GENERAL CONDITIONS

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GENERAL CONDITIONS OF THE CONTRACT

ARTICLE 1 GENERAL PROVISIONS

1.1 DEFINITIONS

THE CONTRACT DOCUMENTS - The Contract Documents consist of the Contract, the Performance Bond and Payment Bond and any other bond required by the Contract, the drawings, the specifications, addenda issued prior to execution of the Contract, and all modifications thereto.

THE CONTRACT - The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto, and supersedes all prior negotiation, representations, or agreements, either written or oral, including the bidding documents.

ACT OF GOD - An Act of God is an earthquake of magnitude 4.5 or greater on the Richter scale, flood, tornado, or other cataclysmic phenomenon of nature, or rain, snowstorm, windstorm, high water, or other natural phenomenon in excess of the normal as established by National Oceanic and Atmospheric Administration weather data.

ACCEPTANCE - Acceptance is when the Agency determines all of the Contract requirements have been completed. Execution of the Notice of Completion will signify acceptance. A copy of the Notice of Completion will be sent to the Contractor after execution by the Agency. Upon receipt of the Notice of Completion, the Contractor will be relieved of the duty of protecting the work, and the Agency will initiate final settlement and payment.

ARCHITECT - The use of the term Architect shall mean the individual, partnership, corporation, association or joint venture contracted by the Agency for the design of this Work, as designated on the title sheet of these specifications and Contract Documents.

BENEFICIAL OCCUPANCY - The right of the Agency to occupy all or any portion of the project prior to final Acceptance of the Work. Such occupancy does not constitute acceptance or completion by the Contractor of the Work or any portion thereof, nor will it relieve the Contractor of the responsibility for correcting defective work or materials found at any time before Acceptance of the Work.

AGENCY - The term Agency when used herein shall mean the Board of Directors of the Redevelopment Agency for the County of Riverside, a public body corporate and politic in the State of California.

COUNTY - The term County when used herein shall mean the Board of Supervisors of the County of Riverside, a political subdivision of the State of California.

CHANGE ORDER - A Change Order is the document issued by the Agency authorizing any change or adjustment to the Contract Documents in accordance with Article 19 of this Contract.

CONTRACT DRAWINGS - "Contract drawings" or "drawings" means and includes (a) all drawings which have been prepared on behalf of the Agency and are included in the Contract Documents and all clarification drawings issued by notice to the bidders thereto; (b) all

drawings submitted pursuant to the terms of the Contract by the Contractor to the Agency during the progress of the Work, which are accepted by the Agency.

CONTRACTOR'S AGENT - The representative of the Contractor, approved by the Agency, who shall be present at the Work and be authorized to receive and act upon instructions from the Agency and to execute and direct the Work on behalf of the Contractor.

CONTRACTOR - When used herein, Contractor means the prime or principal Contractor licensed to perform work in the State of California, including all joint ventures. References to subcontractor or others are only for convenience and all such references shall be considered to refer to the Contractor. The prime or principal Contractor shall be responsible for all subcontractors, and all subcontractors shall require their subcontractors to comply with the relevant provisions of the prime or principal contract.

CRITICAL PATH METHOD(CPM) - "Critical Path Method" is a schedule technique.

DAY - The use of "day" herein means calendar day and shall include every day including Saturdays, Sundays, and legal holidays.

DIRECTOR - The use of "Director" shall mean the Executive Director of the Redevelopment Agency for the County of Riverside or designated representative.

INSTALL - When used herein, "install" shall mean the complete installation, in place, of any item, equipment or material.

MATERIAL - Material shall be construed to include machinery, equipment, manufactured articles, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract. All materials shall be new.

NOTICE OF COMPLETION - The Notice of Completion ("NOC") shall be issued at that point in the Contract when the Contractor has completed all Work required in the Contract Documents. The time for issuance shall be determined by the Agency through a final inspection. The NOC shall be issued by the Board of Supervisors.

NOTICE TO PROCEED - The Notice to Proceed is the written notification from the Agency giving the Contractor notice to commence with the Work. The Notice to Proceed will specify the start date for the Work and the completion date.

REQUEST FOR INFORMATION - (RFI) The form and procedure established for communication between the Contractor and the Agency to clarify or interpret the Contract Documents.

REQUEST FOR QUOTATION - (RFQ) A document consisting of supplemental details, instruction, or information issued by the Architect, through the Agency, for the purpose of obtaining price quotations for possible changes in the Work.

SHALL - When used herein, "shall" means anything, which is mandatory to be performed by the Contractor.

SPECIFICATIONS - The term "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work.

SUBCONTRACTOR - The term "Subcontractor" means a person or firm that has a contract with Contractor or with another subcontractor to perform a portion of the Work. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of any tier, suppliers, manufacturers, and distributors. The term Subcontractor is referred to throughout the Contract Documents as if singular in number.

WORK - The term "Work" comprises the services and materials required by the Contract Documents, as may be amended, and includes all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

1.2 AUTHORITIES AND LIMITATIONS

1.2.1 The Board of Directors alone have the power to bind the Agency and to exercise the rights, responsibilities, authorities, and functions vested therein by the Contract Documents, except that they shall have the right to designate authorized representatives to act for them.

1.2.2 Neither the Contract, nor any part thereof, nor moneys due or to become due there under may be assigned by the Contractor without the prior written approval of the Agency; with the exception of the assignments to Agency which may be required under the terms of this Contract.

1.3 LEGAL REQUIREMENTS

1.3.1 Contractor shall keep informed of, and comply with, all federal, state and county laws, ordinances, rules, and regulations applicable to the Work or to those engaged or employed in the Work of this Contract, especially (but not limited to) those laws relating to hours of employment, prevailing wages, payment of wages, sanitary and safety conditions for workers, workers' compensation insurance, type and kind of materials that can be used, non-discrimination in employment and affirmative action programs. Failure to identify a specific provision in these Contract Documents shall not excuse the Contractor from complying with such applicable statutory requirements.

1.3.2 If conflict arises between provisions of the Contract Documents and any such laws, rules, or regulations, the Contractor shall notify the Agency at once in writing. If, before receiving clarification, Contractor performs any portion of the Work affected by such apparent conflict, such performance shall be at Contractor's own risk. Contractor shall not be entitled to any additional compensation or time by reason of the conflict or its later correction.

1.3.3 All work and materials shall be in full accordance with the latest applicable (or otherwise noted) codes, rules, and regulations including, but not limited to, the following:
.Uniform Building Code
.Uniform Plumbing Code
.Uniform Mechanical Code
.Uniform Fire Code
.State Fire Marshal
.State Industrial Accident Commission's Safety Orders
.Rules of Local Utilities

1.3.4 Nothing in the specifications is to be construed to permit work not conforming to the above, and expense incurred complying with the above shall be borne by the Contractor. Whenever the specifications and working details require higher standards than those required by the ordinances, codes and statutes, the specifications and working details shall take priority over the ordinances, codes and statutes.

1.3.5 In submitting a bid on this public works projects, or any subcontractor agreeing to supply goods, services, or materials, and entering a contract pursuant thereto, the Contractor and\or subcontractor do offer and agree to assign the Agency all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final acknowledgement by the parties.

1.4 STANDARD REFERENCES

1.4.1 All documents and publications (such as, but not limited to, manuals, handbooks, codes, standards, and specifications) which are cited in this Contract for the purpose of establishing technical (non-administrative) requirements applicable to equipment, materials, or workmanship under this Contract, shall be deemed to be incorporated herein as though fully set forth.

1.4.2 Whenever reference is made to any particular document or publication, the Contractor shall comply with the requirements set out in the edition specified in this Contract, or if not specified, the latest edition or revision thereof, in effect on the date of the solicitation of bid on this project, except as modified by, as otherwise provided in, or as limited to type, class, or grade, in the specifications of this Contract.

1.5 PERMITS, LICENSES, FEES & TAXES

1.5.1 AGENCY'S RESPONSIBILITIES

a. The Agency will apply for all plan checks and will apply for and obtain the Building Permit(s), the Grading Permit and Construction Permits required by the County of Riverside, paying all fees in connection therewith.

b. The Agency will furnish, at no expense to the Contractor, all on-site inspection of the Work and will pay for off-site inspection only as noted in the Contract Documents.

1.5.2 CONTRACTOR'S RESPONSIBILITIES

a. The Contractor shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than the County.

b. Exclusive of off-site inspection specified herein to be the Agency's responsibility, the Contractor shall arrange and pay for all off-site inspection of the Work, including certification, required by the specifications, drawings, or by governing authorities.

c. Before Acceptance of the project by the Agency, the Contractor shall submit all licenses, permits, and certificates of inspection to the County and Agency.

1.6 SEPARATE CONTRACTS

1.6.1 The Agency reserves the right to perform work related to this project with its own forces, and to award separate contracts in connection with other portions of the project or other work on the site. The Contractor shall cooperate with others in the execution of all work and shall not interfere with material, appliances or workmen of the Agency or any other contractor engaged by the Agency at the site of the Work. In case of disagreement regarding such use, the matter shall be referred to the Agency whose decision relative to said use shall govern.

1.6.2 The Contractor shall afford the Agency and separate contractors' reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate Contractor's Work with theirs.

1.6.3 If any part of the Contractor's Work depends on the proper execution or results upon the work of the Agency or any separate contractor, the Contractor shall inspect and promptly report to the Agency any discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the Agency's or the separate contractor's work as fit and proper to receive the Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

1.6.4 Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon due notice, settle with such other contractor by agreement, if both will so settle. If such separate contractor sues the Agency because of any damage alleged to have been so sustained, the Contractor agrees to indemnify and defend the Agency in such proceedings with the Agency retaining the right to select and hire independent counsel for the Agency paid by the Contractor.

1.6.5 Any cost caused by defective or ill-timed work shall be borne by the party responsible therefore.

1.7 AGENCY'S AUTHORIZED REPRESENTATIVE, INSPECTOR(S), & ARCHITECT

1.7.1 AUTHORIZED REPRESENTATIVE

The Agency shall designate a representative during the Work, who shall have the right to be present at the job site during construction and shall supervise any additional representatives appointed by the Agency.

1.7.2 INSPECTOR(S)

The Inspector(s) shall have the right to observe the installation of all materials and equipment to be incorporated into the Work and the placing of such material and equipment

to determine in general if the Work is proceeding in accordance with the Contract Documents. The Inspector(s) is not authorized to make changes in the Contract Documents. On the basis of his observations, he shall keep the Agency informed as to the progress of the Work. The Inspector shall not be responsible for means, methods, techniques, sequences, or procedures of construction nor for safety precautions and programs in connection with the Work. Nor will the inspector be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

1.7.3 ARCHITECT

a. The Agency has retained an Architect for this project. The Architect will advise and consult with the Agency, and the Agency will issue instructions to the Contractor. The Architect will be requested to interpret the requirements of the Contract. When requested by the Agency, the Architect will, within a reasonable time, render such interpretations as he may deem necessary for the proper execution of the Work.

b. The Architect will make periodic visits to the job site to familiarize himself generally with the progress and quality of the Work and to determine in general whether the work is proceeding in accordance with the Contract Documents. Based on such observations he will recommend approval of applications for progress payments made by Contractor. The Architect shall not be responsible for means, methods, techniques, sequences, or procedures of construction nor for safety precautions and programs in connection with the Work. Nor will the Architect be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

ARTICLE 2 BONDS AND INSURANCE

2.1 BIDS OF $25,000 OR LESS

2.1.1 If the total amount bid on the Work is $25,000 or less, the payment bond and performance bond are not required, provided that one payment of all compensation shall be made following Acceptance of all work.

