

PROJECT MANUAL

IVDA WATER TOWER REHABILITATION

AGENCY

INLAND VALLEY DEVELOPMENT AGENCY

1601 East 3rd Street, Suite 100, San Bernardino, CA, 92408

December 2019

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INLAND VALLEY DEVELOPMENT AGENCY
Notice Inviting Bids

Prospective bidders are hereby notified that the INLAND VALLEY DEVELOPMENT AGENCY ("AGENCY" and/or "Agency") will receive sealed bid proposals for the:

IVDA WATER TOWER REHABILITATION

The complete Bid shall be submitted in a sealed envelope with the Bidder's name, the project name, and the words "Sealed Bid - Do Not Open" clearly marked on the outside of the mailing envelope. Bids may not be submitted by facsimile or electronic telecommunication. Bids submitted via USPS or other courier service must have the project name and the words "Sealed Bid - Do Not Open" clearly marked on the outside of the mailing envelope.

All Bids shall be submitted by delivery to the AGENCY at the address provided below and will be received until **2:00 PM on Thursday, January 30, 2020**. Bids will be publicly opened and read at that time. Any bids received after the specified date and time will be rejected and returned unopened. The address for delivery of Bids is:

INLAND VALLEY DEVELOPMENT AGENCY
Attention: Clerk of the Board
1601 E. 3rd Street
San Bernardino, California 92408

The selected CONTRACTOR shall construct all improvements in accordance with the project plans and specifications and the request for proposals specific to this bid package. The value of this project is estimated at **\$450,000.00**. Time for completion is estimated to be **45 calendar days**.

Any questions or communications shall be in writing. Written questions regarding details of the project will be accepted until **1:00 PM on Thursday, January 23, 2020**. Written questions must be directed to Jim Harris, Manager of Capital Projects, INLAND VALLEY DEVELOPMENT AGENCY at jharris@sbdairport.com, or the street address for submitting bids.

Contract Documents may be obtained from the AGENCY at 1601 E. 3rd Street, San Bernardino, California 92408, upon payment of a **\$350.00 nonrefundable fee** and are also available for free download on the AGENCY's website, www.ivdajpa.org. Make all checks payable to "INLAND VALLEY DEVELOPMENT AGENCY." A full list of all requirements regarding this project can be found in the project specifications. All information, addendums, and notices regarding this Project will be posted to the AGENCY website. It is the sole responsibility of all perspective respondents to check the website for any pertinent information that may be issued.

A **non-mandatory** pre-bid meeting will be held at 1601 E. 3rd Street, San Bernardino, CA 92408 on **Thursday, January 16th, 2020 at 1:00 PM**.

Each Bidder must be licensed in the State of California and qualified to perform the Work described in the project specifications. Pursuant to Public Contract Code Section 3300, the CONTRACTOR must possess the following classification of CONTRACTOR's license: **CLASS B or C with HAZ.**

Each Bidder, and each subcontractor listed by the Bidder in the bid proposal, must be registered and qualified to perform public work pursuant to Labor Code § 1725.5. Registration number for the prime contractor and each sub-contractor must be included as required with the bid proposal.

Each proposal must be accompanied by a certified or cashier's check or bid bond for ten percent (10%) of the maximum amount of the bid. Said check shall be made payable to the INLAND VALLEY DEVELOPMENT AGENCY and when delivered with a proposal, shall constitute a guaranty that Bidder will, if an award is made to them in accordance with the terms of said Bidder's proposals: execute a contract on the AGENCY's standard form, together with Labor Code Certification thereon; furnish contract performance and payment bonds with a corporate surety or sureties satisfactory to the AGENCY, each for not less than one-hundred percent (100%) of total bid price; furnish certificates of insurance evidencing that all insurance coverage required by the contract has been secured.

This is a "public work" project and each CONTRACTOR to whom a contract is awarded must pay the prevailing rates and post copies thereof at the job site. In addition, it is also the responsibility of each CONTRACTOR to follow all requirements of the State of California Labor Code as it relates to public works contracts. Before work can begin on a public works contract, the CONTRACTOR shall submit a Public Works Contract Award Information Form (DAS 140) to an applicable apprenticeship program that can supply apprentices to the site of the public work. The CONTRACTOR must request dispatch of required apprentices from an Apprenticeship Program for each apprentice craft or trade. The CONTRACTOR is to use a Request for Dispatch of an Apprentice Form (DAS 142) to submit his/her written request.

