall conduct, adjust, correct, and coordinate Work with work of others so that the Project shall be free of defects.

6.19 Property Rights in Materials

Not applicable

6.20 Rights in Land and Improvements

Nothing in these Specifications shall be construed as allowing Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the Contract for any purpose whatsoever, either with or without compensation, in conflict with any agreement between City and any owner, former owner, or tenant of such land, structure, or building.

6.21 Title to Materials Found on the Work

Not applicable

6.22 Trespass

Contractor shall be responsible for all damage or injury which may be caused on any property by trespass by Contractor, any subcontractor, or their employees in the course of their employment, whether the said trespass was committed with or without the consent or knowledge of Contractor.

6.23 Subcontracting

The Contractor shall give personal attention to the fulfillment of the contract and shall keep the work under the Contractor's control.

No subcontractor will be recognized as such, and all persons engaged in the work of crossing guard services will be considered as employees of the Contractor and the Contractor will be held responsible for their work, which shall be subject to the provisions of the contract and specifications.

The Contractor shall perform, with the Contractor's own organization, contract work amounting to not less than 95 percent of the original total contract price, except that any designated "Specialty Items" may be performed by subcontract and the amount of any designated "Specialty Items" performed by subcontract may be deducted from the original total contract price before computing the amount of work required to be performed by the Contractor with the Contractor's own organization. When items of work in the Bid Form, (Document 00400) are preceded by the letters (S), those items are designated as "Specialty Items." Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the contract item bid price, determined from information submitted by the Contractor, subject to approval by the Engineer.

Subcontracts shall include provisions that the contract between the City and the Contractor is part of the subcontract, and that all terms and provisions of the contract are incorporated in the subcontract. Subcontracts shall also contain certification by the subcontractor that the subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted work. Copies of subcontracts shall be available to the City upon written request, and shall be provided to the City at the time any litigation against the City concerning the project is filed.

Before work is started on a subcontract, the Contractor shall file with the City a written statement showing the work to be subcontracted, the names of the subcontractors and the description of each portion of the work to be subcontracted.

When a portion of the work, which has been subcontracted by the Contractor, is not being prosecuted in a manner satisfactory to the City, the subcontractor shall be removed immediately on the requisition of the City and shall not again be employed on the work.

Contractor shall comply with Subletting and Subcontracting Fair Practices Act commencing with Section 4100 of the Public Contract Code Violations shall subject Contractor to penalties described in the Act.

In accordance with Section 4107 of the Public Contract Code, City Council or its designated authorized officer is the awarding authority for the purpose of consenting to a substitute subcontractor.

6.24 Tunnel Construction Safety

Not applicable

6.25 Cultural Resources

Not applicable

6.26 Sound Control

Contractor shall comply with all local sound control and noise level rules, regulations and ordinances that apply to any work performed pursuant to the contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without the muffler.

6.27 Site Security

Contractor shall take and be fully responsible for all reasonably required measures to protect and maintain the security of persons, existing facilities and property at the Site, including without limitation preventing theft, loss, vandalism and improper concealment of personal property of the City and all persons lawfully present on the Site.

6.28 Public Facilities

Not applicable

6.29 Legal Actions Against the City

No representative, officer, or employee of City, no member of the governing body of the locality in which the Project is situated, no member of the locality in which City was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

6.30 Limit of Liability

City, and each of its officers, the City Council, employees, consultants (including without limitation consulting engineer) and agents including, but not limited to, engineer each other city representative shall have no liability to contractor for special, consequential, or incidental damages, except to the limited extent that these contract documents or applicable public contracting statutes may specify their recovery.

SECTION 7. PROSECUTION AND PROGRESS OF WORK

7.1 Assignment

The performance of the Contract may not be assigned except upon the written consent of the Council. Consent will not be given to any proposed assignment, which would relieve the original Contractor or surety of their responsibilities under the Contract.

Contractor may assign moneys due, or to become due under the Contract, and such assignment will be recognized by City, if given proper notice thereof, to the extent permitted by law, but any assignment of

moneys shall be subject to all proper setoffs in favor of City and to all deductions provided for in the Contract and particularly all money withheld, whether assigned or not, shall be subject to being used by City for the completion of the Work in the event that Contractor should be in default therein.

7.2 Notice to Proceed

The Contract Time will commence to run on the date indicated on the Notice to Proceed. Contractor shall not do any work at the site prior to the date on which the Contract Time commences to run.

7.3 Commencement of Work

Contractor shall not begin Work until receipt from City of the Notice to Proceed, and shall, upon receiving notice, begin Work within the time specified in the notice. The time specified in said notice will allow a period of at least 10 days after the date of said notice for commencement of Work. After receipt of said notice, Contractor shall diligently prosecute the Work to completion. The contract time begins on August 1, 2015. Work is to start at the beginning of the 2015/16 school year in accordance with Attachment A.

No Work shall begin until the Contract, bonds and certificates of insurance required by Section 2 have been received and approved.

7.4 Work Progress Schedule

Not applicable

7.5 Temporary Suspension of Work

By written order to Contractor, City may suspend the Work wholly or in part for an indefinite period, or for such period as City may deem necessary, for any of the following reasons:

- Failure of Contractor to carry out orders given or to perform any provisions of the Contract; or
- The convenience and benefit of City.

