

CITY of San Pablo
PUBLIC WORKS Department

**SAMPLE
PROPOSAL
AND
CONTRACT
FOR**

Wildcat Creek Trail Crosswalk

Contract No. PW-219-1

For use in conjunction with the State of California Department of Transportation Standard Specifications dated May 2006, Standard Plans dated May 2006, the current City of San Pablo Standard Details, the latest General Prevailing Wage Rates, and the California Department of Transportation Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished.

Bids Open: Monday, April 25, 2011 @ 2:00 p.m.

PROPOSAL SECTION

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Note: Read instructions in the “Proposal Requirements and Conditions” section of the Special Provisions.

Bidders shall confirm with the City, prior to delivering their bid, the number of Addenda, if any, which have been issued, by checking the City’s web site, www.sanpabloca.gov, where Addenda shall be posted, under “Business – Bids for Construction” or telephoning the city offices (510-215-3030).

All bidders must initial Acknowledgment of Addenda section herein.

It is bidder’s responsibility to confirm it is on the planholders list held by City to ensure bidder receives any communications from city, such as Addenda. Bidders shall provide email address to city per Special Provisions section 2.10 “Communications and Notifications”. This is especially important for bidders who do not directly purchase plans from City.

Submit all of the following forms (pages with numbering 1 through 12) in this “Proposal” section (which may be colored coded for convenience purposes only), including bid bond and any other specified exhibits, in accordance with Notice to Contractors and Special Provisions Section 2 “Proposal Requirements and Conditions” herein.

Proposal to the City of San Pablo
City Clerk's Office, Building 1
City of San Pablo, 13831 San Pablo Ave., San Pablo, CA 94806
510 215 3000

Wildcat Creek Trail Crosswalk

CONTRACT NO. PW- 219 -1

Name of Bidder _____

Business Address _____

Telephone Number (____)

Contractor's License No. _____ Expiration date: _____

Description of Work and Proposed Agreement

The work to be done and referred to in this Proposal is in the City of San Pablo, Contra Costa County, State of California, and shall be constructed in accordance with the Standard Specifications of the State of California, the Special Provisions and the Contract annexed hereto.

The work to be done is shown on the plans entitled: Wildcat Creek Trail Crosswalk, by Hexagon Transportation Consultants, 4 Sheets

Pursuant to the Notice to Contractors, the undersigned hereby proposes and agrees to furnish all work, labor, material, transportation, equipment and services necessary for the completion of the above-named project within the City of San Pablo, California, all in conformity with plans and specifications prepared by the City Engineer and now on file at the City of San Pablo Offices, 13831 San Pablo Ave., San Pablo, CA.

Bidder acknowledges that he has carefully examined the location of the proposed work, the attached proposed form of contract, and the plans. He proposes and agrees if this proposal is accepted, that he will contract with the City of San Pablo in the form of the contract provided to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time prescribed and according to the requirements of the City Engineer as set forth in the plans and contract, and that bidder will take in full payment therefor an amount based on the lump sum price specified herein below for the work, the total value of said work (Total Bid) herein being \$ _____ (Insert Total).

The price for lump sum bid items shall include all costs for the construction of the improvements with appurtenances, including labor and material, as shown on the plan and herein described.

Bids are submitted for the entire work. The amount of the bid for comparison purposes will be the total of all items, excluding additive alternative items, if any.

The Contractor's competitive bid is the "Total Base Bid" or "Total Bid" amount shown herein, which excludes Additive Alternate items. Additive Alternate items (if any) will be selected (or not selected) for inclusion in the contract work at the time of award, or by Change Order after award if appropriate.

The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Item Total" or "Extension" column shall be the product of the unit price bid and the estimated quantity for the item. The "Total Bid" shall be the sum of all item totals/extensions.

In the event there is more than one bid item in a Bidding Schedule, the bidder shall furnish a price for all bid items in the Schedule, and failure to do so may be grounds for its rejection as non-responsive. The bidder shall state in figures the unit prices or the specific sums as the case may be, for which it proposes to supply the labor, materials, supplies, or machinery, and completely perform the Contract.

If the unit price and the total amount for any items are not in agreement, the unit price alone will be considered as representing the bidder's intention and the total will be corrected to conform thereto. Discrepancies between the indicated sum of any column of figures and the correct sum thereof shall be resolved in favor of the correct sum.