2.2 BONDS

2.2.1 GENERAL REQUIREMENTS

a. Before commencing any Work under this Contract, the Contractor shall file four of each bond with the Agency. These bonds shall be in the amounts and for the purposes specified below. They shall be surety bonds issued by:

(1) Either a California Admitted Surety OR a current Treasury Listed Surety (Federal Register).

And

(2) Either a current A.M. Best A VIII rated Surety OR an admitted surety insurer which complies with the provisions of the Code of Civil Procedure, § 995.660.

b. Should any surety or sureties upon said bonds or any of them become insufficient, Contractor shall renew said bond or bonds with good and sufficient sureties within

ten (10) calendar days after receiving notice from the Agency that the surety or sureties are insufficient. Cost of bonds shall be included in the bid price.

2.2.2 PERFORMANCE BOND

The successful bidder shall deliver to the Agency an executed Performance Bond on the attached form in an amount equal to 100% of the accepted bid as security for the faithful performance of the Contract.

2.2.3 PAYMENT BOND

The successful bidder shall deliver to the Agency an executed Payment Bond on the attached form in an amount equal to 100% of the accepted bid as security for the payment of all persons performing labor and furnishing materials in connection with the Work.

2.3 INSURANCE

2.3.1 GENERAL REQUIREMENTS

Before commencing this Work under the Contract, and without limiting or diminishing Contractor's obligation to indemnify and hold the County and Agency harmless, the Contractor shall procure and maintain, or cause to be maintained at its sole cost and expense, the following insurance coverages during the term of this Contract.

2.3.2 WORKERS' COMPENSATION INSURANCE

Contractor shall secure Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than $1,000,000 per person per accident. Policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement, and contain a Waiver of Subrogation in favor of the County of *Riverside* Pursuant to Section 3700 of the Labor Code of the State of California, Contractor shall file with the Agency before commencing the Work the following signed certification:

> "I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I shall comply with such provisions before commencing the performance of the Work of this Contract."

2.3.3 COMMERCIAL GENERAL LIABILITY:

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products/completed operations if applicable, personal and advertising injury – which may arise from or out of CONTRACTOR'S operations, use, and management of the premises, or the performance of its obligations hereunder. Policy shall name the County, the Agency, their Director's, Officers, special Districts, Board of Supervisors, employees, agents or representatives as Additional Insured, and contain a Waiver of Subrogation in favor of the County of Riverside. Policy limits shall not be less than $1,000,000 per occurrence combined single

limits. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall also contain coverage for $5,000 Medical Payments coverage per accident, per person, and Fire Legal Liability in an amount not less than $50,000.

2.3.4 VEHICLE LIABILITY:

If CONTRACTOR'S vehicles or licensed mobile equipment are used on County and or Agency property, or used in any manner on behalf of the Agency, CONTRACTOR shall maintain auto liability insurance for all owned, non-owned and hired automobiles in an amount not less than $1,000,000 per occurrence combined single limit, $2,000,000 in the aggregate. Policy shall name the County of Riverside, Agency, their Director's Officers, Special Districts, Board of Supervisors, employees, agents, or representatives as Additional Insured, and provide a Waiver of Subrogation in favor of the County of Riverside.

2.3.5 PROPERTY (PHYSICAL DAMAGE):

All-Risk property insurance coverage for the full replacement value of all CONTRACTOR'S equipment, improvements/alterations, temporary structures, and systems (Care, Custody, and Control of CONTRACTOR) used on COUNTY and or Agency property, or used in any way connected with the accomplishment of the Work performed in this contract.

2.3.6 COURSE OF CONSTRUCTION INSURANCE

CONTRACTOR shall provide All Risk Builder's Risk (Course of Construction) insurance, including earthquake and flood if in an earthquake or flood zone (required on financed or bond financing arrangements), covering the COUNTY, AGENCY, and the CONTRACTOR and every subcontractor of every tier for the entire project including property to be used in the construction of the project while such property is at off site storage locations or while in transit. Policy shall include coverage for collapse, faulty workmanship, debris removal, expediting expense, Fire Department Service charges, valuable papers and records, trees, grass, shrubbery and plants. If scaffolding, falsework and temporary buildings are insured separately by the CONTRACTOR or others, evidence of such separate coverage shall be provided to AGENCY prior to the start of the work. Policy shall be written on a completed value form. Policy shall also provide coverage for temporary structures (onsite offices, etc.), fixtures, machinery and equipment being installed as part of the construction project. (The Base Bid including course of construction insurance shall be used for determination of lowest bid, unless otherwise stated in the bid form.)

CONTRACTOR shall provide a bid price <u>with</u> Course of Construction insurance as outlined herein, <u>and</u> shall also separately provide the cost of the Course of Construction insurance and deductible; and shall declare all terms, conditions, coverages and limits upon request of AGENCY. AGENCY RETAINS THE RIGHT TO CHOOSE TO USE ITS OWN COURSE OF CONSTRUCTION PROGRAM. If the AGENCY program is chosen, CONTRACTOR shall assume the cost of any and all applicable policy deductibles (currently $50,000 per occurrence), and shall insure its own machinery, equipment, tools, etc., from any loss of any nature whatever. If AGENCY elects the CONTRACTOR's All Risk Builder's Risk Program, CONTRACTOR shall be responsible for any and all policy deductibles.

2.3.7 GENERAL INSURANCE PROVISION – ALL LINES:

a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California unless waived, in writing, by the County Risk Manager. Carrier(s) shall have an A.M. BEST rating of not less than an A:VIII. Insurance deductibles or self-insured retentions must be declared by the carrier(s), and such deductibles and retentions shall have the prior written consent from the County Risk Manager. At the election of the Risk Manager, carriers shall provide written notification, and shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If no written notice is received from the County Risk Manager within ten (10) days of the acceptance of agreement, then such deductibles or self-insured retentions shall be deemed acceptable.

b. Cause its insurance carrier(s) to furnish the Redevelopment Agency for the County of Riverside with either 1) a properly executed original Certificates(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. The County of Riverside, the Redevelopment Agency for the County of Riverside, their Director's and Officers, Special Districts, Board of Supervisors, elected officials, employees, agents or representatives are named as Additional Insureds. Further, said Certificates(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days written notice be given to the Redevelopment Agency for the County of Riverside prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, this Agreement shall terminate forthwith, unless the Redevelopment Agency for the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in fullforce and effect. **CONTRACTOR shall not take possession, or use the Premises, or commence operations under this Agreement until the Redevelopment Agency for the County of Riverside has been furnished original Certificate(s) of Insurance and certified original copies of Endorsements or policies of insurance including all Endorsements and any and all other attachments as required in this Section. The original Endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.**

c. It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and the COUNTY'S and or AGENCY'S insurance and or deductibles and or self-insured retentions or self-insured programs shall not be construed as contributory.

The Redevelopment Agency for the County of Riverside's Reserved Rights-Insurance. The Redevelopment Agency for the County of Riverside reserves the right to adjust the monetary limits of insurance coverage's during the term of this agreement or any extension thereof-if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR becomes inadequate.

d. CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of sub-consultants working under this Agreement.

2.4 INDEMNITY AND HOLD HARMLESS

2.4.1 CONTRACTOR agrees to and shall indemnify and hold the County and Agency, their officers, employees and agents free and harmless from any and all claims, actions, damages and liabilities of whatsoever kind and nature arising from death, personal injury, property damage or other cause asserted or, based upon any negligent act or omission of CONTRACTOR, its employees, agents, invitees, or any subcontractor of CONTRACTOR relating to or in any way connected with the accomplishment of the work or performance of services under this Agreement, regardless of the existence or degree of fault or negligence on the part of the COUNTY and or AGENCY or any officer or employee of said COUNTY, other than the sole active negligence or willful misconduct of COUNTY and or AGENCY-its Directors and Officers, Special Districts, Board of Supervisors, elected officials, employees, agents or representatives. As part hereto of the foregoing indemnity CONTRACTOR agrees to protect and defend at its own expense, including attorneys' fees the COUNTY and or AGENCY-its Directors and Officers, Specials Districts, Board of Supervisors, elected officials, employees, agents or representatives from any and all legal action based upon any acts or omissions, as stated hereinabove, by any person or persons.

2.4.2 If any such claim, action, or proceeding is brought against County and or Agency, or County's officers, agents, employees, or independent contractors, CONTRACTOR, upon notice from Agency, shall defend the same at Contractor's expense by counsel satisfactory to Agency.

2.4.3 Agency shall promptly notify Contractor of any claim, action, or proceeding against County and or Agency, or County's officers, agents employees, independent contractors, and consultants relating to the performance, or omission to perform, any term or condition of this Contract. County and or Agency shall cooperate fully in the defense of such claim, action, or proceeding.

2.4.4 Neither the County nor the Agency shall be liable or responsible for any accident, loss or damage occurring to the Work prior to the completion and Acceptance of same, unless otherwise specifically agreed to at the time of occupancy by the Agency.

ARTICLE 3 SITE CONDITIONS

3.1 DIFFERING SITE CONDITIONS

3.1.1 The Contractor shall have reviewed and ascertained pertinent local conditions such as location, accessibility, and general character of the site and satisfy himself as to the conditions under which the Work is to be performed. No claim for allowances shall be made because of Contractor's error or negligence in acquainting himself with the conditions at the site.

3.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Agency. The Contractor shall promptly report in writing to Agency any errors, inconsistencies, or omissions in the Contract Documents or inconsistencies with applicable code requirements observed by Contractor.

3.1.3 If Contractor performs any construction activity which it knows or should know involves an error, inconsistency, or omission without notifying and obtaining the written consent of Agency,

Contractor shall be responsible for the resultant losses, including, without limitation, the costs of correcting defective work.

3.1.4 The Agency will furnish surveys necessary to properly locate the property and establish the boundaries thereof with general reference points as well as to enable the Contractor to proceed with the Work.

3.1.5 The Contractor shall provide competent engineering services to lay out the Work and all parts thereof and to establish all grades and elevations in accordance with the Contract requirements. The Contractor shall verify the figures shown on the survey and approach drawings before undertaking any construction work and shall be responsible for the accuracy of the finished work.

3.1.6 The Contractor shall protect and preserve established bench marks and monuments and shall make no changes in locations without the written approval of the Agency. Any bench marks or monuments that are lost or destroyed shall be replaced by the Contractor subsequent to notification and approval from Agency.

3.2 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

3.2.1 The Contractor acknowledges by submission of his/her bid that he is satisfied as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including any exploratory work deemed necessary by the Contractor. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Agency.

3.3 DIMENSIONS AND MEASUREMENTS

3.3.1 All dimensions shown for existing conditions and all dimensions required for work that is to connect with work now in place, shall be verified and calculated by the Contractor by actual measurement of the existing work. Any discrepancies between the Contract Documents and the existing conditions shall be referred to the authorized representative of the Agency before any work affected thereby has been performed. Failure to notify the Agency before starting work will be considered acceptance by the Contractor. Where doubts as to dimensions exist, Agency shall determine the correct dimensions.

ARTICLE 4 SPECIFICATIONS AND DRAWINGS

4.1 GENERAL

4.1.1 SUBDIVISIONS

For convenience, the specifications are arranged into several sections, but such separation shall not be considered as the limits of the work required of any separate trade. The terms and conditions of such limitations are wholly between the Contractor and his subcontractors. Requirements contained in any section are required as if contained in all sections and are the responsibility of the Contractor. The Contractor, prior to awarding subcontracts, will assure the Work required as a whole has been coordinated among the subcontracts.