Such suspension shall be effective upon receipt by Contractor of the written order suspending the Work and shall be terminated upon receipt by Contractor of the written order terminating the suspension.

If, under authority of Convenience and benefit of City, as stated above, City orders a suspension of all or a portion of the Work, which is the current controlling operation, it will be cause for a time extension if it affects the controlling item of Work.

7.6 Liquidated Damages

The Contractor shall pay liquidated damages to the City of Cupertino in the sum of **Five Hundred Dollars (\$500.00)** for each and every day that crossing guard services are not completed on time and / or designated crosswalk areas are omitted and **Fifty dollar (\$50)** for each event where it is observed over a 30 minute time period that the crossing guard is not properly staging pedestrians in a manner consistent with these contract documents.

The amount of liquidated damage shall be deducted by the City from monies due from the Contractor, or the Contractor's assigned, successors, and sureties shall be liable to the City for any excess.

7.7 Termination of Control

Failure to supply an adequate working force or material of proper quality, or in any other respect to prosecute the Work with the diligence and force specified by the Contract, is grounds for termination of Contractor's control over the Work and for taking over the Work by City.

7.8 Termination of Contract for Cause

Contractor shall be in default of the Contract Documents and City may terminate Contractor's right to proceed under the Contract Documents, for cause, should Contractor commit a material breach of the Contract Documents and not cure such breach within ten (10) calendar days of the date of notice from City to Contractor demanding such cure; or, if such breach is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for

Contractor to avail itself of a time period in excess of 10 calendar days, Contractor must provide City within the ten (10) day period with a written plan acceptable to City to cure said breach, and then diligently commence and continue such cure according to the written plan).

In the event of termination by City as provided above for cause, Contractor shall deliver to City possession of the Work in its then condition, including but not limited to Project records, cost data of all types, and specifications and contracts with vendors and subcontractors, all other documentation associated with the Project, and all crossing guard supplies and aids dedicated solely to performing the Work which, in the normal course of crossing guard work, would be consumed or only have salvage value at the end of the crossing guard service period. Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this Section shall not be interpreted to diminish any right which City may have to claim and recover damages for any breach of the Contract Documents or otherwise, but rather, Contractor shall compensate City for all loss, cost, damage, expense, and/or liability suffered by City as a result of such termination and failure to comply with the Contract Documents.

In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accord with Section 9 herein. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Contractor.

7.9 Termination of Contract for Convenience

- A. City may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever City shall determine that termination is in City's best interest. Termination shall be effected by City delivering to Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated and the effective date of the termination.

- B. After receiving a notice of termination, and except as otherwise directed by City, Contractor shall:
 - 1. Stop Work under the Contract Documents on date and to extent specified in notice of termination;
 - 2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;
 - 3. Terminate all orders and subcontracts to extent that they relate to performance of Work terminated by the notice of termination;
 - 4. Assign to City in manner, at times, and to extent directed by City, all right, title, and interest of Contractor under orders and subcontracts so terminated. City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - 5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of City to extent City may require. City's approval or ratification shall be final for purposes of this section;
 - 6. Transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, all fabricated or un-fabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed drawings, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to City;
 - 7. Use its best efforts to sell, in manner, at times, to extent, and at price or prices that City directs or authorizes, any property of types referred to in preceding paragraph, but Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at price or prices approved by City. Proceeds of transfer or disposition shall be applied to reduce payments to be made by City to Contractor under the Contract Documents or shall otherwise be credited to the price or

cost of Work covered by Contract Documents or paid in such other manner as City may direct;

8. Complete performance of the part of the Work which was not terminated by the notice of termination; and
9. Take such action as may be necessary, or as City may direct, to protect and preserve all property related to Contract Documents which is in Contractor's possession and in which City has or may acquire interest.

C. After receipt of a notice of termination, Contractor shall submit to City its termination claim, in form and with all certifications required by Section 9. Contractor's termination claim shall be submitted promptly, but in no event later than 6 months from effective date of the termination. Contractor and City may agree upon the whole or part of the amount or amounts to be paid to Contractor because of a total or partial termination of Work under this Section. If Contractor and City fail to agree on the whole amount to be paid to Contractor because of the termination of the Work under this Section, City's total liability to Contractor by reason of the termination shall be the total (without duplication of any items) of:

1. The reasonable cost to Contractor, without profit, for all Work performed prior to the effective date of the termination, including Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the schedule of values. Deductions shall be made for cost of materials to be retained by Contractor, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits against cost of Work. Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead not to exceed a total of ten percent of direct costs of such Work. When, in City's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of Contract Documents and excessive actual cost shall be disallowed.
2. A reasonable allowance for profit on cost of Work performed as determined in the preceding paragraph, provided that Contractor establishes to City's satisfaction that Contractor would have made a profit had the Project been completed, and provided further that the profit allowed shall not exceed 5 percent of cost.
3. Reasonable costs to Contractor of handling material returned to vendors, delivered to City or otherwise disposed of as directed by City.
4. A reasonable allowance for Contractor's internal administrative costs in preparing termination claim.
5. Except as provided in this Section, City shall not be liable for costs incurred by Contractor or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, post-termination general administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting Contractor's Bid, attorney's fees of any type, and all costs relating to prosecution of claim or lawsuit.
6. City shall have no obligation to pay Contractor under this Section unless and until Contractor provides City with updated and acceptable as-builts and Project Record Documents for Work completed prior to termination.