Proposals may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided in (a) or (b), as follows:

- (a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount as the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;
- (b) (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentagewise the unit price or item total in the CITY's Final Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

In the case of a discrepancy between the Total Bid and the sum of all item totals/extensions (due to math errors by the Bidder), the extensions shall prevail and the CITY shall reconcile the error.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the items total shall prevail.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the *CITY*, and that discretion will be exercised in the manner deemed by the *CITY* to best protect the public interest in the prompt and economical completion of the work. The decision of the *CITY* respecting the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.

In accordance with Public Contract Code 5103, within five days after the opening of bids, a bidder may withdraw its bid providing the bidder can establish to the CITY's satisfaction that a mistake was made in preparing the bid. A bidder desiring to withdraw shall give written notice to the CITY, specifying, in detail, how the mistake occurred and how the mistake made the bid materially different than it was intended to be. Withdrawal will not be permitted for mistakes resulting from errors in judgment or carelessness in inspecting the site of the work or in reading the Contract Documents. Other than as provided above for discrepancies, CITY will not waive clerical errors.

The quantities given in the Notice to Contractors, Proposal, and Contract forms are approximate only, being given as a basis for the comparison of Proposals, and the City does not, expressly or by implication, warrant that the actual amount of work will correspond therewith, and reserves the right to increase or decrease the amount of any item or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by the City Engineer. Payment for changes in quantities shall be in accordance with Caltrans Standard Specifications section 4.1.03.B, as revised herein and in the Special Provisions. No allowance will be made for anticipated profit on work which is deleted or decreased.

NOTE: The City reserves the right to reject any and all bids.

ACKNOWLEDGMENT OF ADDENDA

The undersigned Bidder acknowledges receipt of the following Addenda, which have been considered in preparation of this Bid:

No. _____	Dated _____	Initial Here:
No. _____	Dated _____	Initial Here:
No. _____	Dated _____	Initial Here:
No. _____	Dated _____	Initial Here:
No. _____	Dated _____	Initial Here:
No. _____	Dated _____	Initial Here:

Bidders Bond Information

Accompanying this proposal is a "cashier's check" or "bidder's bond," as they may be, in an amount equal to at least ten percent of total of the bid.

If this proposal is accepted and the undersigned fails to enter into the contract and to give the two bonds in the form and amount required within eight (8) days, not including Sundays and legal holidays, after the bidder has received notice from the City Engineer, the City Engineer may, at his option, determine that the bidder has abandoned the contract. On such determination, this proposal and the acceptance of it shall be null and void and the security accompanying this proposal shall be forfeited and shall be the property of the City of San Pablo.

Noncollusion Statement

The undersigned, as bidder, declares that the only persons or parties interested in this proposal as principals are those named herein and that this proposal is made without collusion with any other person, firm or corporation. In submitting this proposal the undersigned bidder agrees that if it is determined that he is the successful bidder, he will execute the noncollusion affidavit.

List of Subcontractors

In conformance with Section 5.4.01, Subcontracting, of the Special Provisions, the Bidder has attached as Exhibit A, a list of the name and address of each subcontractor to whom the Bidder proposes to subcontract portions of the work.

Questionnaire

Public Contract Code Section 10162 Statement

In accordance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever 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?

Yes _____

No _____

If the answer is yes, explain the circumstances in the following space.

Public Contract Code Section 10232 Statement

In accordance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

Public Contract Code Section 10285.1 Statement

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has _____, has not _____ been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

NOTE: This questionnaire constitutes a part of the Proposal, and signature on the signature portion of this proposal shall constitute a signature of this questionnaire. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution

Signature Page: Interested Persons

The names of all persons interested in the foregoing proposal as principals are as follows: (If bidder or other interested person is a corporation, state the legal name of corporation, and the names of the president, secretary, treasurer and manager thereof; if a co-partnership, state true name of firm, also names of all individual co-partners composing firm; if bidder or other interested person is an individual, state first and last name in full).

Licensed in accordance with an act providing for the registration of Contractors License

No. _____.

Signature of Bidder

Print Name

Business Address _____

Place of Residence _____

Dated _____.

NOTE: If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If bidder is a co-partnership, the true names of them shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the co-partnership. If bidder is an individual, his signature shall be placed above. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a Power of Attorney must be on file with the City prior to opening bids or submitted with the bid; otherwise, the bid will be disregarded as irregular and unauthorized.