4.1.2 RECORD DOCUMENTS

a. The Contractor shall keep on the Work site a copy of the awarded construction documents (drawings and specifications) and shall at all times give the Agency and Architect access thereto.

b. The Contractor will be given one set of drawings and specifications which shall be kept at the site of the Work at all times and updated weekly. Payment may be withheld if drawings are not kept current. Exact locations of all pipes and conduits and all changes in construction and details shall be indicated and dimensions provided upon these drawings, and all changes in materials and equipment installed shall be indicated in these specifications. Upon completion and prior to Acceptance of the Work, two final sets of mylars of project record documents and specifications shall be submitted to the Agency by the Contractor.

c. The working details will indicate dimensions, position, and kind of construction, and the specifications, qualities, and methods. Any Work indicated on the working details and not mentioned in the specifications, or vice versa, shall be furnished as though fully set forth in both. Work not particularly detailed, marked, or specified shall be the same as similar work that is detailed, marked, or specified.

d. In case of discrepancy in the documents, the matter shall be promptly submitted to the Agency, who shall make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Agency shall furnish from time to time such detailed information as considered necessary to clarify the Work.

e. Where the word "similar" occurs on the drawings, it shall have a general meaning and not be interpreted as meaning identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

f. Standard details or specification drawings are applicable when listed, bound with specifications, noted on the drawings or referenced elsewhere in the specifications. Where the notes on the drawings indicate modifications, such modifications shall govern.

g. All drawings, specifications and copies thereof furnished to the Contractor are the property of the Agency and shall not be used on other work without its consent. Upon completion of this project, all copies of the drawings and specifications shall be returned to the Agency.

4.2 SUMMARY OF THE ORDER OF THE PROCEDURE

4.2.1 In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

1) Modifications or changes last in time are first in precedence.
2) Addenda.
3) Agency-Contractor agreement.

4) General Conditions except for specific modifications thereto stated in the Supplementary Conditions.
5) Supplementary Conditions.
6) Division One Specifications.
7) Division Two through Sixteen Specifications.
8) Drawings - as between figured dimensions given on drawings and the scaled measurements, the figured dimension shall govern; as between large-scale drawings and small-scale drawings, the larger scale shall govern.
9) Structural drawings
10) Architectural drawings.
11) As between detailed drawings and typical details bound within the specifications, the detailed drawings govern.
12) In the event provisions of codes, safety orders, contract documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive and higher quality shall govern.
13) Schedules shown on the drawings take precedence over conflicting information given on other drawings.
14) Mechanical drawings.
15) Electrical drawings.

4.3 CLARIFICATIONS/REQUEST FOR INFORMATION AND ADDITIONAL INSTRUCTIONS

4.3.1 NOTIFICATION BY CONTRACTOR

a. Should Contractor discover what he perceives to be conflicts, omissions, or errors in the Contract Documents, or have any question concerning interpretation or clarification of the Contract Documents, or if it appears that the work to be done or any matters relative thereto are not sufficiently detailed or explained in the Contract Documents, then, before proceeding with the work affected, Contractor shall notify Agency's authorized representative in writing, and request interpretation, clarification, or additional detailed information concerning the work. The Contractor shall ask for the clarification (Request for Information) immediately upon discovery but no less than 14 calendar days prior to the start date of the activities related to the clarification, based on the latest updated version of the accepted Progress Schedule. Agency, whose decision shall be final and conclusive, shall resolve such questions and issue instructions to Contractor. Should Contractor proceed with work affected before receipt of instructions from Agency, Contractor shall remove and replace or adjust work which is not in accordance with the instructions from Agency and shall be responsible for resultant damage, defect or added cost. In event of failure to agree as to scope of Contract requirements, Contractor shall follow the procedure set forth in the DISPUTES article.

b. The Contractor shall not be entitled to any compensation for delays, disruptions, inefficiencies or additional administrative effort caused by the Contractor's untimely review of the Contract Documents for potential conflicts, omissions, discrepancies or ambiguities.

c. Agency may charge back to the Contractor, time and expense associated with RFI's, as may be reasonably determined by the Agency to be unnecessary.

4.3.2 ADDITIONAL DETAILED INSTRUCTIONS

a. The Agency may furnish additional detailed written instructions on any Request for Information to further explain the Work. If in the opinion of Contractor, the additional detailed instructions constitute work in excess of the scope of the Contract, he must submit written notice thereof immediately to the Agency, but no later than seven (7) calendar days following receipt of such instruction(s), and in any event prior to commencement of work thereon. The Contractor shall not be entitled to additional compensation due to any additional instructions unless the Contractor shall have given the appropriate written notice. Agency will then consider such notice and, if in its judgment it is justified, the Agency instructions will be revised or extra work shall be authorized by Change Order. In the event of a dispute hereunder, attention is directed to the DISPUTES article.

ARTICLE 5 SHOP DRAWINGS AND SUBMITTALS

5.1 SHOP DRAWINGS, PRODUCT DATA, COORDINATION DRAWINGS AND SCHEDULES

5.1.1 Shop drawings are drawings submitted to the Agency by the Contractor showing detail of the proposed fabrication and assembly of structural elements and the installation (i.e., form, fir, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, fabrication, erection and setting drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, and performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the Work required by the Contract. The Agency may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Contract.

5.1.2 The Contractor shall coordinate all shop drawings and review them for accuracy, completeness, and compliance with Contract requirements, and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Agency without evidence of the Contractor's approval shall be returned for resubmission. The Architect will indicate review for compliance of the shop drawings, and if not in compliance as submitted, shall indicate the reasons therefore. Any work done before such review shall be at the Contractor's risk. Review by the Architect shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with paragraph 5.1.3.

5.1.3 If shop drawings show any variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation, no change in time or price will be allowed for Contractor changes. Should the Architect make changes on the shop drawings which affect time and or cost, the Contractor will immediately notify the Agency with a Request for Information. If the Contractor fails to issue the Request for Information within seven (7) calendar days from receipt of the returned shop drawing, the Contractor shall have waived his right to any potential Change Order.

5.1.4 The Contractor shall submit shop drawings, coordination drawings, and schedules for review as required by the Contract Documents. The Contractor will provide a submittal schedule listing all shop drawings and submittals, the submission dates by the Contractor, and return dates from the Architect. This schedule will be provided fourteen (14) calendar days after the Notice to Proceed.

5.1.5 Shop drawings and schedules, other than catalogs, pamphlets, and similar printed material, shall be submitted with one reproducible plus one copy.

5.1.6 Each shop drawing or coordination drawing shall have a blank area 4 by 4 inches located adjacent to the title block. The title block shall display the following:

1) Number and title of drawing
2) Date of drawing or revision
3) Name of project building or facility
4) Name of Contractor and (if appropriate) name of subcontractor submitting drawings
5) Clear identity of contents and location on the work
6) Project title and project number
7) Submittal number

5.1.7 Unless otherwise provided in this Contract or otherwise directed by Agency, shop drawings, coordination drawings, and schedules shall be submitted to the Architect with a letter, sufficiently in advance of construction requirements to permit no less than twenty (21) calendar days for checking and appropriate action.

5.2 SAMPLES

5.2.1 After the award of the Contract, the Contractor shall deliver samples required by the specifications to the Agency for approval. The Contractor shall prepay any shipping charges. Any materials or equipment for which samples are required shall not be used in the Work until reviewed by Agency.

5.2.2 Each sample shall have a label indicating:

1) Name of project building or facility, project title, and project number.
2) Name of Contractor and, if appropriate, name of subcontractor.
3) Identification of material or equipment with specification requirement.
4) Place of origin.
5) Name of manufacturer and brand (if any).
6) Identify by specification section.

5.2.3 Samples of finished materials shall have additional markings that will identify them in reference to the finish schedules.

5.2.4 The Contractor shall mail a letter in triplicate under separate cover submitting each shipment of samples and containing the information required in paragraph 5.2.2. He shall enclose a copy of this letter with the shipment and send a copy to the Agency representative on the project. Approval of a sample shall be only for the characteristics or use `named in such review and shall not be construed to change or modify any Contract requirement. Substitutions will not be permitted unless they are approved under paragraph 5.3.

5.2.5 Approved samples not destroyed in testing will be sent to the Agency. Approved samples of hardware in good condition will be marked for identification and may be used in the Work. Materials and equipment incorporated in the Work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at time of submission.

5.2.6 Failure of any material to pass the specified tests will be sufficient cause for refusal to consider any further samples of the same brand or make of that material or equipment under this Contract.

5.2.7 Samples of various materials or equipment delivered on the site or in place, may be taken by the Agency for testing. Samples failing to meet Contract requirements will automatically void previous approvals of the items tested. The Contractor shall replace such materials or equipment found not to have met Contract requirements, or there shall be a proper adjustment of the Contract price as determined by the Agency.

5.2.8 Unless otherwise specified, when tests are required, only one test of each sample proposed for use will be made at the expense of the Agency. Samples which do not meet specification requirements will be rejected. Requests for testing of additional samples by Contractor may be made by the Agency at the expense of the Contractor.

5.3 SUBSTITUTIONS

5.3.1 Wherever the name, or brand, or manufacturer of an article is specified in the Contract Documents, it is used as a measure of quality and utility or a standard. Except in those instances where the product is designated to match others presently in use, specifications calling for a designated material, product, thing or service by specific brand or trade name shall be deemed to be followed by the words "or equal" so that bidders may propose any equal material, product, thing or service in their bid. If the Contractor desires to use any other brand or manufacturer of equal quality and utility to that specified, he shall list definite particulars of that which he considers equivalent to the specified item in his bid. The Contractor shall have thirty-five (35) days after the award of the Contract for submission of data substantiating substitution of "equal" items. The Agency will then determine whether or not the proposed name brand or article is equal in quality and utility to that specified in the Contract Documents, and its written decision shall be final.

5.3.2 No proposal will be considered unless accompanied by complete information and descriptive data necessary to determine the equality of the offered materials, articles, or equipment. Samples shall be provided when requested by the Agency.

5.3.3 The burden of proof as to the comparative quality or suitability of the offered materials, articles, or equipment shall be upon the Contractor. The Agency shall be the sole judge as to such matters. In the event that the Agency rejects the use of such alternative materials, articles, or equipment, then one of the particular products designated by brand name in the specifications shall be furnished.

5.3.4 The Agency will examine Contractor's submittals with reasonable promptness. Return of the submittals to the Contractor shall not relieve the Contractor from responsibility for deviations and alternatives from the Contract Documents nor shall it relieve him from responsibility for errors in the submittals. A failure by the Contractor to identify, in his letter of transmittal, material deviations from the Contract Documents shall void the submittal and any action taken thereon by the Agency. When specifically requested by the Agency, the Contractor shall resubmit such shop drawing(s), descriptive data, and samples as may be required.

5.3.5 If any mechanical, electrical, structural, or design revisions are required for the proper installation and fit of alternative materials, articles, or equipment, or because of deviations from the Contract Documents, such changes shall not be made without the consent of the Agency's authorized representative, and shall be made without additional cost to the Agency, such costs, including the fees of the Architect, to be borne by the Contractor.

ARTICLE 6 SCHEDULES

6.1 CONSTRUCTION SCHEDULE

6.1.1 The Contractor shall prepare and submit to the Agency a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the salient features of the work (including acquiring materials and equipment). The schedule shall be in the form of a CPM (critical path method) schedule, of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. The scheduled completion date shall be the same as the contractual completion date, for the initial schedule and subsequent updates. Any proposed early completion date shall show the difference between that date and the contract completion date as Float, which shall belong to both the Agency and Contractor.

6.1.2 If, in the opinion of the Agency, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, without additional cost to the Agency. The Contractor shall submit any supplementary schedule or schedules in CPM form as the Agency deems necessary to demonstrate how the approved rate of progress will be regained.

