

SPECIAL PROVISIONS
General Specifications
**KENSINGTON POLICE PROTECTION &
COMMUNITY SERVICES DISTRICT,
CALIFORNIA**

Seismic Upgrades and Building Alterations Kensington Community Center
59 Arlington Avenue
Kensington, CA 94707

1 GENERAL

The work described herein shall be done in accordance with the "Contract Documents," which are the:

1. Special Provisions
2. Project Plans, consisting of 79 sheets entitled Seismic Upgrades and Building Alterations 3. Kensington Community Center
4. State of California Department of Transportation Standard Specifications 2010 (Standard Specifications (See attachment A pages 1-129 for reference only)
5. California Building Code (CBC), 2016 Edition
6. Uniform Mechanical Code, Latest Edition
7. National Electric Code, Latest Edition

In the event of a conflict in any of these documents, the order of precedence shall be determined by Section 5-1.02 of these Special Provisions.

Whenever the Standard Specifications use the terms State of California, Department of Transportation, Director, Engineer, or Laboratory, the following terms shall be substituted therefor, and any reference to any of the foregoing terms shall be understood and interpreted to mean and refer to such substituted terms as follows:

For State of California – the Kensington Police Protection & Community Services District;

For Department - the Kensington Police Protection & Community Services District

For Director - the Kensington Police Protection & Community Services District General Manager;

For Engineer - William Glass, Glass Associates, Inc., and inclusive of Engineering Consultants to the Architect;

For Laboratory- any laboratory as may be authorized by the Owner's Representative

Definition of Additional Terms Used:

- a. Project: Seismic Upgrades and Building Alterations
Kensington Community Center
59 Arlington Avenue
Kensington, CA 94707
- b. Owner: Kensington Police Protection & Community Services District
Public Safety Building
217 Arlington Avenue
Kensington, CA 94707-1401
- c. Architect: Glass Associates, Inc.

337 Seventeenth Street, Suite 100
Oakland, CA 94612
Attn: William R. Glass, FAIA, Principal
wrglass@glassarchplan.com
(510) 788-5888

d. Consultants:

Structural Engineers:

IDA Structural Engineers
1629 Telegraph Avenue, Suite 300
Oakland, CA 94612
Attn: Steven DeJesse, S.E., President
srdejesse@ida-se.com
(510) 834-1629

Mechanical Engineers:

Eddie Padilla Consulting Engineers Inc.
274 Devonshire Street
Vallejo, CA 94591
Attn: Eddie Padilla, P.E., Principal
eddie.padilla@comcast.net
(707) 980-4049

Electrical Engineers:

Bay Area Consulting Engineers
311 California Street, Suite 720
San Francisco, CA 94104
Attn: Lito Magbitang, Principal
Lito@bacengineers.com
(415) 788-8388

Energy Consultant:

Paul Welshmeyer Architects Energy Consultants
37735 Second Street
The Niles District
Fremont, CA 94536
Attn: Paul Welshmeyer, AIA, Principal
paul@pwaec.com
510-825-0783

Unless otherwise provided, whenever in these Special Provisions attention is directed to specific provisions in the Standard Specifications, such direction shall not be interpreted as excluding other applicable provisions of the Standard Specifications.

Unless otherwise provided, when sections and subsections of the Standard Specifications are used in these Special Provisions, such use is not exclusive and shall not be interpreted as excluding other applicable provisions of said sections and subsections but is only intended to add to or modify such sections or subsections.

Unless otherwise provided, full compensation for compliance with these Special Provisions is included in the contract price and no additional allowance will be made to Contractor therefor.

The Standard Specifications are hereby modified to delete any reference or incorporation of provisions providing for or requiring arbitration of any and all claims and disputes arising under this contract.

2 BIDDING

2-1.06 Bid Documents: Prospective bidders will be furnished with an Invitation for Bids which will state the location and description of the contemplated public works project and will show the approximate estimate of the work to be performed and materials to be furnished with a schedule of work and Bid Alternatives (Bid Alts) for which bids are requested.

2-1.07 Approximate Estimate: The estimate given in the Contract Documents is approximate only, being given as a basis for the comparison of bids, and the Kensington Police Protection & Community Services District does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or part of the work or to omit parts of the work, as may be deemed necessary or advisable by the Owner's Representative.

2-1.31 Examination of Project Plans, Specifications, Kensington Police Protection & Community Services District Invitation for Bids and Work Site: Prior to submitting a bid, the bidder shall carefully examine the Project Plans, Invitation for Bids, all applicable construction standards; the Hazardous Waste Survey and the proposed work site. If any person contemplating submitting a bid for this public works project is in doubt as to the meaning of any part of the Contract Documents, or finds discrepancies in or omissions from the Contract Documents, he or she may submit a written request for interpretation or correction to the Owner's Representative. The written request must be received by the Owner's Representative a minimum of **96 hours prior to bid opening**. Any interpretation or correction of the Contract Documents prior to bid opening will be made only by written addendum issued by the Owner's Representative. A copy of such addendum will be mailed, emailed or faxed to each Planholder. All Addenda will become part of the Bid Documents. **Confirmation to the Owner's Representative of receipt of Addenda is mandatory.** The Kensington Police Protection & Community Services District will not be bound by any other explanations or interpretations of the Contract Documents.

If Bidder is awarded the Contract, Bidder waives any claim arising from any errors, inconsistencies, or ambiguities, that Bidder, its subcontractors or suppliers, or any person or entity under Bidder on the Contract became aware of, or reasonably should have become aware of, prior to Bidder's submission of its Bid including but not limited to discrepancies with regard to conflicts between the Documents and any applicable Federal, State or Local law, ordinance, regulation or requirement. Failure to request clarification is a waiver to any claim by Bidder for expense made necessary by reason of later interpretation of the contract documents by the Building Owner's Representative.