Proposal Exhibit "A"

Refer to the contract documents for requirements, including Special Provisions Section 2 "Proposal Requirements"

NAME AND ADDRESS

DESCRIPTION OF PORTION OF WORK
SUBCONTRACTED

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

BIDDER'S BOND

Proposal Exhibit "B"

KNOW ALL MEN BY THESE PRESENTS:

THAT WE _____

_____ as PRINCIPAL, and

_____ as SURETY are held; and firmly bond unto the City of San Pablo in the penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID of the Principal above named, submitted by the Principal to the City of San Pablo for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made to the City of San Pablo to which the bid was submitted, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by those presents. In no case shall the liability of the surety hereunder exceed the sum of \$ _____.

THE CONDITION OF THIS OBLIGATION IS SUCH,

THAT, WHEREAS, the Principal has submitted the above mentioned bid to the City of San Pablo for certain construction specifically described as follows, for which bids are to be opened at the City Hall, One Alvarado Square, San Pablo, CA on April 25, 2011 : Wildcat Creek Trail Crosswalk, PW-219-1.

NOW, THEREFORE, if the Principal is awarded the contract and within the time and manner required under the specifications, after the prescribed forms are presented to him for signature enters into a written contract in the prescribed form, in accordance with the bid, and files two bonds with the City, one to guarantee faithful performance, and the other to guarantee payment for labor and materials as required by law, then this obligation shall be null and void; otherwise, it shall be and remain in full force.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____.

_____ (Seal)

_____ (Seal)

_____ (Seal)

_____ (Seal)

Address: _____

Address: _____

NOTE: Signatures of those executing for the surety must be properly acknowledged.

Exhibit C - Safety Record

The following statements as to safety experience of bidder are submitted with bid, as a part thereof, and the truthfulness and accuracy of information are guaranteed by bidder.

PLEASE PROVIDE THE FOLLOWING SAFETY STATISTICS (FROM YOUR OSHA NO. 200 LOG) FOR THE PAST THREE CALENDAR YEARS FOR THE LOCAL OFFICE MOST LIKELY TO PROVIDE SERVICES TO THE CITY OF SAN PABLO.

Note: First aid cases that are not recordable on the OSHA Log should not be included in these calculations.

(insert 3 most recent full calendar yrs)

	<u>2010</u>	<u>2009</u>	<u>2008</u>
1. No. of fatalities (Total of Columns 1 and 8).	_____	_____	_____
2. No. of cases involving lost work days/restricted activity (Total of Columns 2 and 9).	_____	_____	_____
3. No. of non-lost work day cases (Total of Columns 6 and 13).	_____	_____	_____
TOTAL OSHA CASES:	_____	_____	_____
4. Total employee hours worked by work force covered by the OSHA log for each year (field, supervisory & clerical). Do not include any non-work time , even though paid.	_____	_____	_____
5. To calculate Total Case Rate, multiply total OSHA cases for each year times 200,000 and divide by the total number of employee hours for the year.			
TOTAL RECORDABLE INJURY RATE:	_____	_____	_____
6. List your Worker's Compensation Insurance Experience Modification Rate for each year.	_____	_____	_____

Exhibit D - Statement of Safety Program

Attach a copy of your firm's safety manual, or, if said manual is voluminous, a statement outlining the key elements and methods of implementing the firm's safety program.

Note: a copy of the safety manual may be required for inspection by the City prior to award of contract.

Indicate which is attached:

___ Safety Manual

or

___ Statement outlining key elements and methods of implementing the firm's safety program.

Exhibit E- Bidder's Experience /Qualifications

The Bidder represents that it is competent, knowledgeable, has not presented false claims to its past or present clients, and has special skills on the nature, extent, and inherent conditions of the work to be performed. Bidder further acknowledges that there are certain peculiar and inherent conditions existent in the construction of the particular facilities which may create, during the construction program, unusual or peculiar unsafe conditions hazardous to persons and property. Bidder expressly acknowledges that it is aware of such peculiar risks and that it has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the construction work with respect to such hazards. The Bidder shall complete the following questionnaire:

1. In what type of construction does the firm specialize?

2. Have officers or principals of the firm ever had their contractor's licenses suspended or revoked? Yes___ (Explain on a separate, signed sheet) No___

3. List at least 5 subcontractors the firm regularly uses:

4. List of employees from which on-site superintendent would be chosen:

<u>Name</u>	<u>Position</u>	<u>Years w/ firm</u>	<u>Years experience</u>

5. Has firm, owner or affiliated company ever:

	Yes	No
A. Been unable to obtain a bond or been denied a bond for a contract?	___	___
B. Defaulted on a contract forcing a Surety to suffer a loss?	___	___
C. Failed to complete a contract within Time of Completion?	___	___
D. Ever declared bankruptcy?	___	___
E. Been in receivership?	___	___
F. Had any arbitration on a contract?	___	___
G. Are there any outstanding Stop Notices filed against firm?	___	___
H. Been sued by a client?	___	___