6.1.3 All schedule updates must accurately reflect the as-built schedule. There shall be no change to the Critical Path without the Agency's written consent.

ARTICLE 7 TIME, LIQUIDATED DAMAGES AND EXTENSIONS

7.1 TIME OF WORK

The Contractor shall commence work on this project immediately upon receipt of the written Notice to Proceed and shall perform the work diligently to completion within the number of calendar days specified in the Contract. Neither site access nor physical work shall be commenced before the Contract is fully executed, and bonds, insurance and the schedule are submitted as required by the Contract Documents. No work shall be done on Saturday, Sunday and holidays and no work shall be performed outside of normal working hours without the prior written consent of the Agency, unless required by these Specifications. See: Working Hours.

7.2 LIQUIDATED DAMAGES

If the Work is not completed within the time required, damage will be sustained by the Agency. It is and will be impracticable and extremely difficult to ascertain and determine actual damage which Agency will sustain by reason of such delay; and it is therefore agreed that Contractor will pay to Agency the sum of $2,000.00 per day for each and every day's delay in finishing the Work beyond the time prescribed. If the Contractor fails to pay such liquidated damages, the Agency may deduct the amount thereof from any money due or that may become due the Contractor under the Contract.

7.3 UNAVOIDABLE DELAYS

7.3.1 TIME EXTENSION

a. The Contractor will be granted an extension of time for completion of the Work beyond that named in the Contract Documents, for delays which may result through causes beyond the control of the Contractor and which he could not have avoided by the exercise of care, prudence, foresight and diligence. The appropriate extension of time shall constitute full compensation. Costs associated with extended overhead will not be considered.

b. If the Contractor is allowed extensions of time in which to complete the Work equal to the sum of all unavoidable delays, plus any adjustments of contract time due to contract change orders, during such extension of time liquidated damages shall not be charged to the Contractor.

c. Unavoidable delays within the meaning of this section shall be those caused by Acts of God or of the public enemy, fire, epidemics, or strike. There will be no liquidated damages for delays as described within this paragraph.

d. Delays in the performance of parts of the work which may in themselves be unavoidable, but do not necessarily prevent or delay the performance of critical activity(s) while the activity(s) is on the Critical Path, will not be considered as unavoidable delays within the meaning of the contract and shall not be the basis of a claim for delay.

7.3.2 WEATHER

Inclement weather shall not be a prima facie reason for granting a time extension. The Contractor shall make every effort to continue work under prevailing conditions. However, if the inclement weather prevents the Contractor from beginning at the usual starting time, or prevents the Contractor from proceeding with seventy-five percent (75%) of the normal labor and equipment force towards completion of the day's current Critical Path activities (shown on the most current, and accepted schedule update) for a period of at least five (5) hours, and the crew is dismissed as a result thereof, the Agency will designate such time as unavoidable delay and grant a one (1) calendar day, non-compensable, time extension.

7.3.3 NOTICE OF DELAYS

a. Whenever the Contractor foresees any delay in the performance of a Critical Path work activity, and in any event immediately upon the occurrence of any delay which he regards as an unavoidable delay, the Contractor shall notify the Agency in writing of such delay and its cause, in order that the Agency may take immediate steps to prevent, if possible, the occurrence or continuance of the delay, and may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the work are to be delayed thereby.

b. After the completion of any part or the whole of the Work, the Agency, in calculating the amount due the Contractor, will assume that any and all delays which have occurred have been avoidable delays, except such delays as shall have been called to the attention of the Agency at the time of their occurrence and found by the Agency to have been unavoidable as substantiated by a change order. The Contractor shall make no claims that any delay not called to the attention of the Agency at the time of its occurrence has been an unavoidable delay.

7.4 REQUEST FOR TIME EXTENSION

7.4.1 In the event the Contractor requests an extension of contract time for unavoidable delay, justification shall be submitted no later than seven (7) calendar days after the initial occurrence of any such delay. When requesting time for proposed change orders, the request(s) must be submitted with the proposed change order with full justification. If the Contractor fails to submit justification he shall waive his right to a time extension at a later date. Justification must be based on the currently accepted contract schedule as updated at the time of occurrence of delay or execution of work related to any change(s) in the scope of work. The justification must include a schedule, including, but not limited to, the following information:

a. The duration to perform the activity relating to the change(s) in the work and the resources (manpower, equipment, material, etc.) required to perform these activities within the stated duration.

b. Logical activity ties to the contract schedule for the proposed changes and or delay showing the activity/activities in the schedule whose start or completion dates are affected by the change and or delay.

7.4.2 The Agency, after receipt of such justification and supporting evidence, shall make its finding of fact. The Agency's decision shall be final and conclusive and the Agency will advise the Contractor in writing of such decision. If the Agency finds that the Contractor is entitled to any extension of Contract time, the Agency's determination as to the total number of days of extension shall be based upon the latest updated version of the approved contract schedule.

7.4.3 In the event the Contractor disagrees with the Agency's decision, the Contractor shall be required to submit a claim pursuant to the DISPUTE article.

ARTICLE 8 PERFORMANCE

8.1 SUPERVISION & CONSTRUCTION PROCEDURES

8.1.1 The Contractor shall supervise and direct the work. The Contractor shall be solely responsible for all constructiou means, methods, techniques, sequences, procedures, project safety, and shall coordinate all portions of the Work under the Contract, including the relations of the various trades to the progress of the Work, in accordance with the provisions of the Contract Documents.

8.1.2 The Contractor shall be responsible to the Agency for the acts and omissions of the Contractor's employees, subcontractors, and their agents and employees, and any other persons performing any of the work under a contract with the Contractor.

8.1.3 The Contractor is an independent contractor and nothing in the Contract Documents shall be interpreted to make the Contractor an agent of the Agency.

8.2 SUPERVISION

8.2.1 Within seven (7) days after the Notice to Proceed, the Contractor shall provide to the Agency an organization chart outlining key job personnel. The Contractor will also provide a Letter

of Authority or Corporate Resolution for the individual(s) authorized to sign documents on its behalf, i.e., payment requests, change orders, inspection reports, etc.

8.2.2 The Contractor shall employ, during the progress of the Work, a competent Project Superintendent and any necessary assistants, as approved by the Agency. The Project Superintendent shall not be changed except with the consent of the Authorized Representative of Agency, unless the Superintendent proves to be unsatisfactory to the Contractor or ceases to be in his employ. The Agency shall be notified immediately of any new Superintendent appointed to the Work and the Contractor shall submit qualifications for approval. The Superintendent shall represent the Contractor and all directions given to him shall be as binding as if given to the Contractor.

8.2.3 The Agency shall be supplied at all times with the name and telephone number of a person in charge of or responsible for the Work, who can be reached for emergency work twenty-four (24) hours a day, seven (7) days a week.

8.3 CONDUCT OF WORK

8.3.1 In connecting one kind of work with another, marring or damaging same will not be permitted and, in the event such occurs, shall be corrected by the Contractor at its cost prior to acceptance by the Agency. Should improper work of any trade be covered by another which results in damage or defects, the whole work affected shall be made good by the Contractor without expense to Agency.

8.4 PROTECTION OF WORK & PROPERTY

8.4.1 The Contractor shall continuously maintain adequate protection of the Work from damage and shall protect the Agency's property from injury or loss in connection with this Contract. He shall make good any such damage, injury, or loss, except what may be directly due to errors in the Contract Documents or caused by agents or employees of the Agency. He shall adequately protect adjacent property as provided by law and the Contract Documents.

8.4.2 The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the Work site which are not to be removed and which do not unreasonably interfere with the work required under this Contract.

8.4.3 The Contractor shall protect from damage all existing improvements and utilities at or near the Work site and on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the Work. If the Contractor fails to repair the damage promptly, the Agency may have the necessary work performed and charge the cost to the Contractor.

8.5 CONTRACTOR'S RESPONSIBILITY FOR WORK

8.5.1 Until Acceptance of the Work by the Agency, Contractor shall have the charge and care thereof and shall bear risk of injury or damage to any part of the Work by action of the elements. If a separate Contractor sues the Owner, on account of any loss so sustained, the Agency shall notify the Contractor, who shall indemnify and hold harmless the Agency against any expenses, or judgment arising therefrom.

8.5.2 Contractor, at its cost, shall rebuild, repair, restore and make good all damages from the elements to any portion of the Work occasioned by such causes before its Acceptance.

8.5.3 No advertising of any description will be permitted in or about the Work, except by order of the Agency.

8.5.4 Contractor shall not create or permit the continued existence of any nuisance in or about the Work.

8.6 UTILITIES

8.6.1 Unless otherwise provided for under separate sections herein, Contractor will arrange all water, gas, and electricity required for construction purposes until acceptance of the Work. Contractor shall pay for such services unless otherwise specifically noted.

8.6.2 Utilities shall not be interrupted except with the approval of the Agency. A two (2) work day written notice is required prior to any and all interruptions. Interruptions shall be scheduled so as to minimize duration and disruption to existing operations.

8.6.3 a. The Contractor shall send notices, make all necessary arrangements, and perform all other services required in the care and maintenance of all public utilities.

b. Enclosing or boxing in, for protection of any public utility equipment, shall be done by the Contractor. Upon completion of the Work, the Contractor shall remove all enclosures, and leave in a finished condition.

c. All connections to public utilities shall be made and maintained in a manner so as not to interfere with the continuing use of same by the Agency during the entire progress of the Work.

8.7 WORKING HOURS

8.7.1 All work shall be performed on a calendar day basis during the customary working hours of the trades involved unless otherwise specified in this Contract. Work performed by the Contractor of his own volition outside such established working hours shall be at no additional expense to the Agency and without Agency approval.

8.7.2 It is expressly stipulated that no laborer, workman, or mechanic employed at any time by the Contractor or by any subcontractor(s) under this Contract upon the Work or any part thereof, shall be required or permitted to work thereon more than eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except, as provided by Section 1815 of the California Labor Code. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the California Labor Code, all the provisions of which are deemed to be incorporated herein, said contractor shall forfeit, as a penalty to Agency, twenty-five dollars ($25.00) for each laborer, workman, or mechanic employed in the execution of this Contract by contractor for each calendar day during which said laborer, workman, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of said Sections of the Labor Code.

8.7.3 The Contractor, and each subcontractor, shall keep an accurate record showing the names of and actual hours worked each calendar day and each calendar week by all laborers, workmen, and

mechanics employed by them in connection with the Work contemplated by this Contract, which record shall be open at all reasonable hours to the inspection of the Agency or its officers or agents and to the Division of Labor Standards Enforcement of the Department of Industrial Relations.

8.7.4 No construction work shall be done on Saturdays, Sundays or Agency holidays and no work shall be performed outside of normal working hours without the prior written consent of the Agency. In any event, all work shall be subject to approval of the Agency. Prior to start of such work, the Contractor shall arrange with the Agency for the continuous or periodic inspection of the Work and testing of materials, when necessary. If requests are made by the Contractor for permission to work overtime, nights, Saturdays, Sundays or Agency holidays, and such requests are granted, the Contractor shall bear all extra expense to the Agency for inspection and other incidental expenses caused by such overtime work. If contractors are requested, in the interest of the Agency, to work overtime by the Agency, or if overtime work is specifically required by these specifications, all extra expense of inspection will be paid by the Agency.

8.8 MATERIAL & EQUIPMENT

8.8.1 Materials, equipment, and articles incorporated into the Work shall be new and of equal quality to the types and grades specified. When not particularly specified, the Contractor shall submit for approval satisfactory evidence as to the kind and quality of material. See SUBSTITUTION provision 5.3 concerning "or equal" requirements and procedure for submitting alternative material, articles, or equipment.