- D.** In arriving at the amount due Contractor under this clause, there shall be deducted in whole (or in the appropriate part[s] if the termination is partial):
1. All unliquidated advances or other payments on account previously made to Contractor, including without limitation all payments applicable to the terminated portion of Contract Documents;
 2. Any claim which City may have against Contractor in connection with Contract Documents; and
 3. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Contractor or sold under provisions of this Section, and not otherwise recovered by or credited to City.

7.10 Contractor's Cost Data

Contractor shall maintain cost accounting records for the contract pertaining to, and in such a manner as to provide a clear distinction between, the following six categories of costs of work during the life of the contact:

- A. Direct costs of contract item work.
- B. Direct costs of changes in character in conformance with Section 3.3, Change in Work.
- C. Direct costs of extra work in conformance with Section 3.3, Change in Work.
- D. Direct costs of work not required by the contract and performed for others.
- E. Direct costs of work performed under a notice of potential claim in conformance with the provisions in Section 9.
- F. Indirect costs of overhead.

See also section 3.4, Change in Contract Price, regarding cost accounting records for daily extra work.

City shall have the right to inspect, audit, and copy Contractor's books and records related to the Project wherever located, and to inspect the Site, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. Contractor shall maintain in good order and City shall have the right to inspect and obtain copies of the following documents at all times: all Contract Documents, all Bid Documents, or other cost reduction proposals, all revisions, and all job progress reports and photographs maintained by Contractor.

City or any of its duly authorized representatives shall, from start of work until the expiration of 4 years after filing the Notice of Completion and Acceptance under this Contract or any subcontract under it, have access to and the right to examine any of Contractor's or subcontractor's payrolls, records of personnel, invoices of materials, records of plant and equipment costs, and any and all other directly pertinent books, documents, papers, and records of such Contractor or subcontractors, involving transactions related to said Contract or subcontracts. In the event State or Federal funds are involved in the financing of the project, the State or Federal Government shall have the same rights of inspection as City.

The cost accounting records for this Contract shall be maintained separately from other contracts during the life of this Contract, and for a period of not less than 3 years after the date of acceptance of the Work. If Contractor intends to file claims against City, Contractor shall keep all required cost accounting records until complete resolution of all claims has been reached.

7.11 Coordination with Utilities

Not applicable

7.12 Temporary Facilities

Not applicable

7.13 Project Record Documents

Not applicable

7.14 Preconstruction Conference

City will call for and administer Preconstruction Conference at time and place to be announced (usually the week prior to start of Work).

Contractor and any subcontractors shall attend Preconstruction Conference.

City will distribute copies of minutes to attendees. Attendees shall have 7 Days to submit comments or additions to minutes. Minutes will constitute final memorialization of results of Preconstruction Conference.

7.15 Weekly Progress Meeting

City will schedule and administer weekly progress meetings throughout the first month of crossing guard services, or as needed to determine compliance with these contract documents.

7.16 Right of Way Delays

Not applicable

SECTION 8. MEASUREMENT AND PAYMENT

8.1 Measurement of Quantities

All Work except Work will be paid for at a contract price per unit of measurement and will be measured by City in accordance with the United States Standard Measures and Metric. Unless otherwise specifically provided, City will compute quantities by a method, which, in City's opinion, is best, suited to obtain an accurate determination.

8.2 Deductions from Payments

City may, at its option and at any time, retain out of any amounts due Contractor, sums sufficient to cover claims, filed pursuant to Section 3179 et seq. of the Civil Code.

8.3 Progress Payment

Unless otherwise agreed, Contractor shall submit to City, on or before the first (1st) day of each month, five (5) copies of a request for payment for the cost of the Work put in place during the period from the 1st day of the previous month to the 30th day of the previous month. Such requests for progress payments shall be based upon prices of all labor and acceptable materials incorporated in the Work up until midnight of the last day of that one month period, less the aggregate of previous payments. If Contractor is late submitting its payment request, that payment request may be processed at any time during the succeeding one month period, resulting in processing of Contractor's payment request being delayed for more than a day for day basis.

City shall retain 0 percent of such estimated value of work done and shall pay to Contractor, while carrying on the Work, the balance not retained as aforesaid, after deducting there from all previous payments and all sums to be kept or retained under the provisions of the Contract. However, at any time after 50 percent of the Work has been completed, if City finds that satisfactory progress is being made, City may make any of the remaining progress payments in full for actual Work completed, or may withhold any amount up to 0 percent thereof, as City may find appropriate, based on Contractor's progress. No such estimate or payment shall be required to be made when, in the judgment of City, the Work is not proceeding in accordance with the provisions of the Contract, or when, in City's judgment, the total value of the Work done since the last estimate amounts to less than \$1,000. No such estimate or payment shall be considered to be an acceptance of any defective Work or improper materials. All progress estimates and payments shall be subject to correction in the final estimate.