Explain any Yes answers, with dates of occurrences, on a separate, signed sheet

Exhibit E- Bidder's Experience /Qualifications (continued)

6) Provide information on the 5 most recent contracts (including ones in progress):

<u>Owner</u>	<u>Contact Person</u>	<u>Phone #</u>	<u>Project Name/Description</u>	<u>Contract Award Value</u>	<u>Date Awarded</u>

7) List 3 contracts completed for a public agency in the past three years which are of comparable scope to subject bid:

<u>Agency</u>		
<u>Contact Person</u>		
<u>Phone #</u>		
<u>Project Name/Description</u>		
<u>Contract Award Value</u>		
<u>Final Contract Value</u>		
<u>Date of Notice to Proceed</u>		
<u>Contract Time of Completion</u>	____ working days	____ working days
<u>Actual Time of Completion</u>	____ working days	____ working days
<u>Date of Completion</u>		

8. By submitting this bid, Bidder grants City any permission which may be necessary to contact Bidder's past & present clients, whether or not listed above or otherwise disclosed.

SAMPLE CONTRACT SECTION

To be submitted by the successful bidder after the project is awarded:

Construction Contract

Guaranty

Performance Bond

Payment (Labor and Materials) Bond

Noncollusion Affidavit

For reference in the event change order is issued, sample form of:

Contract Change Order Form

CONTRACT

CAPITAL IMPROVEMENT PROJECT **Wildcat Creek Trail Crosswalk**

Contract No. PW-219-1

Contractor License No. ____

I. PARTIES

This Contract is made and entered into on the last date signed below by and between the CITY OF SAN PABLO ("CITY"), One Alvarado Square, San Pablo, California, telephone number (510) 215-3030, and _____ ("CONTRACTOR"), address telephone no. _____. This Contract is dated for convenience _____.

WHEREAS, CONTRACTOR is qualified and able to perform such services, NOW, THEREFORE, the parties hereto agree and promise as follows:

II. RESPONSIBILITIES

CONTRACTOR shall supply all staffing, equipment, and materials to accomplish the task listed below. Specifically, CONTRACTOR agrees to perform all the work, in the manner set forth in its proposal, dated _____ ("Proposal"), which is incorporated herein by reference, as described below:

Construct Wildcat Creek Trail Crosswalk in accordance with the contract documents set forth below, all of which are incorporated by reference into this Contract as though fully set forth herein, entitled Wildcat Creek Trail Crosswalk, Contract No. PW 219-1, dated _____ and Addenda Nos. _____. The Contract entered into consists of the following Contract Documents, all of which are component parts of the Contract as if herein set forth in full or attached hereto:

- (1) Contract Change Orders
- (2) Contract, including supplemental agreements and approved revisions to plans and specifications
- (3) Proposal (as accepted)
- (4) Addenda to Contract Documents
- (5) Notice Inviting Bids
- (6) Special Provisions
- (7) Project Plans/Drawings
- (8) City Standard Drawings
- (9) State of California Standard Specifications
- (10) Caltrans State of California Department of Transportation Standard Plans

The order of precedence for interpretation of the contract documents is set forth in the special provisions. Subject to that order of precedence, all documents forming the complete

contract are intended to integrate so that any condition or work called for in and one and not mentioned in another shall be executed as if mentioned in all documents and set forth in the drawings. In the event of any discrepancy between any of the terms of this Contract, and any of the terms of the Proposal, the terms most favorable to CITY shall prevail. In the event of any discrepancy or inconsistency between this Contract and the contract documents, or within the contract documents, the terms most favorable to CITY shall prevail.

Contractor shall be liable to City for any damages arising from, or as a result of, a failure to fully comply with the Contract Documents. Contractor shall not be excused with respect to any failure to so comply by any act or omission of City, its officers, employees or agents, unless such act or omission actually prevents Contractor from fully complying with the requirements of the Contract Documents.

III. COMPENSATION

The CITY agrees to pay CONTRACTOR for the performance of the services listed in Section II in accordance with the contract price as specified in the Proposal. Portions of this Contract are on a unit price basis so the amount may vary in accordance with the finished quantities at the unit price bid. The nominal contract value is \$_____ Dollars), which shall constitute full consideration for the work performed, and which may increase or decrease dependent upon changes in course and scope of the work as ordered by the City. Progress payments shall be made in accordance with the contract documents. In no cases shall the value of this contract exceed 15% of the above nominal contract value, unless an amendment to this contract is authorized by the City Council.