8.8.2 All materials shall be delivered so as to insure a speedy and uninterrupted progress of the Work. All materials shall be stored so as to cause no obstruction and so as to prevent overloading of any portion of the structure on the Work site, and the Contractor shall be entirely responsible for damage or loss by weather, theft, vandalism, or other cause.

8.8.3 Materials shall be stored to assure the preservation of their quality and fitness for the Work. Stored materials shall be reasonably accessible for inspection. When considered necessary by the Agency, stored materials shall be placed on wooden platforms or on other hard, clean surfaces and not directly on the ground, and shall be placed under cover when so directed.

8.9 LAYOUT OF WORK

8.9.1 The Contractor shall lay out its work from established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, material, and labor required to lay out any part of the Work. The Contractor shall be responsible for executing the Work to the lines and grades that may be established or indicated in the Contract Documents. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the County and or Agency until authorized to remove them. If such marks are destroyed by the Contractor before their removal is authorized, the Agency may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

8.10 USE OF PREMISES

8.10.1 The Contractor shall maintain the entire premises under his control in an orderly condition. He shall store his apparatus, materials, supplies and equipment in such a manner as will not interfere with the progress of his work or the work of other contractors.

8.11 OPERATIONS & STORAGE

8.11.1 The Contractor shall confine all operations (including storage of materials) on County and or Agency premises to areas authorized or approved by the Agency.

8.11.2 Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Agency and shall be built with labor and materials furnished by the Contractor without expense to the Agency. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at his expense upon completion of the work.

8.11.3 The Contractor shall, under regulations prescribed by the authority having jurisdiction, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the authority having jurisdiction. When materials are transported in performance of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or County regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair, or pay for the repair, of any damaged curbs, sidewalks, or roads.

8.12 HEAT/POWER/LIGHT

8.12.1 Unless otherwise specified or already provided by the Agency, the Contractor shall:

a. Provide heat, as necessary to protect all work, materials, and equipment against injury from dampness and cold;

b. Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material;

c. Provide electric power and light as required for performance of the Work.

8.13 CLEANING UP

8.13.1 The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the Work, the Contractor shall remove from the work and premises any weeds, rubbish, tools, scaffolding, equipment, and materials that are not the property of the County and or Agency. Upon completing the Work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Agency.

ARTICLE 9 SAFETY & HEALTH

9.1 ACCIDENT PREVENTION

9.1.1 In performing this Contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions. For these purposes, the Contractor shall:

a. Provide a copy of its safety program;

b. Provide appropriate safety barricades, signs, and signal lights;

c. Comply with standards issued by the U.S. Government, State, County and City, and other governing agencies having jurisdiction;

d. Ensure that any additional measures the Agency determines to be reasonably necessary for this purpose are taken.

9.1.2 The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by the Agency.

9.1.3 Before beginning excavation for a trench 5 feet or more in depth, Contractor shall provide evidence of having obtained a permit from the authority having jurisdiction.

9.1.4 Nothing herein shall be deemed to allow use of shoring, sloping, or protective systems less effective than those required by the Construction Safety Orders of the California Division of Industrial Safety.

9.2 SANITARY FACILITIES

9.2.1 Contractor shall supply and maintain at its expense such toilets and other sanitary facilities including those which are accessible by the disabled as per ADA and Title 24 requirements necessary for use by visitors and workers employed at the job site. Such facilities shall be approved by the County and Agency.

9.3 RESPONSIBILITY FOR COMPLIANCE WITH CAL-OSHA

9.3.1 All work, materials, work safety procedures and equipment shall be in full accordance with the latest Cal-OSHA rules and regulations.

9.3.2 Contractor warrants that he and each of his subcontractors shall, in performance of this Contract, comply with each and every compliance order issued pursuant to Cal-OSHA. The Contractor assumes full and total responsibility for compliance with Cal-OSHA standards by his subcontractors as well as himself. The cost of complying with any order and or payment of any penalty assessed pursuant to Cal-OSHA shall be borne by the Contractor. Nothing contained therein shall be deemed to prevent the Contractor and his subcontractors from otherwise allocating between themselves responsibility for compliance with Cal-OSHA requirements; provided, however, that the Contractor shall not thereby, in any manner whatsoever, be relieved of his responsibility to the Agency as herein set forth.

9.4 TOXIC AND HAZARDOUS MATERIALS AND WASTE

9.4.1 ASBESTOS

Operations which may cause release of asbestos fibers into the atmosphere shall meet the requirements of Title 8 CCR General Industrial Safety Orders, Section 5208 and California law. Some operations which may cause such concentrations include sanding, grinding, abrasive

blasting, sawing, drilling, shoveling, or otherwise handling materials containing asbestos so that dust will be raised.

9.4.2 TOXIC MATERIALS

Operations which release toxic materials into the atmosphere shall meet the requirements of Title 8 CCR. General Industrial Safety Orders. Some operations which may release such materials include use of adhesives, sealants, paint, and other coatings.

9.4.3 LEAD-BASED PAINT

Lead-based paint is prohibited. Lead-based paint is defined as:

a. Any paint containing more than five-tenths of one percentum lead by weight (calculated as lead metal in the total non-volatile content of the paint) or the equivalent measure of lead in the dried film of paint applied or both; or

b. For paint manufactured after June 22, 1977, any paint containing more than six one-hundredths of one percentum lead by weight (calculated as lead metal) in the total content of the paint or the equivalent measure of lead in the dried film or paint already applied.

9.4.4 HAULING AND DISPOSAL

All hauling and disposal shall meet requirements of Title 22 CCR, Division 4. Chapter 30, "Minimum Standards for Management of Hazardous and Extremely Hazardous Wastes."

9.4.5 ASBESTOS PROHIBITED

No products or materials containing asbestos shall be incorporated into the Work without the prior written approval of the Agency.

ARTICLE 10 AGENCY/COUNTY-FURNISHED PROPERTY

10.1 AGENCY and or COUNTY -FURNISHED PROPERTY

10.1.1 The Agency and or County may furnish to the Contractor property as identified in the specification(s) to be incorporated or installed into the Work or used in performing the Contract. The listed property will be furnished f.o.b. railroad cars at the place specified in the Contract or f.o.b. truck at the project site. The Contractor is required to accept delivery. When the property is delivered, the Contractor shall verify its quantity and condition and acknowledge receipt in writing to the Agency within twenty-four (24) hours of delivery, also specifying any damage to or shortage of the property as received. All such property shall be installed or incorporated into the Work at the expense of the Contractor, unless otherwise indicated in this Contract.

10.1.2 Each item of property to be furnished under this clause shall be identified by the Contractor in a schedule by quantity, item, and description. Schedule form will be provided by the Agency.

10.1.3 The Contractor shall be held responsible for all material delivered to him and deductions will be made from any moneys due him to make good any shortages and deficiencies, from any cause whatsoever, which may occur after such delivery.

10.1.4 The Contractor shall set up accounting records and establish an inspection procedure as approved by the Agency.

ARTICLE 11 BENEFICIAL OCCUPANCY

11.1 BENEFICIAL OCCUPANCY

11.1.1 The Agency shall have the right to take possession of or use any completed or partially completed portion of the Work. The Agency's possession or use shall not be deemed an acceptance of any Work under the Contract. The Contractor will continue to pay for any portion of the utilities which he is using.

11.1.2 While the Agency has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to that portion of the Work resulting from the Agency's possession or use. If Contractor believes the partial possession or use by the Agency will delay the progress of the Work or will cause additional expense to the Contractor, Contractor shall immediately submit a written request for an equitable adjustment in the Contract price or the time of completion. Agency will then consider such request and, if in its judgment it is justified, the Agency will modify the contract in writing accordingly. In the event the Contractor disagrees with the Agency's decision, the Contractor shall be required to submit a claim pursuant to the DISPUTE article.

ARTICLE 12 INSPECTION AND TESTING

12.1 INSPECTION AND TESTING

12.1.1 The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by this Contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Agency. The Agency shall at all times have access to the Work, and the Contractor shall provide proper facilities for such access and for inspection.

12.1.2 Agency inspections and tests are for the sole benefit of the Agency and do not:

a. Relieve the Contractor of responsibility for providing adequate quality control measures;

b. Relieve the Contractor of responsibility for damage to or loss of the material before Acceptance;

c. Constitute or imply Acceptance; or

d. Affect the continuing rights of the Agency after Acceptance regarding latent defects, gross mistakes, fraud or the Agency's rights under any warranty or guarantee.

12.1.3 The presence or absence of an Agency inspector does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Agency's written authorization.

12.1.4 The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Agency. The Agency may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. Special, full size, and performance tests shall be performed as described in the Contract.

12.1.5 The Contractor shall, without charge, replace or correct work found by the Agency not to conform to contract requirements, unless in the public interest the Agency consents to accept the work with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

12.1.6 If, before Acceptance of the Work, the Agency decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet Contract requirements, the Agency shall issue a Change Order for such removal and reinstallation.

12.1.7 The Contractor shall at all times maintain proper facilities and provide safe access for inspection by the Agency to all parts of the work, and to the shops wherein the work is in preparation. Where the specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the Agency of its readiness for inspection and without the approval or consent of Agency. Should any such work be covered up without such notice, approval, or consent, it must, if required by Agency, be uncovered for examination at the Contractor's expense.

12.1.8 The Contractor shall notify the Agency at least one (1) work day in advance of the time scheduled for the inspection. Should the Contractor fail to notify the Agency and proceed with work requiring inspection, all such work is rejected, and no further work shall be done on that portion of the project until the rejected work is accepted by the Agency. Should the Contractor request acceptance of such rejected work the Agency shall, at the Contractor's expense, secure the services of private material testing laboratories, consulting engineers or licensed land surveyors, who shall certify that said work does in fact conform to the requirements of the Contract Documents. The work previously rejected shall be accepted by the Agency after receipt of such certification if the Agency approves of such certification.

12.1.9 If the Contractor does not promptly replace or correct rejected work, the Agency may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

12.1.10 Construction review of the Contractor's performance by the Agency is not intended to include the review of the adequacy of the Contractor's safety measures, in, on, or near the construction site.

12.1.11 The Agency will pay for initial testing services specified to be performed by the Agency. When initial tests indicate non-compliance with the Contract Documents, subsequent retesting occasioned by the non-compliance shall be performed by the same testing agency, and costs thereof will be deducted by the Agency from the Contract sum.

12.2 INSPECTION BY OTHER JURISDICTIONS

Whenever any part of the Work to be performed is under the jurisdiction or control of another public entity, including but not limited to: The United States Government, State of California, County of Riverside or City, such work shall be subject to inspection by the officials of such entities and it must pass inspection, in addition to Agency inspection, and such other inspections as may otherwise be provided for in the Contract Documents.

12.3 FINAL INSPECTION AND TESTS

The Contractor shall give the Agency at least ten (10) calendar days advance written notice of the date the Work will be fully completed and ready for final inspection and tests. Final inspection and tests will be started within ten (10) calendar days from the date specified in the aforementioned notice unless the Agency determines that the Work is not ready for final inspection and so informs the Contractor.

ARTICLE 13 ACCEPTANCE

13.1 ACCEPTANCE OF THE WORK

13.1.1 After the final inspection by Agency and all the contract documentation has been received, it will be recommended to the County Board of Supervisors to accept the Work and file a Notice of Completion. Upon approval of the Notice of Completion, a copy will be sent to the Contractor. (See final payment clause.) Upon Acceptance of the Work, Contractor will be relieved of the duty of maintaining and protecting the Work. Neither determination by the Agency that the Work is complete, nor Acceptance thereof, shall operate as a bar to Agency's claim against Contractor pursuant to Contractor's warranty and guarantees.