2-1.33 Bid Document Completion: Any references to Opt Out of Payment Adjustments for Price Index Fluctuations in the Standard Specifications are deleted in their entirety.

2-1.33A Bid Forms: All bids shall be made on bid forms obtained from https://order.e-arc.com/arcEOC/x_project.asp?de=2F25075D-1B33-4A34-8FB2-62371AA9503B. The bidder shall submit its bid on the original bid forms furnished by the Kensington Police Protection & Community Services District. Bids submitted on forms other than the forms furnished to the bidder by the Kensington Police Protection & Community Services District will not be considered.

The bid forms to be submitted at the time of and with the bid are:

1. Basic Scope Bid and Bids for Bid Alternatives
2. List of Subcontractors
3. List of Previous Similar Jobs
4. Noncollusion Declaration
5. Bid Guaranty Information and Bidder's Information and Signature
6. Bid Guaranty (Bid Bond or alternate security)

All bids shall give the proposed prices and must bear the original signature of the bidder. Bidders shall fill in all blanks on the bid forms where required. A bid will not be accepted unless the bidder registers as a vendor downloads documents/attachments, and is added to the prospective bidders list for this project.

2-1.338 Registration with DIR: No contractor or subcontractor may be listed on a bid for this public works project unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5. No contractor or subcontractor may be awarded a contract for this public works project unless registered with the DIR pursuant to Labor Code section 1725.5. This public works project is subject to compliance monitoring and enforcement by the DIR.

2-1.33C Subcontractors: The Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100-4113, inclusive (the "Act") shall apply to all subcontracts in excess of one-half of one percent of the total amount of a bid. The Act requires subcontractors, if used for such work, to be listed in the contractor's bid and prohibits the substitution of subcontractors, except as authorized by the Act. Each bidder shall, with respect to the work of any subcontractor in excess of one-half of one percent of the total amount of the bid, include as part of the bid on the bid form provided:

1. The name, business address and DIR registration number of each subcontractor who will perform work or labor or render services to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the Project Plans or other Contract Documents in an amount in excess of one-half of one percent of the Contractor's total bid; and
2. The portion of the work that will be done by each subcontractor. Only one subcontractor shall be listed for each portion.

The purchase of sand, gravel, crushed rock, batched concrete, aggregate, ready-mixed concrete, and/or any other materials produced and furnished by established and recognized commercial plants, together with the delivery of such materials to the work site by the source of the materials or by recognized commercial hauling companies, is not considered as subcontracting under this section.

2-1.33E Rejection of Bids Containing Alterations, Erasures or Irregularities: Bids may be rejected if they show any alterations of forms, additions not called for, conditional bids, incomplete bids, erasures or irregularities of any kind.

2-1.34 Bid Guaranty: All bids shall be presented under sealed cover and shall be accompanied by cashier's or certified check, or by a bidder's bond made payable to the Kensington Police Protection & Community Services District and executed as surety by a corporate surety authorized and admitted to transact a surety business in the State of California in an amount equal to ten percent of the amount of the bid. No bid shall be considered unless such cashier's or certified check, or bidder's bond is enclosed with the bid. Any bidder's bond shall contain provisions for forfeiture consistent with California Public Contract Code section 20172.

2-1.40 Withdrawal of Bid: A bid may be withdrawn prior to, but not after, the hour fixed in the public notice for the opening of bids, provided that a written request to withdraw the bid, executed by the bidder or the bidder's authorized representative, is filed with the Owner's Representative before this deadline. The withdrawal of a bid shall not prejudice the right of a bidder to submit a new bid.

2-1.43 Public Opening of Bids: Bids will be opened and read publicly at the time and place indicated in the Notice to Bidders. Bidders or their authorized agents are invited to be present.

2-1.46 Disqualification of Bidders: Serial bids from the same bidder will not be accepted. This section shall not be interpreted to mean that the same contractor may not be the contractor in one bid and listed as a subcontractor in another bid, provided that no collusion exists.

2-1.48 Competency of Bidders: No bid will be accepted from or contract awarded to a contractor that does not hold a California current and active contractor's license at the time of submission of the Bid: General A or B, qualifying it to perform work under this contract, or has not successfully completed projects of similar character, scope and cost to the proposed project. Bidders will be required to provide a list of previous similar jobs with their bids.

3 CONTRACT AWARD AND EXECUTION

3-1.04 Contract Award: The Kensington Police Protection & Community Services District reserves the right to reject any or all bids. Bids are required for the entire work described herein. All bids will be compared with the Engineer's estimate of work to be completed. Contract award, if any, will be made to the lowest responsible bidder within sixty days from the date bids are opened.

3-1.05 Contract Bonds:

Within ten days after receipt of the Notice of Award, the successful bidder shall provide the following bonds to the Kensington Police Protection & Community Services District :

- a. **Performance Bond:** A performance bond to guarantee the faithful performance of the terms and conditions of the Contract by Contractor, which shall be executed in a sum of not less than one-half of the Contract price;
- b. **Labor and Materials Bond:** A labor and materials bond (payment bond) in accordance with Part 6 of Division 4, sections 8000 *et seq.* of the California Civil Code, to guarantee against any and all claims of subcontractors or other third parties furnishing labor, materials, or supplies for the Contract, which shall be executed in a sum of 100% of the Contract price;
and
- c. **Material Guaranty Bond** A material guaranty bond (warranty bond) to serve as surety for the guarantee requirements outlined in Section 6-3.01B, which shall be executed in a sum of not less than one-half of the Contract price.

Original signed and notarized bond(s) shall be provided in the form provided with the Invitation for Bids (Bond Requirements and Sample Bonds) and be issued by a corporate surety in good financial standing and authorized and admitted to transact a surety business in the State of California for the purposes and in the amount(s) stated above. All bonds shall meet the requirements set forth in the Bond Requirements and Sample Bonds document and include original powers of attorney, seals and notarizations.