IV. TERM

Time being of the essence, Contractor shall commence and diligently pursue the Project to full and final completion within the number of working days stated in the Contract Documents, except as such time may be extended in writing by City in accordance with the provisions of the General Conditions.

V. INSURANCE

On or before beginning any of the services or work called for by any term of this Contract, CONTRACTOR, at its own cost and expense, shall carry, maintain for the duration of the Contract, and provide proof thereof that is acceptable to the CITY the insurance specified in subsections (a) through (b) below with insurers and under forms of insurance satisfactory in all respects to the CITY. CONTRACTOR shall not allow any subcontractor to commence work on any subcontract until all insurance required of the CONTRACTOR has also been obtained for the subcontractor.

- (a) Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by CONTRACTOR shall be provided with limits not less than one million dollars, or as required by state law. In the alternative, CONTRACTOR may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the CONTRACTOR, if a program of self-

insurance is provided, shall waive all rights of subrogation against the CITY for loss arising from work performed under this Contract.

(b) Commercial General and Automobile Liability Insurance. CONTRACTOR, at CONTRACTOR's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this Contract.

1. Minimum limits of insurance, combined single limit coverage for risks associated with the work contemplated by this Contract:
 - i. General Liability (including operations, products and completed operations): five million dollars per occurrence for bodily injury, personal injury and property damage.
 - ii. Automobile Liability: one million dollars per occurrence for bodily injury and property damage.
2. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Contract or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Contract, including the use of owned and non-owned automobiles.
3. Coverage shall be at least as broad as:
 - i. Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) *or* Insurance Services Office Form (CG 00 09 11 88 Owners and Contractors Protective Liability Coverage Form – Coverage for Operations of Designated Contractor)
 - ii. Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto).
 - iii. No endorsement shall be attached limiting the coverage.
4. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:
 - i. CITY, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired, or

borrowed by CONTRACTOR. General Liability coverage shall be provided in the form of an Additional Insured endorsement (form CG 2010 version 11/85, or forms CG2010 version 10/01 and GC 2037 versions 10/01, or equivalent) to the Consultant's insurance policy, or as a separate owner's policy. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents, or volunteers.

- ii. The insurance shall cover on an occurrence or an accident basis, and not on a claims made basis.
- iii. An endorsement must state that coverage is primary insurance and that no other insurance affected by the CITY will be called upon to contribute to a loss under the coverage.
- iv. Any failure of CONTRACTOR to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- v. Insurance is to be placed with California- admitted insurers with a Best's rating of no less than A:VII.
- vi. Notice of cancellation or non-renewal must be received by CITY at least thirty days prior to such change.

VI. HOLD HARMLESS AND INDEMNITY

To the fullest extent permitted by law, Contractor hereby agrees, at its sole cost and expense, to defend, protect, indemnify, and hold harmless the City (and Redevelopment Agency) of San Pablo and its respective elected officials, officers, attorneys, agents, employees, volunteers, successors, and assigns (collectively "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith (collectively "Liabilities"), arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to any act, failure to act, error, or omission of Contractor or any of its officers, agents, servants, employees, subcontractors, materialmen, suppliers or their officers, agents, servants or employees, arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to the work performed under the Contract, or the performance or failure to perform any term, provision, covenant, or condition of the Agreement, including this indemnity provision.

This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence.

This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies which Indemnitees may have under the law.

Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against an Indemnitee shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

Indemnitor shall pay Indemnitees for any attorney fees and costs incurred in enforcing this indemnification provision.

Notwithstanding the foregoing, nothing herein shall be construed to encompass (a) Indemnitees' sole negligence or willful misconduct to the limited extent that the underlying Agreement is subject to Civil Code 2782(a), or (b) the contracting public agency's active negligence to the limited extent that the underlying Agreement is subject to Civil Code 2782(b).

This indemnity is effective without reference to the existence or applicability of any insurance coverage required under the Agreement or any additional insured endorsements which may extend to Indemnitees.

Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the Contractor regardless of any prior, concurrent, or subsequent active or passive negligence by the Indemnitees. Accountants, attorneys, or other professionals employed by Indemnitor to defend Indemnitees shall be selected by Indemnitees.

In the event there is more than one person or entity named in the Agreement as the Contractor, then all obligations, liabilities, covenants and conditions under this instrument shall be joint and several.