13.1.2 Partial payments shall not be construed as acceptance of any part of the Work.

13.1.3 In judging the Work, no allowance for deviations from the drawings and specifications will be made, unless already approved in writing at the time and in the manner as called for herein.

13.1.4 Agency shall be given adequate opportunity to make any necessary arrangements for fire insurance and extended coverage.

13.1.5 The Acceptance of the Work will not be recommended until all requirements of the Contract Documents are complete and approved by the Agency. This shall include, but is not limited to, all construction, guarantee forms, parts lists, schedules, tests, operating instructions, as-built drawings, and all other documentation identified by the Contract Documents.

ARTICLE 14 WARRANTY AND GUARANTEES

14.1 CONTRACTOR'S WARRANTY AND GUARANTEE

14.1.1 Contractor warrants that all materials and equipment furnished under this Contract shall be new unless otherwise specified, and that all Work performed under this Contract conforms to the Contract requirements and is free of any defect whether performed by the Contractor or any subcontractor or supplier.

14.1.2 This warranty shall continue for a period of one (1) year from the date of filing of Notice of Completion on the Work. The Performance Bond shall remain in force during the warranty period.

14.1.3 The Contractor shall remedy at the Contractor's expense any damage to County and or Agency -owned or controlled real or personal property, when that damage is the result of:

a. The Contractor's failure to conform to Contract requirements or

b. Any defect of equipment, material, workmanship, or design furnished by the Contractor.

14.1.4 The Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. The Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.

14.1.5 The Agency shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) calendar days after being notified in writing by the Agency of any work not in accordance with the requirements of the Contract or any defects in the Work, commence, and perform with due diligence, all work necessary to fulfill the terms of this Article. If the Contractor fails to remedy any defect, or damage within fourteen (14) calendar days after receipt of notice, the Agency shall have the right to replace, repair, or otherwise remedy the defect, or damage at the Contractor's expense. Payment due to the Architect from the Agency for extra architectural services required in the enforcement of Contractor's guarantee after Acceptance of the Work shall be paid to the Agency by the Contractor.

14.1.6 In the event of any emergency constituting an immediate hazard to health or safety of County and or Agency employees, property, or licensees, when caused by work of the Contractor that is not in accordance with the Contract requirements, the Agency may undertake at Contractor's expense and without prior notice, all work necessary to correct such hazardous condition(s).

14.1.7. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall:

a. Obtain all warranties that would be given in normal commercial practice;

b. Require all warranties to be executed, in writing, for the benefit of the County and Agency, unless directed otherwise by the Agency; and

c. Enforce all warranties for the benefit of the County and Agency, unless otherwise directed by the Agency.

14.1.8 This warranty shall not limit the Agency's rights under the Inspection and Acceptance section(s) of this Contract with respect to latent defects, gross mistakes, or fraud.

ARTICLE 15 ENVIRONMENTAL PROTECTION

15.1 DUST CONTROL

15.1.1 The Contractor shall provide any and all dust control required.

15.1.2 Whenever the Contractor is negligent in providing dust control, the Agency shall order the Contractor to provide such dust control. If the Contractor does not comply promptly with such order, the Agency shall have the authority to provide such dust control and charge the Contractor therefore by deducting the cost from progress payments to the Contractor as such costs are incurred by the Agency. The Agency shall not be held responsible for schedule delays due to actions taken by Agency to mitigate the failure of the Contractor in providing dust control.

15.2 EXCESSIVE NOISE

15.2.1 The Contractor shall use only such equipment on the Work and in such state of repair, that the emission of sound there from is within the noise tolerance level of that equipment as established by CAL-OSHA.

15.2.2 Should the Agency determine that the muffling device on any equipment used on the Work is ineffective or defective so that the noise tolerance of such equipment is exceeded, such equipment shall not, after such determination by the Agency, be used on the Work until its muffling device is repaired or replaced so as to bring the noise tolerance level of such equipment within such standards.

15.3 POLLUTION CONTROL, CLEANING

15.3.1 The Contractor shall not, in connection with the Work, discharge any smoke, dust, or other contaminants into the atmosphere which are in violation of South Coast Air Quality Management District standards or discharge any fluids or materials into any lake, river, stream, or channel as will violate regulations of State of California Water Resources Board. The Contractor shall control accumulation of waste materials and rubbish and dispose of waste materials and rubbish off-site at a minimum of weekly intervals. Burning of materials is not permitted.

ARTICLE 16 EMPLOYMENT PRACTICES

16.1 QUALIFICATIONS FOR EMPLOYMENT AND APPRENTICESHIP STANDARDS

16.1.1 In accordance with Section 1735 of the California Labor Code, no person under the age of 16 years and no person currently serving sentence in a penal or correctional institution shall be employed to perform any Work under this Contract. No person whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health or safety of others shall be employed to perform Work under this Contract; provided that this requirement shall not operate against any physically handicapped persons otherwise employable where such persons may be safely assigned to Work which they ably perform.

16.1.2 This contract is subject to the provisions of Sections 1777.5 and 1777.6 of the California Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him. Section 1777.5 as amended, requires the Contractor or subcontractor employing tradesmen in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of this project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the Contract.

16.1.3 The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making contributions.

16.1.4 All employees engaged in work on the project under this Contract shall have the right to organize and bargain collectively through representatives of their own choosing, and such employees shall be free from interference, restraint, and coercion of employers in the designation of such employees for the purpose of collective bargaining or other mutual aid or protection, and no person seeking employment under this Contract shall be required as a condition of initial or continued employment to join any company, union, or to refrain from joining, organizing, or assisting a labor organization of such person's own choosing. No person in the employment of the County and or Agency shall be employed by this contractor.

16.2 WAGES & RECORDS

16.2.1 WAGE RATES

a. Pursuant to Section 1770 and 1773 et seq. of the Labor Code of the State of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification, or type of workman needed to execute the contract which will be awarded to the successful bidder, copies of which are on file and available upon request at the Clerk of the Board, Board of Supervisors, 4080 Lemon St., 1st Floor, Riverside, CA 92501-3655, and shall be posted at the job site.

b. It shall be mandatory upon the Contractor and upon any subcontractor under him, to pay not less than the said specified rates to all laborers, workmen, and mechanics employed in the execution of the Contract. It is further expressly stipulated that the Contractor shall, as a penalty to Agency, forfeit twenty-five dollars ($25.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic paid less than the stipulated prevailing rates for any work done under this Contract by him or by any subcontractor under him; and Contractor agrees to comply with all provisions of Section 1770 et. seq. of the Labor Code.

c. In case it becomes necessary for the Contractor or any sub-contractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, the Contractor shall immediately notify the Agency who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish the Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

d. The Agency will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth as provided herein. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the Agency or County on the Contract.

16.2.2 WAGE RECORDS

a. The Contractor and each subcontractor shall keep or cause to be kept an accurate record (certified payroll) showing the names and occupations of all laborers, workers, and mechanics employed by him in connection with the execution of this Contract or any subcontract thereunder. The record shall show the actual per diem wages paid to each of said workers, which records shall be provided to the Agency, and to the Division of Labor Standards Enforcement upon its request. Copies provided will include one which has the name and social security numbers marked out.

16.3 NOTICE OF LABOR DISPUTES

16.3.1 If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice, including all relevant information, to the Agency.

16.3.2 The Contractor agrees to insert the substance of this clause, including this paragraph into any subcontract in which a labor dispute may delay the timely performance of this Contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

16.4 NONDISCRIMINATION

16.4.1 EQUAL EMPLOYMENT OPPORTUNITY

a. Contractor agrees for the duration of this Contract that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

c. The Contractor will send to each labor union or other representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the workers' representative of the Contractor commitments under this agreement.

d. The Contractor agrees that it will comply with the provisions of Titles VI and VII of the Civil Rights Act, Revenue Sharing Act Title 31, U.S. Code Section 2716, and California Government Code Section 12990.

e. The Contractor agrees that it will assist and cooperate with the Agency, County, the State of California and the United States Government in obtaining compliance with the equal opportunity clause, rules, regulations, and relevant orders of the State of California and United States Government issued pursuant to the Acts.

f. In the event of the Contractor's non-compliance with the discrimination clause, the affirmative action plan of this contract, or with any of the said rules, regulations or orders, this Contract may be canceled, terminated, or suspended in whole or in part by the Agency.

16.4.2 HANDICAPPED NON-DISCRIMINATION

This project is subject to Section 504 of the Rehabilitation Act of 1973 as amended, (29 U.S.C. 794), and the Americans with Disabilities Act of 1990, as amended, and all requirements imposed by the guidelines and interpretations issued thereto. In this regard, the Agency and all of its contractors and subcontractors will take all reasonable steps to ensure that handicapped individuals have the maximum opportunity for the same level of aid, benefit or service as any other individual.

16.4.3 FAIR EMPLOYMENT AND HOUSING ACT ADDENDUM

In the performance of this Contract, the Contractor will not discriminate against any employee or Applicant for employment because of race, sex, color, religion, ancestry, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, sex, color, religion, ancestry, or national origin. Such action shall include, but not limited to, the following: employment, upgrading, emotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State or local agency setting forth the provisions of this Fair Employment and Housing Section.

16.4.4 ACCESS TO RECORDS

The Contractor will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment and Housing section of this Contract.

16.4.5 REMEDIES FOR WILLFUL VIOLATION

The State or local agency may determine a willful violation of the Fair Employment and Housing provision to have occurred upon receipt of a final judgment having that effect from a court in an action to which Contractor was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Contractor has violated the Fair Employment and Housing Act and has issued an order or obtained an injunction under Government Code Sections 12900, et seq.

ARTICLE 17 SUBCONTRACTING

17.1 SUBCONTRACTORS

17.1.1 A subcontractor is an individual, firm or corporation having a direct contract with the Contractor or with any other subcontractor for the performance of a part of the Work. In accordance with Section 4104 of the Public Contract Code, each Contractor, in his bid, shall include the name and location of each subcontractor who will perform work or labor, or render services to the Contractor in or about the Work in an amount in excess of one half of 1% of the Contractor's total bid.

17.1.2 The Agency reserves the right to approve all subcontractors. Such approval shall be a consideration to the awarding of the Contract and unless notification to the contrary is given to the Contractor prior to the signing of the Contract, the list of subcontractors which is submitted with his proposal will be deemed to be acceptable.

17.1.3 The Contractor shall be as fully responsible to the Agency for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

17.1.4 Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and the Agency.

17.1.5 The divisions or sections of the specifications are not intended to control the Contractor in dividing the Work among subcontractors or to limit the work performed by any trade.

17.2 RELATIONS OF CONTRACTOR AND SUBCONTRACTOR

17.2.1 The Contractor agrees to bind every subcontractor by the terms of the Contract with the Agency, the General Conditions, Supplementary Conditions, and the drawings and specifications as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Agency.

17.3 SUBCONTRACTS

17.3.1 Pursuant to the provisions of Sections 4100 to 4114 of the California Public Contract Code, inclusive, the Contractor shall not, without the consent of the Agency, either:

a. Substitute any persons as subcontractors in place of the subcontractors designated in his original bid without the consent of Agency. (The County's consent can only be given in cases permitted by Public Contract Code Section 4107.)

b. Permit any subcontract to be assigned or transferred or allow any work to be performed by anyone other than the original subcontractor listed in his bid.

c. Sublet or subcontract any portion of the work in excess of one-half of one percent of his bid to which his original bid did not designate a subcontractor.