Whenever the financial or legal status of any surety on any such bond(s) is/are unacceptable to the Kensington Police Protection & Community Services District, it may make a demand to Contractor for further bond(s) or additional surety, not exceeding the sums originally required. Thereafter, no payment shall be made upon the Contract to Contractor or any assignees of Contractor until such bond(s) or additional surety has/have been provided to the Kensington Police Protection & Community Services District.

3-1.07 Indemnification and Insurance:

INDEMNIFICATION – HOLD HARMLESS.

(a) To the fullest extent permitted by law and without limitation by the provisions of this section relating to insurance, the Contractor shall indemnify, defend (with independent counsel approved by the District) and hold harmless the District from and against all liabilities (including without limitation all claims, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs and costs of alternative dispute resolution) regardless of nature, type, or cause, arising out of or resulting from or in connection with the performance of the Contract. The Contractor's obligations under this Section apply regardless of whether or

not a liability is caused or contributed to by any act or omission of the District, except that the Contractor shall not be obligated to indemnify for liability arising from the sole negligence or willful misconduct of the District. The provisions of this Section survive the completion of the Work or termination of the Contract.

(b) To the fullest extent permitted by law and without limitation by the provisions of this section relating to insurance, the Contractor shall also indemnify, defend and hold harmless the District from and against all liability (including without limitation all claims, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) resulting from any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Contractor or any of the Contractor's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Contractor or its subcontractors, the Contractor shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor. The provisions of this Section survive completion of the Work or termination of the Contract.

Insurance Requirement

A. Contractor shall procure and maintain during the period of performance of this Master Contract and for 24 months following completion, insurance from insurance companies authorized to do business in the State of California, as set forth in this section. These policies shall be primary insurance as to the District so that any other coverage held by the District shall not contribute to any loss under Contractor's insurance.

General liability: (with coverage at least as broad as ISO form CG 00 01 10 01) coverage in an amount not less than \$5,000,000 general aggregate and \$5,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

Automobile liability: (with coverage at least as broad as ISO form CA 00 01 10 01, for "any auto") coverage in an amount not less than \$3,000,000 per accident for personal injury, including death, and property damage.

Contractor's pollution legal liability and/or asbestos legal liability and/or errors and omission

\$1 million per occurrence or claim

If the work involves lead-based paint or asbestos identification/remediation, the pollution liability policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the pollution liability policy must not contain a mold exclusion and a definition of "Pollution" in said policy shall include microbial matter including mold.

Workers' compensation and employer's liability: coverage shall comply with the laws of the State of California, but not less than an employer's liability limit of \$1,000,000.

A deductible or retention may be utilized, subject to approval by the District.

B. Endorsements: The insurance policies shall be endorsed as follows:

For the commercial general liability insurance, the District (including its officers, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contain the provisions required by this contract.

Contractor's insurance is primary to any other insurance available to the District with respect to any claim arising out of this Contract. Any insurance maintained by the District shall be excess of the Contractor's insurance and shall not contribute with it. The Contractor's endorsement of insurance shall include a waiver of any rights of subrogation against the District, and its directors, officers, employees and agents.

Contractor's insurance will not be canceled, limited, amended, reduced in coverage amount, or allowed to expire without renewal until after 30 days' written notice has been given to the District, or after 10 days' written notice in the case of cancellation for non-payment of premium.

C. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by the District, which satisfies the following minimum requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better and a financial size of "\$10 million to \$24 million (Class V) or better", or A Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state. Workers' Compensation and Employer's Liability shall be provided by an A-V rated carrier or by the California State Compensation Fund. If provided by a carrier other than California State Compensation Fund, Contractor shall provide proof of the carrier's A-V rating to District.

D. Provision of Insurance Prior to Commencement of Services. Before commencing any services, Contractor shall furnish certificates of insurance and endorsements affecting coverage on forms provided by District, or on equivalent ISO forms that contain provisions required by this contract.

3-1.18 Contract Execution: The fully executed Contract, original bonds including all required original powers of attorney, seals and notarizations and insurance certificates and endorsements required under the Contract shall be delivered to the Kensington Police Protection & Community Services District Owner's Representative within ten calendar days of Contractor's receipt of the Notice of Award.

The Owner's Representative will supply Contractor with up to three sets of the Invitation for Bids and Project Plans. At least one complete set of the Invitation for Bids and Project Plans shall be kept at the construction site in good condition and made available to the Owner's Representative and other Owner's Consultants specified in these documents at all times. Additional copies of the Invitation for Bids and Project Plans will be provided by the Owner's Representative at Contractor's cost.

3-1.20 Failure to Execute Contract: Contractor's failure to deliver to the Kensington Police Protection & Community Services District Owner's Representative the fully executed Contract within ten calendar days of Contractor's receipt of the Notice of Award shall be cause for the cancellation of the award and the forfeiture of the bid guaranty to the Kensington Police Protection & Community Services District. If the successful bidder refuses or fails to execute the Contract, the Kensington Police Protection & Community Services District may award the Contract to the second lowest responsible bidder. If the second lowest responsible bidder refuses or fails to execute the Contract, the Kensington Police Protection & Community Services District may award the Contract to the third lowest responsible bidder. The refusal or failure by the second or third lowest responsible bidder to deliver to the Kensington Police Protection & Community Services District the fully executed Contract and all documents required by section 3-1.18 within ten calendar days of receipt of the Notice of Award to the respective bidder shall likewise be cause for the cancellation of the award and the forfeiture of the bid guaranty of the respective bidder. In its discretion, the Kensington Police Protection & Community Services District may then re-advertise the project or construct it by day labor.

3-1.21 Return of Bid Guarantees: Within ten days after the opening of bids, the Kensington Police Protection & Community Services District will return the bid guarantees to all bidders except the three lowest responsible bidders. The bid guarantees of the three lowest responsible bidders will be retained until the Contract has been fully executed. In the event all bids are rejected, all bid guarantees will be returned to the respective bidders.