The promise and agreement in this section is not conditioned or dependent on whether or not any Indemnitee has prepared, supplied, or approved a plan, drawing, specification or special provision in connection with this work, and insurance or other indemnification covering any of these matters, or that the alleged damage resulted partly from any negligent or willful misconduct of any Indemnitee.

If, through acts of neglect on the part of the Contractor, any other contractor or any other subcontractor shall suffer loss of damage on the work, the Contractor agrees to settle with such other contractor or subcontractor by agreement or arbitration. If such other contractor or subcontractor asserts a claim against the City on account of any damage alleged to have been so sustained, the City shall notify the Contractor who shall defend, indemnify and hold harmless the City against such claims.

CITY shall not be required to exonerate any surety, release any security relating to satisfactory completion of the improvements until acceptance of proposed public improvements by the CITY or, in the case of improvements which will not be dedicated to and accepted by CITY, until the improvements have passed final inspection by CITY. In addition, release of security or exoneration of sureties will be predicated upon the receipt of required maintenance and/or warranty Contracts and security therefor.

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VII. INDEPENDENT CONTRACTOR

CONTRACTOR is an independent CONTRACTOR and not an employee or agent of CITY and has no authority to contract or enter into another Contract in the name of the CITY. CONTRACTOR has, and hereby retains, full control over the employment, direction, compensation, and discharge of all persons employed by CONTRACTOR who are assisting in the performance of services under this Contract. CONTRACTOR shall be responsible for its own acts and those of its agents and employees during the term of this Contract. CONTRACTOR shall exercise control over the work and the manner of its performance, and is free to provide this or other services to others during the term of this Contract.

VIII. SUBCONTRACTORS

CONTRACTOR may not subcontract any portion of the work to be performed under this Contract without the written authorization of CITY. If CITY consents to such subcontract, CONTRACTOR shall be fully responsible to CITY for all acts or omissions of the subcontractor. Nothing in this Contract shall create any contractual relationship between CITY and subcontractor nor shall it create any obligation on the part of the CITY to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. CITY will consent to subcontracts listed in the Proposal.

IX. ASSIGNMENT

This Contract is binding on the heirs, successors, and assigns of the parties hereto. This Contract may not be assigned by CONTRACTOR without prior, written consent of CITY.

X. INTEGRATION

The Contract Documents integrate all terms and conditions in connection with the Work called for herein and supersede all negotiations and prior oral or written understandings, either oral or in writing, in respect to the subject matter hereof. Each and every provision of law and clause required to be inserted into the Contract Documents shall be deemed to be inserted therein, and if through mistake or otherwise any such provision is not inserted, or is not inserted correctly, then upon application of either party, the Contract Documents shall forthwith be amended in writing to make such insertion or correction. The Contract Documents shall not be amended except by a writing duly executed by the parties.

This Contract contains 9 pages, excluding the Attachments described on its signature page. This Contract shall become effective and commence as of the date set forth below on which the last of the parties, whether City or Contractor, executes said Contract.

XI. TERMINATION

- A. If Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will insure its completion within the time specified or any extension thereof, or fails to complete the Work within such time, or if Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of his insolvency, or if

Contractor or any subcontractor shall violate any of the provisions of this Contract, or should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, or instructions of City or Project Coordinator, or otherwise breach this Contract, City shall serve written notice on Contractor and Contractor's sureties of the intention that this Contract be terminated together with the reasons therefor. Unless within five (5) working days after the service of such notice such condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Contract shall upon the expiration of said five (5) working days, cease and terminate. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished.

B. In event of any such termination, City shall immediately serve written notice thereof upon surety and Contractor, and surety shall have the right to take over and perform this Contract; provided, however, that if surety within five (5) working days after service upon it of the notice of termination does not give City written notice of its intention to take over and perform this Contract or does not commence performance thereof within ten (10) working days from the date of serving such notice, City may take over the Project and prosecute the same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor, and Contractor and its surety shall be jointly and severally liable to City for any excess cost or other damages occasioned City thereby. If City takes over the Project as herein above provided, City may, without liability for so doing, take possession of, and utilize in completing the Project, such materials, appliances, plant, and other property belonging to Contractor as may be on the site of the Project and necessary therefor.

In the event of any such termination, Contractor will be paid the actual amount due based on unit prices or lump sums bid, and the quantity of the Work completed at the time of cancellation, less damages caused to City by the acts of Contractor causing the termination.