Contractor shall, at the time any payment request is submitted, certify in writing the accuracy of the payment request and that Contractor has fulfilled all scheduling requirements of this Document 00700 including updates and revisions. The certification shall be executed by a responsible officer of Contractor.

8.4 FINAL PAYMENT

As soon as practicable after Final Acceptance of the Work, Contractor shall submit to City five (5) copies of a final request for payment for the cost of the Work, which request will show deductions for prior payments and any other amounts to be retained under Section 8.2, Deduction from Payments. The amount determined due, less the amount retained, will be paid. This retained amount will not be due or payable until 35 days after the completion of all of the Work including punch list items and the recording of Notice of Completion and Final Acceptance in the manner provided by law, and until after Contractor has furnished City a release of any and all claims by Contractor or Subcontractors (Document 00650) against City arising by virtue of this Contract, except such claims in definite amounts as Contractor may specifically exempt from the operation of the release and the furnishing of any guaranty.

8.5 Scope of Payment

Payment for all items of Work at the unit or lump sum price shall be considered as full compensation for furnishing all labor, materials, tools, equipment, and incidentals necessary to complete the item of Work, and no additional allowance will be made therefore.

Payment for items of Work which are called for in the Specifications or shown on the Drawings but which are not separately identified in the Bid form shall be compensated as part of the bid price of one or more of the items which are listed, and no additional allowance will be made therefore.

8.6 Substitution Of Securities In Lieu Of Retention

Not Applicable

8.7 Effect of Payment

Payment will be made by City, based on City's observations at the Sites and the data comprising the Application for Payment. Payment will not be a representation that City has:

- Made exhaustive or continuous on-Site inspections to check the quality or quantity of Work;
- Reviewed crossing guard means, methods, techniques, sequences, or procedures;
- Reviewed copies of requisitions received from Subcontractors and other data requested by City to substantiate Contractor's right to payment; or made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

SECTION 9. CLAIMS BY CONTRACTOR

9.1 General

A Contract Interpretation Disputes:

Should it appear to Contractor that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, Contractor shall give written notice to City. Contractor shall bear all costs incurred in the giving of such notice. All issues regarding the interpretation of the Specifications shall be referred to City for interpretation and determination. City shall have the right but not the obligation to affirm or disaffirm any City interpretation of the Plans or Specifications, which affirmance or disaffirmance shall be final. All issues regarding the Contract Documents shall be determined by City whose determination shall be final. If Contractor should disagree with City's determination regarding any aspect of the Contract Documents, Contractor's sole and exclusive remedy is to file a claim in accordance with this Section. Notwithstanding and pending the resolution of any claim, Contractor shall diligently prosecute the Disputed Work (as defined in following paragraphs) to Final Completion.

B Work Disputes:

Should any dispute arise under the Contract Documents respecting the true value of any Work performed, the implementation of the Work required by the Contract Documents, any Work omitted, any extra Work which Contractor may be required to perform or time extensions,

respecting the size of any payment to Contractor during the performance of the Contract Documents, or of compliance with Contract Documents procedures, the dispute shall be decided by City and its decision shall be final and conclusive. If Contractor disagrees with City's decision, Contractor's sole and exclusive remedy is to file a claim in accordance with this Section. Notwithstanding and pending the resolution of any claim, Contractor shall diligently prosecute the Disputed Work to Final Completion.

The claim notice and documentation procedure described in this Section applies to all claims and disputes arising under the Contract Documents, including without limitation any claim or dispute by any Subcontractor or material supplier. All Subcontractor and supplier claims of any type shall be brought only through Contractor as provided in this Section. Under no circumstances shall any Subcontractor or supplier make any direct claim against City.

"Claim" means a written demand or written assertion by Contractor seeking, as a matter of right, the payment of money, the adjustment or interpretation of the Contract Documents terms, or other relief arising under or relating to the Contract Documents. In order to qualify as a "claim," the written demand must state that it is a claim submitted under this Section.

A voucher, invoice, payment application, or other routine or authorized form of request for payment is not a claim under the Contract Documents. If such request is disputed as to liability or amount, then the disputed Portion of the submission may be converted to a claim under the Contract Documents by submitting a separate claim in compliance with claim submission requirements.

The provisions of this Section constitute a non-judicial claim settlement procedure, and also a claim presentment procedure by agreement under Section 930.2 of the Government Code, shall survive termination or completion of the Contract Documents, and may not be changed, waived, modified, or its requirements reduced absent a written change order approval by City Council. Contractor shall bear all costs incurred in the preparation and submission of a claim. Pursuant to Government Code Section 930.2, the one-year period in Government Code section 911.2 shall be reduced to 150 days. Any claims presented in accordance with the Government Code shall affirmatively indicate Contractor's prior compliance with the claims procedure herein and previous dispositions under Section 9.2, Procedures, below.

Contractor shall impose the claim notice and documentation requirements in this Contract on Contractor's subcontractors of all tiers, and require them to submit to Contractor all claims against Contractor and/or City within the times and containing the documentation required by this Section. The claim notice and documentation procedure described in this Section applies to all claims and disputes arising under the Contract Documents, whether or not specifically referred to in any specific Portion of the Contract. Government Code Section 930.2 et. seq. applies to this procedure.