3-1.22 Subcontractors: The successful bidder shall furnish a list of all subcontractors as required under Sections 2-1.33C. The list shall include the name, business address, DIR registration number and the state contractor's license number of each subcontractor on the list and the names of the responsible managing employees whose names appear on the subcontractors' licenses.

4 SCOPE OF WORK

4-1.05 Changes and Extra Work: All changes to the Contract shall be made by written change order only.

All extra work shall be recorded by Contractor on a weekly report signed by both the Owner's Representative and Contractor. The "weekly reports" shall thereafter be considered the true record of extra work performed. A copy of the weekly reports will be furnished to Contractor. Contractor is directed to Section 9-1.04 of this Invitation for Bids.

4-1.06 Compensation for Altered Quantities: Payment and compensation for altered quantities shall conform to the provisions of Section 9-1.06 of the Standard Specifications, except as modified herein.

5 CONTROL OF WORK

5-1.02 Contractor's Copies of Contract Documents: In the event of a conflict in any of the Contract Documents, the order of precedence from highest to lowest shall be as follows:

1. Special Provisions
2. Project Plans, consisting of 79 sheets entitled Seismic Upgrades and Building Alternations Kensington Community Center
3. State of California Department of Transportation Standard Specifications 2010 (Standard Specifications) (See attachment A pages 1-129 for reference only)
4. California Building Code (CBC), 2016 Edition
5. Uniform Mechanical Code, Latest Edition
6. National Electric Code, Latest Edition

5-1.05 Order of Work: The work as shown on the Project Plans and as specified in the Invitation for Bids shall be constructed in a sequence that is satisfactory to and approved by the Owner's Representative.

Contractor shall prepare a work schedule per Section 8-1.02 of the Standard Specifications. The work Schedule shall include regular bi-weekly site meetings with the Owner's Representative. Contractor shall be responsible for ensuring the Site Supervisor and all relevant subcontractor supervisor's are in attendance at the bi-weekly meetings.

Full compensation for the conformance to the requirements of this section is included in the Contract price and no additional allowance will be made to Contractor for this work.

5-1.17 Character of Workers: Contractor is directed to Section 5-1.17 of the Standard Specifications which states:

"If any subcontractor or person employed by the Contractor shall appear to the Owner's Representative to be incompetent or to act in a disorderly or improper manner, he/she shall be discharged immediately on the request of the Owner's Representative, and such person shall not again be employed on the work."

No additional compensation shall be granted to Contractor in the event Kensington Police Protection & Community Services District exercises any part of its rights under this section and any and all costs related to such exercise shall be borne by Contractor.

5-1.20 Cooperation with Other Entities: Attention is directed to Section 5-1.20 of the Standard Specifications.

Other construction may be in progress by other forces within and adjacent to the project area at the same time work is being performed under this Contract by Contractor.

Contractor shall cooperate with the forces performing other work, to the end that such forces may conduct their operations with as little inconvenience and delay as possible. Contractor shall grant such forces access to the project area as is reasonable and necessary to transport materials and equipment to the site of operations by the other forces.

5-1.20B(4)(a) Offsite Staging Areas and Construction Yards: Attention is directed to the plans and specifications regarding Staging Areas and Construction Yards.

If necessary, a Temporary Use Permit shall be obtained by Contractor as required for any offsite construction yard on private property to be used for any of the following:

- a. Stockpiling of equipment and/or materials;
- b. Staging of construction;
- c. Placement of work trailers or mobile offices;
- d. Storage of excavation spoils; or

e. Other construction related activities not specifically enumerated above.

5-1.26 Lines and Grades: Contractor shall carefully preserve all bench marks, grade stakes, and all other survey markers. In the case of willful or careless destruction, Contractor shall bear the cost of replacing the markers.

Contractor shall contact the Owner's Representative directly for coordination of survey staking. Written staking requests must be submitted at least two working days in advance of the date and time stakes are needed.

5-1.278 Examination and Audit: Pursuant to California Government Code section 8546.7, any contract with the Kensington Police Protection & Community Services District involving expenditures in excess of \$10,000 shall be subject to the examination and audit of the California State Auditor for a period of three years after final payment is made to Contractor by Kensington Police Protection & Community Services District under this Contract. Any such examination and audit will be confined to those matters connected with the performance of this Contract.

5-1.30A Inspection: Contractor shall bear all costs associated with the inspection of work or re-inspection of any defective, rejected or unauthorized work as determined by the Owner's Representative's sole discretion. Such costs of re-inspection, including any costs incurred by the Kensington Police Protection & Community Services District for additional staff time or fees for third-party consultant inspectors, will be deducted from one or more progress payments hereunder.

5-1.36A Property and Facility Preservation: Attention is directed to Section 5-1.36 of the Standard Specifications.

At Contractor's sole expense, all fences, gates, landscaping, drainage ditches, sidewalks, irrigation systems, and any other improvements that are damaged, removed or destroyed because of Contractor's operations, shall be replaced in accordance with applicable State, Local or Federal Standards at a minimum and restored to the same or better condition.

5-1.36E Obstructions: Attention is directed to Section 5-1.36 of the Standard Specifications and to the possible existence of underground gas mains, high voltage lines, telephone ducts, storm drains and water and sewers systems, the locations of which are not shown on the Project Plans. The determination of the location of these facilities and the cost of repair or replacement in the event of damage to such facilities are the sole responsibility of Contractor.

Should Contractor alter any public utility or private improvements to facilitate its operations or for its sole benefit which alteration would not be otherwise required, Contractor shall make whatever arrangements are necessary with the owner or controlling authorities, and shall bear all expenses in connection therewith. Any damages to any public utility or private improvement caused by Contractor shall be repaired by Contractor at its sole expense and to the full satisfaction of the Owner's Representative or the controlling authority.