Should the Contractor violate any of the provisions of Sections 4100 to 4114, inclusive, of the Public Contract Code, his so doing shall be deemed a violation of this Contract, and the Agency may either cancel the contract, or assess the Contractor a penalty in the amount of not more than ten (10) percent of the amount of the subcontract involved, or both.

ARTICLE 18 TAXES

18.1 SALES AND PAYROLL TAXES

18.1.1 Each Contractor, subcontractor, and material dealer shall include in their bid all applicable taxes including but not limited to sales tax and payroll taxes required by law.

ARTICLE 19 CHANGES

19.1 CHANGE ORDER WORK

19.1.I The Agency reserves the right to make changes in the work without impairing the validity of the Contract. The Agency may make changes to the work, or suspend the work, and all such changes or suspension are within the contemplation of the parties and will not be a basis for compensable delay. Such changes may be made in accordance with any of the following methods:

a. By written change order to the Contract ordered by the Board of Supervisors.

b. By written change order, signed by the Executive Director of the Redevelopment Agency for the County of Riverside in the manner and amounts specified by Board Policy B-11.

c. By written authorization, issued by the Executive Director of the Redevelopment Agency for the County of Riverside, for items of work done under unit prices. The cost or credit for such added or omitted work shall be determined by multiplying the number of units added to or omitted from the work by the applicable unit price.

19.1.2 Upon receipt of a proposed Change Order from Agency, the Contractor shall submit a proposal in accordance with the requirements and limitations set forth in this "Change Orders" article, for work involved in the contemplated change.

19.1.3 The Contractor must submit a cost proposal within fifteen (15) calendar days after receipt of the proposed change order. The Contractor must submit cost proposals in less than fifteen (15) calendar days if requested by the Agency or if required by schedule limitations.

19.1.4 If the Contractor fails to submit the cost proposal within the 15-day period (or as requested), the Agency has the right to order the Contractor in writing to commence the work immediately on a force account basis and or issue a lump sum change to the contract price in accordance with the Agency 's estimate of cost. If the change is issued based on the Agency estimate, the Contractor will waive his right to dispute the action unless within fifteen (15) calendar days following completion of the added/deleted work, the Contractor presents proof that the Agency 's estimate was in error.

19.1.5 If the Agency disagrees with the proposal submitted by Contractor, it will notify the Contractor in writing and the Contractor may elect to proceed under the DISPUTE article of this Contract, or, in the event either party contests the price or time extension of Change work, or time is of the essence, the Agency may issue a Construction Change Directive and the contractor shall proceed with the work. The Agency will provide its opinion of the appropriate price and or time extension in a "Response to Change Order Request." If the contractor agrees with the Agency's estimate, a change order will be issued by the Agency. If no agreement can be reached, the Agency shall have the right to issue the Change Order Directive setting forth its unilateral determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a Claim in writing to the Agency, within twenty-one (21) days of the Change Order Directive, disputing the terms of such Directive. No dispute, disagreement or failure of the parties to reach agreement regarding the amount, if any, of any adjustment to the contract sum or contract time shall relieve the Contractor from the obligation to proceed with performance of the work, including extra work, promptly and expeditiously."

19.1.6 The Contractor will give notice of a requested change on his letterhead within seven (7) calendar days of discovery and, if the Agency agrees, a proposed change order will be issued on the Agency 's standard change order form.

19.1.7 If any change involves an increase or decrease in the cost of the Contractor's work, a change order shall state the amount to be added or deducted from the Contract amount, and the additional time, if any, needed for the performance of such work.

19.1.8 Any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the Agency, except that when, in the opinion of the Agency, such basis is not feasible the change to the Contract amount shall be determined upon a cost-plus-percentage basis with a guaranteed maximum lump sum cost within the limitations provided by law.

19.1.9 Each lump sum quotation from the Contractor shall be accompanied by sufficiently detailed estimates to permit verification of totals in accordance with (a) through (d) in 19.1.11 below.

19.1.10 When the work is to be done on a cost-plus-percentage basis, the Contractor shall submit statements as required by the Agency showing all labor, material, and equipment costs incurred, and upon completion of the work, a summary of costs, including overhead and profit, and in accordance with Item (a) through (d) in 19.1.11 below.

19.1.11 Estimates for lump sum quotations and accounting for cost-plus-percentage work shall be limited to direct expenditures necessitated specifically by the subject extra work, and shall be segregated as follows:

a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the extra work cost will not be permitted unless the contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery.

c. Tool and Equipment Use. No payment will be made for the use of tools which have a replacement value of $100 or less. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed.

d. Overhead, Profit and Other Charges. The mark-up for overhead and profit on work added to the Contract shall be according to the following Schedule.

(1) For work performed by the Contractor's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the net cost of the work, equipment, labor and materials.

(2) For work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the net cost of the work, equipment, labor and materials, to which the Contractor may add five (5) percent of the subcontractor's price of the work.

(3) For work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed fifteen (15 %) percent of the net cost for work, equipment, labor and materials to which sub-contractor and general contractor may each add an additional five (5 %) percent of the total price from the lower tier subcontractor.

(4) "Net Cost" is defined as consisting of costs of labor, materials and equipment use and or rental only. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up.

(5) The cost of direct supervision, except when provided by working foreman whose time is included above, of change order work when done exclusively, and not in conjunction or at the same time as, other work performed on the job and when approved in advance by the Agency's authorized representative, including only payroll taxes, insurance, pension and direct costs for the labor of supervision may be charged to the change order. The cost of transportation, use of vehicle and other costs incurred by supervision will not be allowed.

19.1.12 For added or deducted work by subcontractors, the Contractor shall furnish to the Agency the subcontractor's signed detailed estimate of the cost of labor, material and equipment, including the markup by such subcontractor for overhead and profit. The same requirement shall apply to sub-subcontractors.

19.1.13 For added or deducted work furnished by a vendor or supplier, the Contractor shall furnish to the Agency a detailed estimate or quotation of the cost to the Contractor for such work, signed by such vendor or supplier.

19.1.14 Any change in the work involving both extras and credits shall show a new total cost, including subcontracts. Allowance for overhead and profit, as specified therein, shall be applied if the net total cost is an extra; overhead and profit allowances shall not be applied if the net total cost is a credit. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.

19.1.15 The Contractor shall identify any adjustment in time of the final completion of the Work as a whole which is directly attributable to the changed work within fifteen (15) calendar days of receipt of the proposed change order. The Contractor's request for a change in time will be supported by a detailed schedule analysis including a schedule indicating the activities which have been affected and the additional time being requested.

a. For a change in time for the Work, the Contractor shall be entitled only to such adjustments where completion of the entire Work (critical path) is delayed due to the performance of the changed work. Failure to request extra time when submitting such estimate shall constitute waiver of the right to subsequently claim adjustment in time for final completion based upon such changed work.

b. If the Agency and the Contractor fail to arrive at an agreement on the amount of extra cost, credit or time extension for a proposed change, a change order will be processed in the amount believed by the Agency to be reasonable, and the Contractor shall proceed with the work. If the Contractor believes that the amount or time stipulated in the change order is not reasonable for the work required, he may elect to issue a notification in accordance with the DISPUTES article for review by the Agency, stating therein the basis for his dispute with such change order.

19.1.16 Any change in the Work shall conform to the original Contract Documents insofar as they may apply without conflict to the conditions involved in the change.

19.1.17 Payment for additional work or extras, if any, shall become due and payable in accordance with the provisions for payment in the Contract.

19.1.18 Contractor shall not reserve a right to assess impact cost, extended job site costs, extended overhead, and or constructive acceleration at a later date as related to any and all changes. All costs or estimated costs must be supported with full schedule and cost documentation with each proposed change within the prescribed submission times. If a request for a change is denied and the Contractor disputes the denial, the Contractor must supply the aforementioned documentation to support his claim under the DISPUTES article of this Contract. No claims shall be allowed for impact, extended overhead costs, and or construction acceleration due to the multiplicity of changes and or clarifications. Any attempt by Contractor to change or modify the change order form (sample included herein) shall void the form, including any letters the Contractor may issue in conjunction therewith.

19.1.19 All alterations, extensions of time, extra and additional work and other changes authorized by these specifications or any part of the Contract may be made without securing consent of the surety or sureties on the contract bonds.

19.2 CHANGE ORDERS AND LABOR RATES GUIDELINES

19.2.1 The following are guidelines for preparing change orders:

a. Labor Rates:

(1) To establish the labor rate for each classification and trade, a breakdown shall be submitted to the Agency.

(2) Labor rates are based on current prevailing state and federal wages. Only those benefits mandated by law or a valid labor contract are paid by the Agency.

(3) Payroll taxes shall be paid as mandated by law. Labor related insurances shall be paid according to industry standard average.

(4) No other costs related to labor shall be paid by Agency.

b. Change Orders:

(1) Change orders shall be prepared in accordance with the project contract.

(2) No insurance costs are paid by Agency, except for labor insurances specified in this guideline under section I titled "LABOR RATES".

(3) Material cost shall be broken down on a separate sheet, and for those jobs designated as time and material shall be supported by valid invoices from suppliers.

(4) Hours for non-productive labor, such as non-working foremen or general foremen, shall be paid only when justified in the opinion of the Agency, and approved by the Agency. The total number of

nonproductive labor hours shall be limited to a maximum of 15% of the total number of productive labor hours.

(5) Cost of use of special equipment shall be paid when justified in the opinion of the Agency, and approved by the Agency. Equipment refers to special equipment that is needed to perform that specific job, and does not include the usual tools customarily required for that trade. Small tools costs are not paid by Agency.

(6) Material transportation costs are paid by Agency when justified in the opinion of the Agency, and approved by the Agency's authorized representative.

(7) Overhead, profit and fees on subcontracts, are paid according to the contract.

(8) No costs other than those designated above shall be paid by Agency. The percentages of overhead and fee allowed with change orders have been established to account for any other direct or indirect costs that might be incurred due to the change order.

19.3 AUDIT

19.3.1 The Agency shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the Agency.

19.3.2 The Contractor shall make available at its office at all reasonable times the materials described in paragraph 19.3.1 above, for examination, audit, or reproduction, until 4 years after final payment under this Contract.

19.3.3 The Contractor shall insert a clause containing all the provisions of this 19.3, including this paragraph, in all subcontracts over $10,000 under this contract.

ARTICLE 20 PAYMENT

20.1 PROGRESS PAYMENTS

20.1.1 The Agency shall pay the Contractor the price as provided in this Contract.

20.1.2 The Agency shall make progress payments monthly as the Work proceeds, on estimates approved by the Agency. The Contractor shall furnish a breakdown of the total contract price, in a format provided by the Agency, showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments.

20.1.3 Contractor shall submit to the Agency vouchers, schedule activities, or other satisfactory proof of the value of any work for which he claims payment on such account, and receipts showing that progress payments have been duly made on such contracts, and for materials furnished.

20.1.4 In the preparation of estimates, the Agency may authorize 75% of the value of material delivered and satisfactorily stored on the site, and preparatory work done to be taken into consideration for major equipment if:

a. Consideration is specifically authorized by this Contract; and

b. The Contractor furnishes certified receipt that it has acquired title and paid invoices for such material and that the material will be used to perform this Contract.

20.1.5 On the 25th of each month the Contractor will submit his request for payment. Prior to that submittal the Agency will review the requested percentage of completion for each activity. The payment request will be in the format as provided by the Agency and will refer to the schedule.

20.1.6 Upon receipt of a payment request, the Agency shall:

a. Review that request as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request; and

b. Any payment request determined not to be a proper request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) calendar days after receipt. The returned request for payment shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

20.1.7 Any progress payment which is undisputed and properly submitted and remains unpaid for thirty (30) calendar days after receipt by Agency shall accrue interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. The number of days available to the Agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the Agency exceeds the seven-day return requirement set forth in 20.1.6 above.