Bidders are hereby notified that the prevailing rate of per diem wages, as determined by the Director of Industrial Relations, applicable to the work to be done for the locality in which the work is to be performed in compliance with Section 1773 of the Labor Code of the State of California are on file in the AGENCY's principal office at the address listed above and will be made available to any interested party upon request.

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

The AGENCY reserves the right to accept or reject any or all proposals, to waive any irregularity or to award the contract to other than the lowest bidder consistent with the award of the contract to the lowest responsible bidder. Bidder may not withdraw their bid for one hundred and twenty (120) days after bid opening.

INLAND VALLEY DEVELOPMENT AGENCY
San Bernardino, California

By: _____
Jennifer Farris, Clerk of the Board

PROJECT NAME: Project: IVDA WATER TOWER REHABILITATION

INFORMATION FOR BIDDERS

1. **BIDDING DOCUMENTS AND BID PREPARATION:** Bidding Documents consist of the Bidding Requirements and the Contract Documents. The Bidding Requirements consist of the Notice Inviting Bids, Information for Bidders, the Bid Form (including Attachments described herein), and Bid Cover Sheet. The Contract Documents consist of the form of Agreement between the Agency and CONTRACTOR, Conditions of the Contract (General, General Project Requirements and other Conditions), Drawings, Specifications, and all Addenda issued prior to the execution of the Contract.

Bids shall be prepared on the Bid Form (including all attachments), and shall be submitted at such time and place as is stated in the Notice Inviting Bids. The Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, prepared and submitted in accordance with the Bidding Documents. All blanks in the Bid form must be appropriately filled in.

2. **PROJECT:** CONTRACTOR's Bid must include everything necessary for and incidental to executing and completing all Work for the Project named below, as described in the Notice Inviting Bids, the Summary of the Work, and the Contract Documents.

IVDA WATER TOWER REHABILITATION

3. **ADDENDA:** Addenda are written or graphic instruments issued by the AGENCY prior to the execution of the Contract to modify or interpret Bidding Documents by additions, deletions, clarifications or corrections. Addenda issued during the bidding period shall be included in the Bid and will be made a part of the Contract. Bidders shall list in the Bid Form each Addendum received. Addenda will be issued as follows:

- A. Addenda will be prepared and issued at the option of the AGENCY and will be posted to the agency website no less than 72 hours prior to the bid date. It is the sole responsibility of each bidder to check for addenda at the agency website. Addenda will NOT be sent to each plan holder or prospective bidder.
- B. Any Addendum containing any material changes, additions or deletions issued less than 72 hours from the Bid Due Date will cause the Bid Due Date and time to be extended so as to provide a minimum of 72 hours between the issuance of the Addenda and the Bid closing. No extension will be given for non-material Addenda.
- C. Bidders shall be responsible for confirming they are in receipt of all Addenda.

4. **BID SECURITY:** As stipulated in the Notice Inviting Bids, each Bid shall be accompanied by a cashier's check made payable to the AGENCY or a satisfactory Bid bond in favor of the AGENCY, executed by the BIDDER and a California-admitted surety company as Surety, in an amount not less than ten (10%) of the Base Bid. The check or Bid bond shall be given as a guarantee that the BIDDER will execute the contract if it is awarded to it, in

conformity with the contract documents, and will provide the surety bonds as specified in these Bidding Requirements and the Contract Documents within ten (10) calendar days after notification of the AGENCY's award of the contract to the Bidder. In case of refusal or failure to execute the Agreement and to provide the bonds and other documents within ten (10) calendar days of the award, the, cashier's check or Bid bond, as the case may be, shall be forfeited to the AGENCY, as liquidated damages.

5. **BIDS:** Bids to receive consideration shall be made in compliance with the following instructions:

- A. Bids shall be prepared and delivered in accordance with the Notice Inviting Bids and on the approved Bid Form.
- B. Bids shall be for the elements of the Work listed on the Bid Form, and shall contain no recapitulation of work to be performed. Proposals other than those specifically requested will not be considered.
- C. Bids shall provide stipulated sums that include all items of expense necessary for completion of the Work of the Contract.
- D. In the event of a discrepancy between the written amount of the Bid Price and the numerical amount of the Bid Price, the written amount of the Bids shall govern.
- E. Bidders shall carefully examine and understand the Contract Documents, including drawings, specifications, Scope of Work, and all forms contained in the Project Manual, and shall visit the site of the Work and fully inform themselves as to all existing conditions and limitations.

6. **SIGNATURE:** The Bid must be signed in the name of the Bidder and must bear the signature in longhand of the person or persons authorized to sign the Bid on behalf of the Bidder. All signatures shall be in ink.