9.2 Procedures

Should any clarification, determination, action or inaction by City, Work, or any other event, in the opinion of Contractor, exceed the requirements of or not comply with the Contract Documents, or otherwise result in Contractor seeking additional compensation in time or money for any reason (collectively "Disputed Work"), then Contractor and City shall make good faith attempts to resolve informally any and all such issues, claims and/or disputes. Before commencing the Disputed Work, or within seven (7) Days after Contractor's first knowledge of the Disputed Work, whichever is earlier, Contractor must file a written notice of the Disputed Work with City stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of the Contract Documents. If a written notice of Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice required by this Section, Contractor shall waive its rights to further claim on the specific issue.

City will review Contractor's timely notice of Disputed Work and provide a decision. If, after receiving the decision, Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of the Contract Documents, it shall so notify City, in writing, within seven (7) Days after

receiving the decision that a formal claim will be issued. Within thirty (30) Days of receiving the decision, Contractor shall submit its claim in the form specified herein and all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting its position. Contractor's failure to furnish notification within seven (7) Days and all justifying documentation within thirty (30) Days will result in Contractor waiving its right to the subject claim. If Disputed Work persists longer than thirty (30) days, then Contractor shall, every thirty (30) days until the Disputed Work ceases, submit to City a document titled "Claim Update" which shall update and quantify all elements of the Claim as completely as possible. Contractor's failure to submit a Claim Update or to quantify costs every thirty (30) days shall result in waiver of the claim for that thirty (30) day period. Claims or Claim Updates stating that damages will be determined at a later date shall not comply with this Section and shall result in Contractor waiving its claim(s).

Upon receipt of Contractor's formal claim including all arguments, justifications, cost or estimates, schedule analysis, and documentation supporting its position as previously stipulated, City or its designee will review the issue and render a final determination. City may in its discretion conduct an administrative hearing on Contractor's claim, in which case Contractor shall appear, participate, answer questions and inquiries, and present any further evidence or analysis requested by City to evaluate and decide Contractor's claim.

If Contractor's claims at project completion total less than \$375,000, then claims resolution shall proceed in the manner prescribed by Section 1.5, Chapter 1, Part 3 of Division 2 of the California Public Contract Code. If such claims exceed \$375,000, then Contractor shall prepare a compendium of claims not resolved as a result of these procedures, and submit them in a claim submitted under the Government Claims Act, Government Code Section 901 *et seq.*, for final investigation and consideration of their settlement prior to initiation of any litigation thereon, as required by Government Code Section 945.4. For all claims under or over \$375,000, pursuant to Government Code Section 930.2, the one-year period in Government Code Section 911.2 shall be reduced to 150 days.

Claims shall be calculated in the same manner as Change Orders per Section 3, Scope of Work. Except where provided by law, or elsewhere in these contract documents, if applicable, City shall not be liable for special or consequential damages. Contractor shall be limited in its recovery on claims to the change order calculations set forth in Section 3, Scope of Work.

9.3 Claim Format

Contractor shall submit the claim justification in the following format: (a) Cover letter and certification of the accuracy of the contents of the claim, (b) summary of claim including underlying facts, entitlement, quantum calculations and Contract Document provisions supporting relief, (c) list of documents relating to claim including specifications, Plans, clarifications/requests for information, schedules, cost calculations, and other supporting documents, (d) chronology of events and correspondence, (e) analysis of claim merit, (f) analysis of claim cost, and (g) attach supporting documents referenced in (c).

9.4 Mediation

All claims not subject to the claim resolution procedures set forth in Section 9.2, Procedures, shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties, and, if the parties cannot agree, a mediator selected by the American Arbitration Association from its panel of approved mediators trained in industry mediation. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved claims shall be submitted to the same mediator. The cost of mediation shall be equally shared.

9.5 Exclusive Remedy

Contractor's performance of its duties and obligations specified in this Section and submission and mediation of a claim as provided in this Section is Contractor's sole and exclusive remedy for the payment of money, extension of time, the adjustment or interpretation of Contract Documents terms or other contractual or tort relief arising from the Work. This exclusive remedy and the limitation of liability (expressed herein and elsewhere throughout the Contract Documents) apply notwithstanding the completion, termination, suspension, cancellation, breach or rescission of the Work or the Contract Documents, negligence or strict

liability by City, its representatives, consultants or agents, or the transfer of the Work or the Project to City for any reason whatsoever. Contractor waives all claims of waiver, estoppels, release, bar, or any other type of excuse for non-compliance with the claim submission requirements. Compliance with the claim submission and mediation procedures described in this Section is a condition precedent, and a prerequisite within the meaning of Section 930.6 of the Government Code, to the right to commence litigation or to seek to file a Government Code Claim (where applicable) or to commence any other legal action. No claim or issue not raised in a timely protest and timely claim submitted under this Section may be asserted in any Government Code Claim, in any subsequent litigation, or in any legal action. If Contractor fails to raise any claim(s) or issue(s) in a timely protest and timely claim submitted under this Section, then Contractor may not thereafter assert such claim(s) or issue(s) in any Government Code Claim, subsequent litigation, or legal action. City shall not be deemed to have waived any provision under this Section, if at City's sole discretion; a claim is accepted in a manner not in accord with Section.