Any subsurface information and data furnished under any part of this Contract are not intended as a representation or warranty but are furnished for information only. It is expressly understood that the Kensington Police Protection & Community Services District will not be responsible for the accuracy of or for any deduction, interpretation or conclusion drawn therefrom by Contractor. The information is made available so that Contractor may have ready access to the same information available to the Kensington Police Protection & Community Services District and is not part of this Contract.

PRIOR TO STARTING ANY EXCAVATION, CONTRACTOR SHALL (AT LEAST TWO WORKING DAYS IN ADVANCE) CALL UNDERGROUND SERVICE ALERT (USA) toll free at (800) 227-2600, PG&E toll free at 811, and East Bay Municipal Utilities District at (866) 403-2683 to provide contacts with all necessary data relative to the proposed excavation. USA will accept calls and process information to participating agencies who have underground facilities in the area between the hours of 7:30 a.m. and 5:00 p.m. daily, except Saturdays, Sundays, and holidays. Between the hours of 5:00 p.m. and 7:30 a.m., calls will be recorded and then processed after 7:30 a.m. For emergency situations, after hours, and on Saturdays, Sundays and holidays, Contractor shall contact the owner of the affected facility.

Contractor shall coordinate all work with the appropriate State, Local, Federal and Kensington Police Protection & Community Services District field personnel. When non-contractor work forces are required at the job site to perform Contract related items of work, Contractor shall give a minimum of two working days advanced notification to the Owner's Representative.

5-1.43 Arbitration: Any references to Arbitration in the Standard Specifications are deleted in their entirety.

6 CONTROL OF MATERIALS

6-2.01 Source of Supply and Quality of Materials: All materials required to complete the work under the Contract shall be furnished by Contractor and shall be free of hazardous substances.

6-3.01 General: Statistical means will not be used by the Kensington Police Protection & Community Services District for determination of Standard Specification compliance.

6-3.01A Material Submittals: Upon award of the Contract by Kensington Police Protection & Community Services District, Contractor shall submit to the Owner's Representative product data and shop drawings as called for in the Plans and Specifications.

For all other materials used on this project, regardless of the type of work, Contractor shall provide to the Owner's Representative and appropriate Consultant the name of the manufacturer and model/part number along with supporting documentation and/or samples that will allow the a determination of the material's acceptability.

The Owner's Representative reserves the right to reject any proposed material. If the Kensington Police Protection & Community Services District obtains information indicating that a listed item is not performing satisfactorily or is found to be defective, that item will be rejected and Contractor shall submit a replacement for review at no additional cost to the Kensington Police Protection & Community Services District.

6-3.01B Material Guarantee: The successful bidder shall unconditionally guarantee project materials and workmanship for a period of one year from the date of recording of the Notice of Completion. The guarantee shall cover 100% of all costs of repairs within the one year period, including all costs of labor, materials, equipment, and incidentals. Except as may be otherwise provided in Section 3-1.05, the successful bidder shall provide a surety bond executed by a corporate surety authorized and admitted to transact a surety business in the State of California in the minimum amount of one-half of the Contract price to cover this guarantee.

6-3.0 5 Quality Assurance: Any Applicable Quality Assurance requirements are addressed in the Project Specifications.

6-4 Water Utility

6-4.01A Construction Water: All water required for the performance of the work shall be provided from existing taps, hose bibs, and gate valves within the property boundary of the project.

Contractor is prohibited from operating fire hydrants.

The acquisition of water through un-metered hydrants or other facilities is a violation of and will be subject to citations and fines.

6-4.01B Water Utility Notification: Contractors or parties requiring work of any kind by the East Bay Municipal Utilities District shall request such services a minimum of 48 hours in advance of the time such services are desired. Work requests which will involve more than eight hours shall be requested a minimum of seven calendar days in advance.

Other than the hours specified in this Invitation for Bids, requests by Contractor for after hours or weekend work is to be avoided whenever possible. Any overtime costs charged by East Bay Municipal Utilities District for such work shall be borne by Contractor.

6-4.01C Water Facility Damage: All damage caused to the East Bay Municipal Utilities District's water system shall be immediately reported to the Owner's Representative.

Damage caused to the East Bay Municipal Utilities District's water system by Contractor's operations shall be repaired by the Contractor at Contractor's sole expense in a manner satisfactory to the East Bay Municipal Utilities District. Such

repairs shall not be charged to the Kensington Police Protection & Community Services District or any Kensington Police Protection & Community Services District project. All repair work shall be witnessed and approved by the East Bay Municipal Utilities District prior to backfilling the excavation.

Contractor is responsible for, at its sole cost and expense, the repair and remediation of damage to East Bay Municipal Utilities District property and facilities.

East Bay Municipal Utilities District may, in its discretion, opt to make the repairs for which Contractor is responsible with its own forces. In such cases, the repairs will be made at Contractor's expense in accordance with the emergency repair rate schedule of the East Bay Municipal Utilities District. The East Bay Municipal Utilities District and/or the Kensington Police Protection & Community Services District may make repairs whenever restoration of service requires extraordinary speed or special equipment. Contractor will be billed accordingly and Kensington Police Protection & Community Services District shall have the right and option to withhold payment hereunder, or a portion thereof, for any such costs billed but not promptly paid by Contractor.

6-4.02 Salvage : All valves, hydrants, and other appurtenances of the water system that are the property of the East Bay Municipal Utilities District and removed by Contractor shall be delivered to the East Bay Municipal Utilities District unless Contractor has obtained specific written approval from the Owner's Representative to otherwise dispose of the materials.