7. **MODIFICATIONS:** Changes in or additions to the Bid Form, recapitulations of the work bid upon, alternative proposals or any other modification of the Bid Form which is not specifically called for in the Contract Documents can result in the AGENCY's rejection of the Bid as not being responsive to the Notice Inviting Bids. No oral, facsimile (FAX) or telephonic modification of any Bid submitted will be considered.

8. **ERASURES:** The Bid submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the Bid.

9. **WITHDRAWAL OF BIDS:** Any Bidder may withdraw its Bid, either personally or by written notice at any time prior to the scheduled Bid Due Date. No Bid, once opened and read, may be withdrawn for a period of **one hundred twenty (120) consecutive calendar days** after the Bid Opening Date unless authorized in writing by the AGENCY.

10. **OPENING OF BIDS:** Bids shall be opened and publicly read aloud at the time and place stipulated in the Notice Inviting Bids. Upon the opening of Bids, the AGENCY will post the name and amount of the apparent lowest Bidder ("Low Bidder Notice") on the Agency's web

site. The posting of the Low Bidder Notice shall not constitute an award of the contract by the Agency nor shall such posting preclude a further review of all Bids as provided herein and only the issuance of a Notice of Award as provided in Section 13 shall constitute an award of the contract.

11. **AGENCY RIGHTS:** AGENCY may investigate the qualifications of any Bidder under consideration inclusive of, but not limited to, the information provided in the bid submittal. AGENCY may require confirmation of information furnished by the Bidder, and require additional evidence of qualifications to perform the Work. AGENCY reserves the right to:

A. Reject any or all of the Bids, at its discretion, including multiple Bids if the multiple Bids are prejudicial to the interests of AGENCY or to other Bidders;

B. Reject any Bid that, in the opinion of AGENCY, is so unbalanced in comparison to other Bids received and/or to AGENCY's internal estimates that it does not accurately reflect the cost to perform the Work;

C. Cancel the entire Bid;

D. Issue subsequent Bids;

E. Appoint evaluation committees to review Bids;

F. Seek the assistance of outside technical experts to evaluate Bids;

G. Disqualify the Bid(s) upon evidence of collusion with intent to defraud or other illegal practices on the part of the Bidder(s);

H. Waive any errors or informalities in any Bid, to the extent permitted by law;

I. Award a Contract without interviews, discussions, or negotiations, as permitted by the single Bid process;

J. AGENCY may prior to or after Contract award delete any Bid line item at the line item Bid price. If AGENCY elects to delete any Bid line Item prior to award of Contract, the method of determining the lowest Bidder shall be in compliance with Public Contract Code Section 20103.8. If AGENCY elects to delete any Bid line item after award, it shall be done pursuant to a Change Order.

K. The Notice Inviting Bids does not commit the AGENCY to enter into a contract, nor does it obligate the AGENCY to pay any costs incurred in preparation and submission of Bids or in anticipation of a contract.

12. **RESPONSIBILITY CRITERIA:** Responsibility is the apparent ability of the Bidder to successfully meet and complete the requirements of the Contract. The AGENCY reserves the right to consider the financial responsibility and general competency of each Bidder, as well as its reputation within the industry. AGENCY may request that the apparent low Bidder provide a financial statement, audit if necessary, including the Bidder's latest balance sheet and income statement. The AGENCY expects that each Bidder will fully and truthfully disclose all information required of the Bidder by the Bid Documents. The prospective Bidder, in order to be evaluated by the AGENCY as being a responsible CONTRACTOR, may be requested to

confirm the following responsibility criteria:

- A. Has or can secure adequate financial resources to perform the contract;
- B. Is able to meet the performance or delivery schedule of the contract, taking into consideration other business commitments; and
- C. Has a satisfactory record of performance. A CONTRACTOR seriously deficient in current contract performance, considering the number of contracts and extent of the deficiencies, is presumed not to meet this requirement unless the deficiencies are beyond its control or there is evidence to establish its responsibility notwithstanding the deficiencies. Evidence of such satisfactory performance record should show that the CONTRACTOR:
 - (1) Has a satisfactory record of integrity in its dealings with government agencies and with subcontractors, and is otherwise qualified to receive an award under applicable laws and regulations;
 - (2) Has the necessary organization, experience, satisfactory safety record, accounting and operational controls and technical skills or the ability to obtain them;
 - (3) Has the necessary production, construction, and technical equipment and facilities or the ability to obtain them; and
 - (4) Has an adequate safety record in performance of other construction projects.