END OF DOCUMENT

DOCUMENT 00800**SPECIAL CONDITIONS****1. LOCATIONS**

The project is located at up to sixteen (16) intersections, all in the City of Cupertino, County of Santa Clara. The intersections are as follows:

- | | |
|-----------------------------------|--------------------------|
| 1. Blaney & Forest | (Collins Elementary) |
| 2. Blaney & Suisun | (Eaton Elementary) |
| 3. Greenleaf & Stelling | (Garden Gate Elementary) |
| 4. Bubb & Hyannisport | (Kennedy Middle) |
| 5. De Anza Blvd & Mariani | (Lawson Middle) |
| 6. Vista & Merritt | (Lawson Middle) |
| 7. Vista & Stevens Creek Blvd | (Lawson Middle) |
| 8. McClellan @ Lincoln Elementary | (Lincoln Elementary) |
| 9. Bubb & Regnart | (Regnart Elementary) |
| 10. Barnhart & Tantau | (Sedgwick Elementary) |
| 11. Hyannisport & Fort Baker | (Kennedy Middle School) |
| 12. Orange & McClellan | (Lincoln Elementary) |
| 13. Location to be determined | |
| 14. Location to be determined | |
| 15. Location to be determined | |
| 16. Location to be determined | |

The City reserves the right to add or delete intersections. The City will provide crossing guard services at twelve (12) intersections throughout the duration of this agreement and may add up to four (4) additional locations (location 13-16) at various intersections within the City.

2. SCOPE OF WORK

The work to be performed under this contract is to provide all labor, materials, tools and equipment necessary for crossing guard services at various City intersections as described in these Specifications and to the requirements of the latest edition of the Manual on Uniform Traffic Control Devices California Supplement, Section 7E.02.

The contractor shall render a full-service program to provide adult crossing guards for the City of Cupertino. The contractor will administer and coordinate the program. This Agreement will commence prior to the 15/16 school year, and it shall continue until June 30, 2018, unless extended by written mutual agreement of the parties.

The contractor shall recruit, select, and employ crossing guards and alternate crossing guards as required to provide coverage at each crossing guard post on each day when guards are required in accordance with the adopted school calendars. The contractor is required to communicate with each school benefiting from crossing guard services regarding specific start times and holidays. School specific phone contact information (subject to change) is as follows:

| | <u>Phone Number</u> |
|-------------------------|---------------------|
| Collins Elementary | (408) 252-6002 |
| Eaton Elementary | (408) 255-2848 |
| Garden Gate Elementary | (408) 252-5414 |
| Kennedy Middle | (408) 253-1525 |
| Lawson Middle | (408) 255-7500 |
| Lincoln Elementary | (408) 252-4798 |
| Regnart Elementary | (408) 253-5250 |
| Sedgwick Elementary | (408) 252-3103 |
| Monta Vista High School | (408) 366-7600 |

The contractor is responsible for the application process and determining the suitability and qualifications of the guards hired. All crossing guards employed by the contractor to perform services under this contract shall meet the qualifications specified in these specifications and according to the latest edition of the Manual of Uniform Traffic Control Devices.

The contractor shall remove, and replace, any assigned personnel deemed unacceptable by the City. Replacement personnel shall be assigned immediately after the removal of any personnel.

The contractor shall provide a qualified crossing guard at up to sixteen (16) separate locations, as identified by the City, during specified school hours. In Document 00457 Proposed Crossing Guard Schedule, the contractor is to detail hours at each site. The contractor shall have the capacity to provide crossing guard services at unknown locations (locations 13-16) if the City deems these additional sites necessary.

Should a conflict arise between the contract documents and the other referenced standards the latest edition of the Manual on Uniform Traffic Control Devices California Supplement, Section 7E.02 shall prevail.

3. PROGRAM MANAGEMENT

The contractor shall provide a program manager as required to ensure competent and efficient management of the crossing guard program.

4. FIELD SUPERVISION

The contractor shall hire field supervisors to make on-site visitations at crossing guard sites. One Field Supervisor shall be responsible for the supervision of no more than twenty five (25) crossing guards. The contractor shall provide the name and contact information for the Field Supervisor(s) to the City. **The contractor shall conduct on-site visitations to crossing guards' sites at least three times per school year. The field supervisor is to contact the Service Center at 408-777-3269 prior to each on site visit.**

5. MINIMUM STANDARDS FOR ADULT SCHOOL CROSSING GUARDS

Crossing guards provided by the contractor to provide services under this contract shall:

1. Be at least eighteen (18) years of age.
2. Be physically and mentally capable of performing the duties of a crossing guard.
3. Have the ability to understand, communicate, give and follow oral instructions in English.
4. Have the ability to establish and maintain effective working relationships with children, parents, school officials and law enforcement officials.
5. Have the ability to remain calm and use judgment and initiative in an emergency situation.
6. Be of good moral character.