6-4.03 Trade Names and Alternatives: Unless otherwise specified, material and equipment specifications that identify a particular patent, trade name or manufacturer, may be satisfied through substitute materials and equipment accepted by the Kensington Police Protection & Community Services District. Contractor may offer substitute materials and equipment of equal or better quality to the Kensington Police Protection & Community Services District. Any such offer shall be made in writing to the Owner's Representative at least four weeks in advance of the time Contractor wishes to order the materials or equipment. Contractor shall include sufficient data which, together with any other information the Owner's Representative may require, will enable the Owner's Representative to determine the acceptability of the materials and equipment. When the substitute materials or equipment necessitate changes to any part of the work, the information shall include drawings and details showing all such changes and Contractor shall perform these changes as a part of any acceptance of substitute materials or equipment. The use of substituted materials and equipment will be permitted only after written acceptance of the materials and equipment by the Owner's Representative. Such acceptance shall not relieve the Contractor from full responsibility for the sufficiency, quality and performance of the substitute materials and equipment.

The Kensington Police Protection & Community Services District will not, under any circumstances, acknowledge or consider any offers to accept substitute materials or equipment between the dates of public notice of advertisement and the bid opening.

7. LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

7-1.02A(1) Forfeitures for Health and Safety Violations: Contractor shall comply with all applicable provisions of the Local, State and Federal law and any failure to do so shall constitute a breach of the Contract. In the event of any violation Kensington Police Protection & Community Services District shall have the right to impose a charge against Contractor in an amount equal to \$500.00 per violation per day. Prior to the imposition of any charge hereunder, Kensington Police Protection & Community Services District shall first provide a written notice to Contractor of the violation and setting forth a reasonable period of time for Contractor to cure the violation(s). In the event Contractor fails to cure any such violation within the time provided, Kensington Police Protection & Community Services District shall have the right, in addition to all other rights and remedies available to Kensington Police Protection & Community Services District, to deduct and withhold as a permanent forfeiture by Contractor the appropriate amounts from any payment otherwise due Contractor under this Contract.

7-1.02K(2) Wages: Pursuant to Labor Code sections 1770 *et seq.*, each laborer or mechanic of Contractor or any subcontractor engaged in work on the project under this contract shall be paid not less than the hourly wage rate of per diem wages set forth in the prevailing wage rate schedule published by the Director of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between Contractor or any subcontractor and such laborers and mechanics. A copy of the schedule of prevailing wage rates can be obtained online at www.dir.ca.gov .

Any laborer or mechanic employed to perform work on the public works project under this Contract, which work is not covered by any of the foregoing classifications, shall be paid not less than the prevailing wage rate of per diem wages specified herein for the classification which most nearly corresponds to the work to be performed by the worker.

The foregoing specified prevailing wage rates are minimum rates only, and Contractor may pay any wage rate in excess of the applicable rate.

Pursuant to Labor Code Section 1775, Contractor as a penalty to the owner shall forfeit not more than \$200.00 for each calendar day, or a portion thereof, for each worker paid less than the prevailing wage rate established by the Department of Industrial Relations for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor.

Contractor shall only provide prevailing wage reports upon written request from Kensington Police Protection & Community Services District or as required by law.

7-1.02K(4) Apprentices: Contractor agrees to comply with Chapter 1, Part 7, Division 2, sections 1777.5 *et seq.* of the California Labor Code. These sections require contractors and subcontractors to employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice work for each five hours of journeyman work (unless an exception is granted in accordance with Section 1777.5), and the contractors and subcontractors shall not discriminate among otherwise qualified employees as apprentices solely on the ground of sex, race, religion, creed, national origin, ancestry, or color. Only apprentices as defined in Labor Code section 3077, who are in training under apprenticeship standards and who have written apprentice agreements will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the prime contractor for all apprenticeable occupations.

7-1.0 2K(6)(a)(1) Notice to Vendors: Attention is directed to the current OSHA Standards. All equipment, tools and materials which are furnished and/or installed as part of this Contract shall meet or exceed the aforementioned standards in order to be considered acceptable.

7-1.02K(6)(b) Excavation Safety: When the digging or excavation occurs during project construction Contractor shall:

- a. Promptly notify Kensington Police Protection & Community Services District in writing of the following conditions before any such conditions are disturbed:

1. Material that the Contractor believes may be hazardous waste as defined in Health and Safety Code section 25117 that is required to be removed to a Class I, Class II or Class 111 disposal site in accordance with provisions of existing law;
 2. Subsurface or latent physical conditions at the site differing from those indicated in the Invitation for Bids; and
 3. Physical conditions at the site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in the type of work under the Contract.
- b. The Owner's Representative will investigate the conditions and will issue a change order under the terms of the Contract if it finds that the conditions warrant it.
- c. If a dispute arises between Kensington Police Protection & Community Services District and Contractor as to whether a change order is warranted, Contractor shall not be excused from any scheduled completion date provided for in the Contract, but shall proceed with all work to be performed under the Contract.

7-1.02L(2)(a) Patents and Royalties: All fees, royalties, or claims for any patented invention, article, process or method that may be used upon or in any manner connected with the work under this Contract shall be paid by Contractor. Contractor and its sureties shall protect and hold harmless Kensington Police Protection & Community Services District and its officers, agents, and employees from any and all demands made for such fees royalties or claims brought or made by any third party, and before the final payment is made on the account of the Contract, Contractor shall, if requested by Kensington Police Protection & Community Services District, furnish acceptable proof of a proper release from all such claims and liabilities.

Should Contractor, its officers, agents, or employees, or any one of them be enjoined from furnishing or using any invention, article, material, or plans supplied or required to be supplied or used under the Contract, Contractor shall promptly substitute other articles, materials, or appliances in lieu thereof of equal efficiency, quality, finish, suitability, and market value, and satisfactory in all respects to the Owner's Representative. In the event that the Owner's Representative elects, in lieu of such substitution, to have supplied and to retain and use any such invention, article, materials, or plans as may be required to be supplied by the Contract, Contractor shall pay such royalties and secure such valid licenses as may be requisite and necessary for Kensington Police Protection & Community Services District, its officers, agents, and employees, or any one of them to use such invention, article, materials, or appliance without being disturbed or in any way interfered with by any proceeding in law of equity on account thereof. Should Contractor neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then in that event the Owner's Representative shall have the right to make such substitutions or Kensington Police Protection & Community Services District may pay such royalties and secure such licenses and charge Contractor even though final payment under the Contract may have been made.