C. City may terminate the Contract at its own discretion for any reason, including but not limited to its own convenience, lack of funding, or when conditions encountered during the Project make it impossible or impracticable to proceed, or when City is prevented from proceeding with the Contract by Act of God, by law, or by official action of a public authority and/or funding agency. Upon such termination, City will pay Contractor fair and reasonable compensation as agreed upon between Contractor and the Project Coordinator, based on the Bid Proposal. In the event that no agreement is reached between Contractor and the Project Coordinator as to fair and reasonable compensation, City will be liable to Contractor only for the reasonable value of the Work performed and other actual costs sustained by Contractor.

Contractor, in having tendered a bid, shall be deemed to have waived any and all claims for damages because of termination of the Contract for any reason.

Contractor shall not be entitled to any lost profit in the event of termination.

XII. WAIVER

No waiver of any provision of this Contract shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

XIII. NOTICE

All notice permitted or required hereunder shall be addressed as follows and shall be deemed delivered upon posting the notice first class, U.S. mail, postage prepaid:

If to the CITY: Public Works Director
 City of San Pablo
 13831 San Pablo Ave.
 San Pablo, CA 94806

If to the CONTRACTOR:

Contractor: _____

Phone: _____

Cell Phone: _____

Fax: _____

E-mail: _____

unless and until different addresses may be furnished in writing by either party to the other.

XV. ATTORNEY'S FEES

Except as specifically provided for herein, attorney's fees shall not be awarded to either party in any action in law or in equity, including an action for declaratory relief, brought to enforce or interpret the provisions of this Contract or to assert any claim resulting or alleged to result from its performance.

XVI. MISCELLANEOUS PROVISIONS

Should a change be contemplated in the name or nature of Contractor's legal entity, Contractor shall first notify City in order that proper steps may be taken to have the change reflected in the Contract Documents.

The Contract shall be effective from and after the date that this Contract is signed by the representatives of City.

This Contract may be made in counterparts.

The captions of the articles, sections, subsections, paragraphs and subparagraphs of the Contract Documents are for reference only and are not to be construed in any way as a part of the

Contract. The rights and remedies contained in this Contract are cumulative, and in addition to and not in limitation of, any right or remedy at law or in equity to which City may be entitled.

Both parties, having understood and agreed to the terms and conditions above, do execute this Contract.

By _____
CONTRACTOR's Authorized Representative
Print Name: _____
Title: _____
Date: _____

By _____
City of San Pablo
City Manager
Date: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

City Attorney

Adèle M. D. Ho
Public Works Director

Attachments:

Performance Bond
Payment Bond
Guaranty
Noncollusion Affidavit
CONTRACTOR's Proposal
Authorizing Resolution

GUARANTY

TO THE CITY OF SAN PABLO

The undersigned guarantees the construction and installation of the work included in this project.

If any of the work is defective, due to faulty workmanship, materials furnished or methods of installation, or if the work or any part of it fails to operate properly as originally intended and in accordance with the plans and specifications, due to any of the above causes, all within one year after the date on which this contract is accepted by the City after relief from maintenance, the undersigned agrees to reimburse the City, upon demand, for its expenses incurred in restoring the project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or, upon demand by the City, to replace any such material and to repair the work completely without cost to the City so that the work will function successfully as originally contemplated.

The City shall have the unqualified option to make any needed replacements or repairs done by the undersigned. If the City elects to have the performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the City. If the undersigned fails or refuses to comply with his obligations under this guaranty, the City shall be entitled to all costs and expenses, including attorney's fees.

Signature of Contractor

Date

Bond No: _____
Premium: _____
Contract No: **PW-219-1**

PERFORMANCE BOND

WHEREAS, the City Council of the City of San Pablo, State of California, and _____, ("Principal"), have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements. The agreement, dated _____, and identified as **PW-219-1, Wildcat Creek Trail Crosswalk Project**, is hereby referred to and made a part hereof; and

WHEREAS, the principal is required under the terms of the agreement to furnish a bond for the faithful performance of the agreement.

NOW, THEREFORE, we, the Principal and _____, as surety, are held and firmly bound unto the City of San Pablo ("City"), in the sum of \$ _____ Dollars lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors and administrators, jointly and severally.

The condition of this obligation is such that if the above principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications. Surety further agrees that in the event of default by Principal, surety will hire a replacement contractor other than the Principal.

///

Performance Bond, Project PW -219-1 (continued)

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and

Surety above named, on _____.