6. DUTIES OF CROSSING GUARDS

Crossing guards shall:

1. Halt vehicles when necessary by mechanical and hand signal to permit children to cross the road safely.
2. Maintain order among children assembled at street crossing points and permit them to cross only when they can do so safely.
3. Use existing gaps in traffic to help students cross safely. When the natural traffic flow does not allow enough time for children to safely cross a street, the guard shall create gaps by stopping traffic temporarily.
4. Communicate in real time, when applicable, with other adjacent crossing guards to properly coordinate the temporary stopping of traffic between intersections. Purpose of communication is to maximize pedestrian flow, while minimizing the temporary stopping of traffic.
5. Be the first person in the street and the last person out of the street.
6. Report to the Santa Clara County Sheriff the license plate numbers of motor vehicles who violate traffic laws or crossing guard instructions.
7. Make children aware of the elements of traffic safety and operation of pedestrian controls.
8. Report to school authorities the names of children who do not follow safety regulations.
9. Wear a reflective traffic safety vest at all times when on duty.

7. BACKGROUND CHECK & SECURITY CLEARANCE FOR CROSSING GUARDS

The contractor shall contact employers of the crossing guard applicant for the previous five (5) years. Personnel reference shall also be checked if the applicant has not been employed during the last five (5) years. Employment and personal reference checks should be of such a nature as will provide the contractor with the information necessary to determine if the applicant is capable of performing the duties of a crossing guard.

All personnel assigned to work in the City of Cupertino must have successfully passed a background check. The contractor shall provide for fingerprinting each applicant and shall complete a fingerprint identification card which shall be forwarded within five (5) working days to the California Department of Justice (DOJ). The contractor shall not employ any person as a crossing guard who has been convicted of a drug offense, sex offense or a felony, or is otherwise prohibited from working with children.

The contractor shall maintain records of fingerprint identification during the period of this contract and five (5) years thereafter. Such records shall be available to the City for review upon request of the City.

8. TRAINING PROGRAM

The contractor shall provide each crossing guard with appropriate training for the position of crossing guard before assigning a guard to any post. The training program shall include:

1. General indoctrination concerning rules and regulations of employment.
2. Instructions on the proper handling of required reports.
3. Crossing guard techniques appropriate to the guard post.
4. Telephone numbers, and addresses, of the schools served by the crossing guards and local law enforcement.
5. Public relations instructions, including the importance of image, dress and appearance, attitude and general demeanor of a crossing guard.

9. MATERIALS TO BE SUPPLIED BY THE CONTRACTOR

The contractor shall provide each crossing guard with the following equipment:

1. Complete uniform with contractor's identifiable patch or badge (uniform shall be distinctively different from those worn by regular law enforcement officers).
2. Regulation-size, hand-held stop sign.
3. Brass or plastic whistle.
4. Retro-reflective traffic safety vest.
5. High visibility rain coat.
6. Two way radio for crossing guards providing contract work with 500 feet of each other.
7. Cellular phone.

10. CONTRACTORS QUALIFICATIONS

The Contractor bidding on this project must have at least three years of experience providing crossing guard services, preferably for a City comparable to Cupertino in size.

11. ESTIMATED QUANTITIES

| <u>Item</u> | <u>Description</u> |
|-------------|---------------------------------------------|
| 1 | Adult Crossing guard (locations 1 -10) |
| 2 | Adult Crossing guard (locations 11 & 12) |

3 Adult Crossing guard
(locations 13-16 with locations to be determined)

12. EXPLANATION OF BID ITEM NO. 1 - ADULT CROSSING GUARD (LOCATIONS 1-10)

The price bid per unit measure of work shall include all cost for supervision, adult crossing guard labor, equipment, incidentals, overhead costs and direct expenses and materials necessary for maintenance to satisfactorily complete crossing guard services in accordance with these Contract documents.

Any item shown described in these provisions and not specifically listed as a bid item shall be considered as included in this bid items and no additional compensation will be allowed. City may at its sole discretion add or delete any designated crossing site location. Throughout the duration of this contract, a minimum of ten (10) sites will receive crossing guard services. Total hours for Bid Item No. 1 are not exceed 8,200 for the school year. If in the event a location is deleted and an alternate location added, any required and mutually agreed additional time at the new site will be compensated at the established hourly rate.

EXPLANATION OF BID ITEM NO. 2 - ADULT CROSSING GUARD (LOCATIONS 11& 12)

The price bid per unit measure of work shall include all cost for supervision, adult crossing guard labor, equipment, incidentals, overhead costs and direct expenses and materials necessary for maintenance to satisfactorily complete crossing guard services in accordance with these Contract documents.

Any item shown described in these provisions and not specifically listed as a bid item shall be considered as included in this bid items and no additional compensation will be allowed. If in the event a location is deleted and an alternate location added, any required and mutually agreed additional time at the new site will be compensated at the established hourly rate.

EXPLANATION OF BID ITEM NO. 3 - ADULT CROSSING GUARD (LOCATION 13-16)

The price bid per unit measure of work shall include all cost for supervision, adult crossing guard labor, equipment, incidentals, overhead costs and direct expenses and materials necessary for maintenance to satisfactorily complete crossing guard services in accordance with these Contract documents.

Any item shown described in these provisions and not specifically listed as a bid item shall be considered as included in this bid items and no additional compensation will be allowed.