7-1.02M(3) Mined Materials: California Public Contract Code section 20676 prohibits surface mining operators which are subject to the Surface Mining and Reclamation Act of 1975 (SMARA) from selling California mined construction material to the Kensington Police Protection & Community Services District unless the operator is identified in a list referred as the **3098 List**. The List, which is maintained by the Department of Conservation's Office of Mine Reclamation (OMR), changes throughout the year and can be viewed at the OMR website: http://www.consrv.ca.gov/OMR/ab_3098_list/index.htm. To confirm whether or not a specific operator is on the List at any given time. Contractor shall call the OMR at (916)323-9198.

7-1.03A Maintaining Traffic: Attention is directed to Sections 7-1.04 of the Standard Specifications and to the following modifications thereof:

If construction is within Kensington Police Protection & Community Services District-owned or Contra Cost County right-of-way, provisions shall be made for the safe passage of public traffic through the work site at all times consistent with the requirements of Kensington Police Protection & Community Services District or Contra Costa County.

Contractor shall furnish and install and maintain project identification signs at each end of the project or as directed by the Owner's Representative two weeks prior to any construction activity.

Two weeks prior to any construction activity, advance notice signs for road closures shall be furnished and installed by Contractor at each end of the project and shall remain in place throughout the duration of the subject closure. Details of panel

construction and lettering shall be approved by the Owner's Representative.

Contractor shall furnish, install, and maintain at its expense all barricades, signs, lights, and other devices necessary to adequately warn of any obstructions to the traveled and pedestrian way and provide flaggers as necessary for the safety of public traffic and pedestrians and to provide access to property adjacent to the worksite.

Contractor shall comply with the current edition of the California Manual of Uniform Traffic Control Devices (CA MUTCD) for all items related to traffic within the work site.

Rain and other occurrences that may cause the suspension or delay of the work shall in no way relieve Contractor of its responsibility to provide traffic control and public access through the work site as specified herein. At all times, Contractor shall keep at the work site such materials, forces and equipment as may be necessary to keep roads, streets, and driveways within the work site open to traffic and in good repair and shall expedite the passage of such traffic, using such forces and equipment as may be necessary.

Should Contractor fail, in the opinion of the Owner's Representative, to provide all the materials, forces and equipment necessary to maintain traffic through the work site as set forth herein, Kensington Police Protection & Community Services District may take steps necessary to remedy any such failure, including but not limited to causing such work to be performed and/or suspending any further work under the Contract. Any such remedial cost and expense incurred by the Kensington Police Protection & Community Services District, plus an administrative charge of 15%, shall be immediately due and payable by Contractor and may be deducted from any amounts owed to Contractor hereunder. In the event there are insufficient sums owed to Contractor hereunder to cover the foregoing costs and charges, Kensington Police Protection & Community Services District shall have the right to pursue any other remedy to recover the same, including but not limited to, proceeding against any surety or bond in favor of Kensington Police Protection & Community Services District. Kensington Police Protection & Community Services District's rights under Section 7 -1.02 are intended to be in addition to and not in lieu of any charges imposed by Kensington Police Protection & Community Services District against Contractor under Section 7-1.02A(1) above for violations of law.

Contractor shall be responsible for informing emergency response agencies operating within the area of the work of obstructions to either public or private roads caused by reason of Contractor's operations hereunder.

Contractor shall make provisions for the safe passage of pedestrians around the project work site at all times.

8 PROSECUTION AND PROGRESS

8-1.01A Assignments: Once awarded, this Contract shall not be transferred, assigned, or sub• contracted, except as herein expressly provided without the prior written consent of the Kensington Police Protection & Community Services District in the Kensington Police Protection & Community Services District 's sole and absolute discretion.

8-1.04 Standard Start: All work shall be performed and completed between March 18, 2019 and August 16, 2019. The building will be available for construction-related work in accordance with the Conditions of Approval determined by the Department of Conservation & Development, Contra Costa County and cited in the Drawings and Specifications. Bidder shall be responsible for conforming with said guidelines and requirements governing after-hours and weekend work.

The Owner must have beneficial occupancy and building must have an occupancy permit from the Contra Costa County Department of Conservation & Development Department Building Department on or prior to September 12, 2019.

Contractor shall begin work within ten calendar days after the date authorized in the Notice to Proceed and shall diligently prosecute the Contract to completion before the expiration of:

158 Calendar Days

Time is of the essence of this contract. Please note:

8-1.05 Time: Calendar days will be counted beginning with the day Contractor begins work unless otherwise directed by the Owner's Representative, Contractor shall not conduct any activities that generate noise earlier than the start and end times defined by Conditions of Approval determined by the Department of Conservation & Development, Contra Costa County and cited in the Drawings and Specifications

Materials testing, survey, water system and inspection services will be provided on regular business days.

8-1.10 Liquidated Damages: Contractor hereby agrees that Contractor shall pay to the District liquidated damages in the amount of \$500 per day for each and every calendar day delay commencing September 13, 2019. By entering into this Agreement, Contractor agrees that District will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that this amount is not a penalty, but is reasonable estimate of the loss that District will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. District may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between District and Contractor.

9 MEASUREMENT AND PAYMENT

9-1.04 Force Account Work: All work done on a force account basis shall be recorded weekly on report sheets prepared by Contractor and signed by both the Owner's Representative and Contractor. Such reports shall thereafter be considered the true record of force account work performed during the project. Such reports shall be furnished to the Owner's Representative and a copy retained by Contractor.

All extensions of labor, equipment, and material costs shall be completed by Contractor and submitted to the Owner's Representative within 30 days of the completion of the extra work. Completed and extended extra work reports received later than the times herein prescribed may be deemed invalid and rejected without payment at the discretion of the Owner's Representative.