Principal/Contractor

Firm name: _____

Authorized Signature: _____

Address:

Surety

Firm name: _____

Authorized Signature: _____

Address:

SUBJECT:

Bond No: _____
Premium: _____
Contract No: PW--219-1

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the City Council of the City of San Pablo, State of California, and _____, ("Principal"), have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements. The agreement, dated _____, , and identified as project PW-219-1, Wildcat Creek Trail Crosswalk Project, is hereby referred to and made a part hereof; and

WHEREAS, under the terms of the agreement, principal is required before entering upon the performance of the work to file a good and sufficient payment with the City of San Pablo to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

NOW, THEREFORE, the principal and the undersigned as corporate surety, are held firmly bound unto the City of San Pablo and all contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the agreement and referred to in the above-mentioned Code of Civil Procedure in the sum of \$ _____ Dollars), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the surety will pay the same in an amount not exceeding the amount set forth above, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment rendered.

It is hereby expressly stipulated and agreed that this bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the conditions of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alternation or addition to the terms of said agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

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///

Payment Bond, PW-219-1, (continued)

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on _____.

Principal/Contractor

Firm name: _____

Authorized Signature: _____

Address:

Surety

Firm name: _____

Authorized Signature: _____

Address:

Contract No: PW- 219-1

NONCOLLUSION AFFIDAVIT

To the CITY OF SAN PABLO, State of California,

The undersigned, in submitting a bid for performing the following work by contract, being duly sworn, deposes and says:

That he has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken action in restraint of free competitive bidding in connection with such contract: PW-219-1.

Contractor's Signature

Company Name

Business Address

Place of Residence

Date



CITY of SAN PABLO
City of New Directions

Public Works Department

City Project Name _____
Contract No. PW _____
Contract Change Order No. _____
Date of change order _____

Scope Summary: _____

Contractor: Contractor Name _____

Contract Execution Date: _____

In accordance with Special Provisions Section 5.3.02, "Change Order", of the Special Provisions of the Contract Documents, you are hereby directed to make the herein described changes to the plans, specifications, or scope of work contracted for within the terms of the subject Contract.

A. CHANGES IN THE CONTRACT DOCUMENTS

Description of work

Increase/decrease in quantities of engineer's estimated quantities, etc.
List and subtotal by bid item # as needed

NET CHANGE IN COST TO THE CONTRACT: \$ _____

CURRENT CONTRACT AMOUNT \$ _____

REVISED CONTRACT AMOUNT \$ _____

Based on quantities estimated, the net increase in nominal contract value is estimated to be \$ _____. The revised nominal contract value is \$ _____

Time of Completion: The contract time of completion will be increased (decreased) by ____ working days.

///

B. APPROVAL SECTION

<u>Action</u>	<u>Title</u>	<u>Signature</u>	<u>Date</u>
Submitted	Construction Manager		
Recommended	Engineer		
Scope Approved	Public Works Director		
Funding Approval*	City Manager		

* necessary if > \$5,000 increase in contract value

The compensation (time and cost) set forth in the Change Order comprises the total compensation due the CONTRACTOR, all SUBCONTRACTORS and all suppliers, for the work or change defined in the Change Order, including all impact on any unchanged work. By signing the Change Order, the CONTRACTOR acknowledges and agrees, on behalf of itself, all SUBCONTRACTORS, and all suppliers, that the stipulated compensation includes payment for all work contained in the Change Order, plus all payment for the interruption of schedules, extended overhead costs, delay, and all impact, ripple effect or cumulative impact on all other work under this Contract. The signing of the Change Order shall indicate that the Change Order constitutes full mutual accord and satisfaction for the change, and that the time and/or cost under the Change Order constitutes the total equitable adjustment owed the CONTRACTOR, all SUBCONTRACTORS, and all suppliers, as a result of the change. The CONTRACTOR, on behalf of itself, all SUBCONTRACTORS, and all suppliers, agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim or request for equitable adjustment of any type, for any reasonably foreseeable cause that shall arise out of or as result of this Change Order or the impact of this Change Order on the remainder of the work under this Contract.

Contractor Acceptance by:

Signature _____	Print name & title _____	Date _____
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Distribution:

Note: Attach Dated Transmittal Sheet when delivering approved CCO to Contractor

Original: City Clerk

Copies: Contractor

Engineering

Finance (increase PO# _____ by _____)

Project Inspector/Construction Manager

Revised Form Approved by City Attorney February 2011

Notes

1. Contract value including this CO/Authorized Contract: ____/____=
(determines if City Council action required)
2. Remaining funds in approved capital project budget are adequate to cover this change order