20.1.8 In making these progress payments, there shall be retained ten percent (10%) from the amount of each progress payment until the work is 50% complete. After the 50% completion point, if satisfactory progress is being made and at the sole discretion of the Agency, the retention may be reduced to a minimum of 5% of the contract.

20.1.9 Except as otherwise prohibited by law, the Contractor may elect to receive all payments due under the contract pursuant to this section without any retention, by posting securities in accordance with Public Contract Code Section 22300.

20.1.10 Contractor and each subcontractor shall pay each of its employees engaged in work under this Contract in full (less deductions made mandatory by law) in accordance with California law.

20.1.11 The Agency may withhold (in excess of retentions) or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect the Agency from loss on account of:

a. Defective work not remedied.

b. Claims filed or reasonable evidence indicating probable filing of claims.

c. Failure of the Contractor to make payments properly to subcontractors or for material or labor.

d. Damage to another Contractor.

e. Delays in progress toward completion of the work, with the stipulated amount of liquidated damages being withheld for each day of delay for which no extension is granted.

f. Default of the Contractor in the performance of the terms of the Contract.

20.1.12 Should stop notices be filed with the Agency, the Agency shall withhold the amount required plus 25% from certificates until such claims shall have been resolved pursuant to applicable law. California Civil Code Section 3179 et seq.

20.1.13 At the election of the Agency, Contractor shall provide, within ten (10) calendar days of receipt of each progress payment, unconditional waivers and release of lien rights, signed by Contractor and each of its subcontractors and materials suppliers, in the form established therefore by Section 3262 of the Civil Code.

20.1.14 All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Agency, but this shall not be construed as:

a. An acceptance of any work not in accordance with the Contract Documents; or

b. Waiving the right of the Agency to require the fulfillment of all of the terms of the contract.

20.2 FINAL PAYMENT

20.2.1 GENERAL

a. The Agency shall pay the amount due the Contractor under this Contract after:

1.) The Acceptance of all work and Notice of Completion per the terms of this Contract;

2.) Presentation of a properly executed voucher;

3.) Release of all liens and Stop Notices; and

4.) Presentation of release of all claims against the Agency arising by virtue of this Contract, other than claims and disputes in stated amounts, that the Contractor has specifically excepted from the operation of the release.

b. The Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Agency, to indemnify him against any lien.

20.2.2 FINAL CERTIFICATE FOR PAYMENT

a. When the work is ready for acceptance by the Agency, Agency will certify and submit to the Board of Directors a Notice of Completion. Upon approval of the Notice of Completion, a copy will be sent to the Contractor.

b. Notice of Completion will be recorded by the Agency upon completion and Acceptance of the Work. Providing no stop notices have been filed, thirty-five (35) calendar days after filing of such Notice of Completion, payment due under the contract will become due to the Contractor and the Agency shall so certify authorizing the final payment.

20.2.3 FINAL PAYMENT

a. After Acceptance of Work, the Agency will submit to Contractor a statement of the sum due Contractor under this contract, together with Agency payment in the amount thereof. Said statement shall take into account the contract price, as adjusted by any change orders; amounts already paid; sums to be withheld for incomplete work; liquidated damages; and for any other cause under the Contract.

b. The Contractor shall, from the effective date of Acceptance until the expiration of four years after final settlement under this Contract, preserve and make available to the Agency, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract.

ARTICLE 21 SUSPENSION OF WORK/TERMINATION

21.1 NON-COMPLIANCE WITH CONTRACT REQUIREMENTS

21.1.1 In the event the Contractor, after receiving written notice from the Agency of non-compliance with any requirement of this Contract, fails to promptly initiate appropriate action to comply with the specified requirement, the Agency shall have the right to withhold payment for work completed under the Contract until the Contractor has complied with the notice or has initiated such action as may be appropriate to comply, within a reasonable period of time. The Contractor shall not be entitled to any extension of contract time or payment for any costs incurred for work under this article.

21.1.2 Should the Contractor abandon the Work called for under the Contract, or assign his Contract, or unnecessarily and unreasonably delay the work, or willfully violate or perform the work in bad faith, the Agency shall have the power to notify the Contractor to discontinue all work or any part thereof under this Contract, and thereupon the Contractor shall cease to continue said work or such part thereof as the Agency may designate, and the Agency shall have the power to employ such persons as it may consider desirable, and to obtain by contract, purchase, hire or otherwise, such implements, tools, material or materials as the Agency may deem advisable to work at and be used to complete the work herein described, or such part thereof as shall have not been completed, and to use such material as it may find upon the site of the work, and to charge the expense of such labor and material, implements and tools to the Contractor, and the expense so charged shall be deducted and paid by the Agency out of such monies as may either be due, or may at any time thereafter become due to the Contractor under the Contract.

21.2 TERMINATION

21.2.1 TERMINATION FOR BREACH

If the Contractor should be adjudged bankrupt or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his subcontractors should violate any of the provisions of the Contract, the Agency may serve written notice upon him and his surety of its intention to terminate Contractor's performance hereunder, said notice shall contain the reasons for such intention to terminate Contractor's performance, and, unless within ten (10) calendar days after serving of said notice, such violation shall cease and satisfactory arrangements for correction thereof be made, Contractor's performance shall, upon the expiration of said ten (10) calendar days, cease and terminate. In the event of any such termination, the Agency shall immediately serve written notice thereof upon the surety and the Contractor, and the Agency may take over the Contractor's work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the Agency for any excess cost occasioned the Agency thereby, and in such event the Agency may without liability for so doing take possession of and utilize in completing the work, such materials, appliances, plants, and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

21.2.2 TERMINATION FOR CONVENIENCE

a. If the construction of the project herein is damaged, which damage is determined to have been proximately caused by an Act of God, in excess of 5% of the contract amount, provided that the work damaged is built in accordance with applicable building standards and the plans and specifications, then the Agency may, without prejudice to any other right or remedy, terminate the Contract.

b. The Agency may terminate performance of work under this Contract in whole or in part, if the Agency determines that a termination is in the Agency's interest. The Agency shall terminate by delivering to the Contractor a Notice to Terminate specifying the extent of termination and the effective date.

c. After receipt of such Notice, and except as directed by the Agency, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete any continued portion of the Contract.

(3) To terminate all subcontracts to the extent they relate to the work terminated.

(4) With approval or ratification to the extent required by the Agency, settle all outstanding liabilities and termination settlement proposals arising from termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(5) As directed by the Agency, transfer title and deliver to the Agency (1) the fabricated or unfabricated parts; work in progress, completed work, supplies, and other material produced or acquired for the work terminated; and (2) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Agency.

(6) Complete performance of work not terminated.

(7) Take any action that may be necessary, or that the Agency may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Agency has or may acquire an interest.

(8) Use its best efforts to sell, as directed or authorized by the Agency, any property of the types referred to in subparagraphs above; provided, however, that the Contractor (1) is not required to extend credit to any purchaser and (2) may acquire the property under the conditions prescribed by, and at prices approved by the Agency. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Agency under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Agency.

d. After termination, the Contractor shall submit a final termination settlement proposal to the Agency in the form and with the certification prescribed by the Agency. The Contractor shall submit the proposal promptly, but no later than thirty (30) days from the effective date of termination. If the Contractor fails to submit the proposal within the time allowed, the Agency may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

e. Subject to subparagraph (2) above, the Contractor and the Agency may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, may not exceed the total contract price as reduced by:

(1) the amount of payments previously made and;

(2) the contract price of work not terminated. The contract shall be amended with a Change Order, and the Contractor paid the agreed amount.

f. If the Contractor and Agency fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Agency shall pay the Contractor the amounts determined as follows:

(1) For contract work performed before the effective date of termination, the total (without duplication of any terms) of:

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on (i) above, determined by the Agency to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Agency shall allow no profit under this subdivision (iii).

(2) The reasonable costs of settlement of the work terminated including:

(i) Accounting, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; and

(ii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

g. Except for normal spoilage, the Agency shall exclude from the amounts payable to the Contractor the fair value, as determined by the Agency, of defective work, and of property that is destroyed, lost, stolen, or damaged so as to become undeliverable.

h. The Contractor shall have the right to make a claim under the DISPUTES article, from any determination made by the Agency.

i. In arriving at the amount due the Contractor, there shall be deducted:

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;

(2) Any claim which the Agency has against the Contractor under this Contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Agency.

j. If the termination is partial, the Contractor may file a proposal with the Agency for a Change Order of the price(s) of the continued portion of the Contract. The Agency shall process any Change Order agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within thirty (30) days from the effective date of termination unless extended in writing by the Agency.

k. The Agency may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the Agency believes the total of these payments will not exceed the amount to which the Contractor will be entitled. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Agency upon demand, together with interest.

l. Unless otherwise provided in this Contract or by statute, the Contractor will maintain all records and documents relating to the terminated portion of this Contract for 4 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Agency, State and or the U.S. Government or their representatives at all reasonable times, without any direct charge.

ARTICLE 22 DISPUTES/CLAIMS

22.1 CLAIMS RESOLUTION

In accordance with Public Contract Code Sections 20104 20104.6 and other applicable law, public works claims of $375,000 or less which arise between the Contractor and the Owner shall be resolved under the following the statutory procedure unless the Owner has elected to resolve the dispute pursuant to Public Contract Code Section 10240 et seq.

a. All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by the claimant for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the claimant and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled, or (3) an amount the payment of which is disputed by the Owner.

b. Claims Under $50,000. The Owner shall respond in writing to the claim within 45 days of receipt of the claim, or, the Owner may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the Owner may have. Of additional information is needed thereafter, it shall be provided upon mutual agreement of the Owner and the claimant. The Owner's written response shall be submitted 15 days after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.

c. Claims over $50,000 but less than or equal to $375,000. The Owner shall respond in writing within 60 days of receipt, or, may request in writing within 30 days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims the Owner may have against the claimant. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between the Owner and the claimant. The Owner's response shall be submitted within 30 days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater.

The Contractor shall make these records and documents available to the Agency, County, State and or the U.S. Government or their representatives at all reasonable times, without any direct charge.

d. If the claimant disputes the Owner's response, or if the Owner fails to respond within the statutory time period(s), the claimant may so notify the Owner within 15 days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, the Owner shall schedule a meet and confer conference within 30 days.

e. If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant may file a claim pursuant to Government Code 900 et seq. and Government Code 910 et seq. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.

f. If a civil action is filed to resolve any claim, the provisions of Public Contract Code 20104.4 shall be followed, providing for nonbinding mediation and judicial arbitration.

22.2 CLAIM FORMAT/REQUIREMENTS

22.2.1 The Contractor will submit the claim justification in the following format:

a. Summary of claim merit and price plus clause under which the claim is made.

b. List of documents relating to claim
   (a) Specifications
   (b) Drawings
   (c) Clarifications (RFIS)
   (d) Schedules
   (e) Other

c. Chronology of events and correspondence

d. Analysis of claim merit

e. Analysis of claim cost

f. Analysis of Time in CPM format

g. Cover letter and certification (form included herein)

22.2.2 If any claim submitted includes a request for overhead, the Agency may request a Profit & Loss statement and supporting documentation from Contractor. If requested, such documentation must be submitted for the Agency to consider the claim.

222.2.3 Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by Agency, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Contractor.

22.3 NOTICE OF THIRD PARTY CLAIMS

The Agency shall provide notification to the Contractor within a reasonable time after receipt of any third-party claim relating to the Construction Contract.

END

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