9-1.07 Payment Adjustments For Price Index Fluctuations: Any references to Opt Out of Payment Adjustments for Price Index Fluctuations in the Standard Specifications are deleted in their entirety

9-1.16 Progress Payments: Once each month the Contractor shall submit a Request for Payment to the Kensington Police Protection & Community Services District. The payment request shall represent the Contractor's good faith estimate of the percentage of the work completed and accepted materials purchased by Contractor but not installed, less amounts previously paid or withheld. The Owner's Representative will certify to the Kensington Police Protection & Community Services District that either the amount requested is correct and payable or that a lesser amount is certifiable and payable within 5 working days of receipt of the Contractor's Request for Payment. The Kensington Police Protection & Community Services District will retain five percent of such certified value of the completed work and the unused materials. The Kensington Police Protection & Community Services District will pay the certified funds less withheld funds within 10 days of receipt from the Owners representative a certified Request for Payment. Withheld funds will be paid to the Contractor within 10 days of issuance of the Notice of Completion by the Owner's representative.

The Kensington Police Protection & Community Services District may, at its option and at any time, retain out of any amounts due Contractor sums sufficient to cover any unpaid claims of Kensington Police Protection & Community Services District or others, provided that sworn statements of all non-Kensington Police Protection & Community Services District claims shall have been filed with the Kensington Police Protection & Community Services District General Manager.

9-1.16E(6) Substitution of Securities for Withheld Amounts: Pursuant to Public Contract Code section 22300, securities maybe substituted for any moneys withheld by Kensington Police Protection & Community Services District to ensure performance under this Contract, provided that substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmer's Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 USC sections 1921 *et seq.*), and where federal regulations or policies or both do not allow the substitution of securities. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the Kensington Police Protection & Community Services District, or with a state or federally chartered bank as the escrow agent, which shall then pay such moneys to Contractor. The Director of Finance is authorized to execute substitution of securities agreements on behalf of the Kensington Police Protection & Community Services District. The Kensington Police Protection & Community Services District will return the securities to Contractor upon satisfactory completion of the Contract as determined by Kensington Police Protection & Community Services District in its sole discretion and the resolution of all outstanding claims against the securities.

Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Securities eligible for investment under this section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit or any other security mutually agreed to by Contractor and the Kensington Police Protection & Community Services District, provided that the substituted security is equal to or not less than five percent of the Contract amount.

Security substitutions must be submitted by Contractor and approved by Kensington Police Protection & Community Services District prior to the time of the first progress payment to be made under the Contract. No other method of substituting securities for retention will be accepted. The security substitution shall be done only upon execution of an agreement satisfactory to Kensington Police Protection & Community Services District which

includes the following

provisions:

- a. The amount of securities to be deposited;
- b. The terms and conditions of conversion to cash in case of the default of Contractor; and
- c. The procedure for return of securities upon completion of the Contract.

9-1.17D Final Payment and Claims: The processing of payment of the final Request for Payment shall not be commenced less than 35 days after the date of recording of the Notice of Completion with the County Recorder's Office. Contractor is advised that it takes approximately ten days for a check to be issued following a request for payment.

Contractor shall submit its written statement of all claims for additional compensation under the Contract to the Owner's Representative within 15 days after submission to Contractor of the semi-final Request for Payment.

If Contractor does not file a claim within the 15 day period, or upon Contractor's approval, the Owner's Representative will issue a final written certification and the Kensington Police Protection & Community Services District shall pay to Contractor the entire sum due after deducting all previous payments, if any, and all amounts to be retained under the provisions of the Contract.

If Contractor files a claim within the 15 day period, Owner's Representative shall then consider and investigate such claim, and shall make such revision in the final quantities as the Owner's Representative may find to be due, and shall then make and issue a final written certification. The Kensington Police Protection & Community Services District will pay the amount due, after deducting all previous payments, if any, and amounts to be retained under the provisions of the Contract.

Any and all prior partial Requests for Payment, certifications and payments shall be subject to correction in the final estimate and payment.

The final Requests for Payment and certification shall be conclusive and binding against both parties to the Contract on all questions relating to the performance of the Contract and the amount of work done thereunder and compensation therefor, except in the case of gross error.

9-1.17D(3) Final Determination of Claims: Claims filed by Contractor shall be in sufficient detail to enable the Owner's Representative to determine the basis and amount of the claims. If additional information is required by the Owner's Representative, Contractor shall provide such information to the Owner's Representative no later than the 15th day after receipt of the written request from the Owner's Representative. If the 15th day falls on a weekend, holiday, or day Kensington Police Protection & Community Services District offices are closed, then the information shall be provided to the Owner's Representative no later than close of the next business day. Failure to submit the requested information to the Owner's Representative within the time specified will be sufficient cause for denying the claim.

Contractor shall keep full and complete records of the costs and additional time incurred for any work for which a claim for additional compensation is made. The Owner's Representative or any designated claim investigator or auditor shall have access to those records and any other records as may be required by the Owner's Representative to determine the facts or contentions in the claims. Failure to grant access to such records shall be sufficient cause for denying the claims.

Claims submitted by Contractor shall be accompanied by a notarized certificate containing the following language:

Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code sections 12650 *et seq.*, the undersigned,

(Name) of

(Title)

(Contractor)

hereby certifies that the claim for additional compensation made herein is supported by a true statement of the actual costs incurred and time expended on this project, and is fully documented by records maintained by Contractor.

Dated _____

IS/ _____

Subscribed and sworn before me this__ day of

Notary Public

My Commission Expires _____

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

Any overhead claim shall be subject to audit by the Kensington Police Protection & Community Services District at its discretion.

Any costs or expenses incurred by the Kensington Police Protection & Community Services District in reviewing or auditing any claims that are not supported by Contractor's cost accounting or other records shall be deemed to be damages incurred by the Kensington Police Protection & Community Services District within the meaning of the California False Claims Act.