City may at its sole discretion add locations no. 13 - 16 within the City. Location no. 13- 16, if added, will be similar to locations numbers 1-12. The price quoted on the Schedule of Bid Prices for location no. 13-16 is "each" and only for one intersection location. If locations 13-16 are added, they will be added at price quoted in the Schedule of Bid Prices. Bid item no. 3 may be added or deleted in its entirety or by individual location with no payment from the City and no penalty to the City.

13. CONTRACT SECURITY

The Contractor shall furnish a surety bond in the amount equal to four months of the Contract price as security for the faithful performance of the Contract.

14. TIME OF COMPLETION/LIQUIDATED DAMAGES

This contract begins prior to the 15/16 school year and crossing guard services will commence at the beginning of the school year.

The Contractor shall diligently prosecute the work and said work shall be completed on the school coordinated days and at the school specified times, excluding holidays. Contractor is required to communicate and coordinate with the various listed schools.

The Contractor shall diligently prosecute the work to completion as scheduled. Liquidated damages shall be \$500 for each and every day that services are not completed on time and/or designated crosswalk areas are omitted and \$50 for each event where it is observed over a 30 minute time period that the crossing guard is not properly staging pedestrians in a manner consistent with these contract documents.

These amounts of liquidated damages shall be deducted by the City from monies due from the Contractor hereunder, or the Contractor's assigned, successors, and sureties shall be liable to the City for any excess.

15. TERM OF AGREEMENT

With satisfactory performance by the contractor, the term of this agreement shall be three (3) years from the start date of the agreement. The City shall retain the option to extend the term of the agreement for an additional two (2) years, for a possible total of five (5) years. Contractor performance will be documented weekly by the Street / Fleet Supervisor, with deficiencies communicated to the contractor. An annual review of contractor performance will be completed by March 31st of each year. Satisfactory performance will be achieved if annual liquidated damages are less than \$500.

Any such renewal after the first two years shall be accomplished by the City providing a written notice of renewal to the Contractor at least 30 days prior to expiration of the term. Any such renewal shall contain the same provisions as the original agreement, including an increase or decrease in compensation paid to the Contractor. Any increase or decrease in the previous contract price shall be based on the annual percentage change in the Consumer Price Index (CPI) as of June of the year the adjustment is being made. The CPI shall be the San Francisco/Oakland/San Jose Consumer Price Index for all urban wage earners. There will be no CPI adjustment during the first three-year term of the agreement.

At the end of the initial three years of the contract period, and annually thereafter for the duration of the contract, the unit prices on the Schedule of Bid Prices will be increased or decreased in direct proportion to the increase or decrease in the Consumer Price Index (CPI). The most recent CPI for June San Francisco/Oakland/San Jose area for all urban wage earners shall be used.

The City shall have the authority to suspend this agreement, wholly or in part, for such period as deems necessary due to unfavorable conditions or to the failure on the part of the Contractor to perform any provisions of this agreement.

16. HOURS OF WORK

Crossing guard services are to be coordinated with the start times of the various schools benefiting from this contract. The contractor is to coordinate with each school to confirm schedules. Crossing guards are to be in place no later than fifteen (15) minutes prior to the start of each respective school day. Crossing guards are to be in place for a minimum of fifteen (15) minutes at the end of each respective school day. Coordination of school start and end times will include minimum days or any other day where the schedule is not typical and/or scheduled off. It is expected that each school crosswalk site benefiting from crossing guard services will have a minimum of four hours crossing guard time assessed per school day.

17. HOLIDAYS

Refer to the Cupertino Union School District website (<http://cupertino.ca.campusgrid.net>) and the Fremont Union High School District website (www.fuhd.org) for expected holiday schedules.

18. ITEMS AND WORK NOT SPECIFICALLY INCLUDED IN A DESCRIPTION

It is specifically pointed out that any and all items and/or work called for in the specifications, and not included in a description or a specific bid item, shall be included by the bidder in all bid items and no special compensation will be allowed. This includes, but is not limited to, providing of all safety requirements or work and materials required to provide public convenience and public safety, etc.

Prior to beginning any extra work for the project the Contractor is required to have a signed authorization form from the City.

19. PUBLIC CONVENIENCE AND SAFETY

The Contractor shall conduct their operations so as to cause the least possible obstruction and inconvenience to public.

20. PAYMENT

In order to request payment, Contractor shall submit monthly invoices to the City identifying the services performed and the charges for hours worked and hourly rates based upon the agreed unit cost. Contractor shall invoice monthly for actual services completed and payment shall be made monthly, provided that the work performed is to the satisfaction of the City. No payment will be made for months where no work occurred.

21. QUESTIONS

Any questions regarding these specifications should be directed to City of Cupertino, Assistant Director of Public Works, Roger Lee at (408) 777-3350.

22. RESPONSIBILITY OF CONTRACTOR

The City assumes no responsibility whatsoever for loss or damage of equipment owned or operated by the Contractor, agents or employees.

The entire responsibility for any and all injury to the public, to individuals and to property resulting directly or indirectly from the performance of the work hereunder shall rest upon the Contractor, and Contractor agrees to indemnify, expense, claims, costs, suits and damages arising out of the negligence on the part of the Contractor.