13. AWARD OF CONTRACT OR REJECTION OF BIDS:

A. After the Bids for the contemplated Work have been opened and read, as provided in the Notice Inviting Bids, the Bids will be compared upon the basis of the sum of the totals of the items stated in the schedule of prices, as calculated from the given estimated quantities and the unit prices or lump sum amounts submitted. The AGENCY will issue to the lowest responsive bid by a responsible Bidder a "Notice of Award" within one hundred twenty (120) days after the opening of Bids.

B. No Bidder may withdraw its Bid during this 120-day period. AGENCY will return the bid security, except any guarantees which have been forfeited, to the respective Bidders whose Bids they accompanied, within sixty (60) days after the Contract is awarded to the successful BIDDER, or rejection of all Bids, or upon receipt of a written request for return received after the period set forth herein.

C. Within ten (10) days after the issuance of the "Notice of Award", the successful Bidder shall post the Performance and Payment Bonds, provide certificates of insurance, and return executed copies of the Agreement, Bonds and required attachments to the Agreement to the AGENCY.

D. Before the award of the Contract by AGENCY, any Bidder shall furnish, upon request of AGENCY, a recent statement of financial condition, previous construction experience, information on owned equipment and/or information regarding the specific use and availability of

equipment on the subject project, and such additional information as may be requested by AGENCY. Failure by a BIDDER to furnish the information requested shall be considered sufficient grounds for rejection of the Bid.

E. Qualified bids are not acceptable to the AGENCY. Bids with qualifications or omissions will be rejected without consideration as non-responsive.

F. Until such time as the Contract has been awarded as provided below, the AGENCY reserves the right to reject any or all Bids, and to reject Bids not suitable to their best interest. If, in the judgment of AGENCY, a Bid is unbalanced, non-responsive or if the Bidder is not responsible, it shall be considered sufficient grounds for rejection of the entire Bid.

G. The Contract shall be deemed awarded upon satisfaction of all of the following: (1) the AGENCY's issuance of a Notice of Award to the successful BIDDER, (2) the BIDDER's compliance with all of the requirements of this Section 13, including delivering to the AGENCY executed copies of the Agreement, Bonds and required attachments to the Agreement, and (3) the issuance by the AGENCY of a Notice to Proceed under the Contract. Notwithstanding any prior approval by the AGENCY, the Contract shall not be deemed awarded until all of the above requirements have been satisfied.

14. **FILING OF BID PROTESTS:** This Section sets forth the procedure and remedies concerning submittal and consideration of all protests received by AGENCY with respect to the Invitation for Bids (IFB). By submitting a Bid, each Bidder hereby agrees and understands that the Bidder must comply with these protest procedures and exhaust all administrative remedies set forth herein prior to the initiation of any type of related legal action. Upon the express written agreement of the parties, this protest procedure can also be used to resolve issues surrounding the AGENCY's determination of a Bidder as not responsible. The following terms as used in this Section shall have the following meanings:

"Protest" shall mean a written objection by an interested party or affected party to (i) the requirements or specifications contained in the IFB (solicitation protest); or (ii) a proposed award recommendation (award protest).

"Days" shall mean calendar days, unless otherwise specified.

"Interested Party" shall mean all Bidder or prospective Bidders on a procurement.

"Solicitation Protest Statement" shall mean a written objection during the bid solicitation phase of the procurement, which shall be submitted prior to the Bid due date as specified herein.

"Award Protest Statement" shall mean a written objection to the award of the Contract, which shall be submitted with five (5) days after opening of the Bids, as specified herein.

"File or Submit" shall refer to the date of receipt by AGENCY.

"Affected Parties" shall mean a Bidder on a procurement, whose direct economic interest would be affected by a submitted protest.

Specific procedures and requirements are as follows:

A. Solicitation Phase Protest. The purpose of the IFB is to obtain competitive Bids from interested Bidders. Any interested party who has reason to believe that a free and open competition has not taken place or that a particular specification or requirement is impractical, unduly restrictive, or ambiguous may advise the AGENCY of its concerns by submitting a detailed Solicitation Protest Statement in accordance with the requirements set forth below in this Section A.

(1) Contents and Requirements

A Solicitation Protest Statement must be submitted to AGENCY's Manager of Capital Projects identified in the IFB via electronic mail (email) by 4:00p.m. (Pacific Time zone) no less than fifteen (15) days prior to the Bid due date, and must contain all of the following to be considered:

- a) The name, address, and telephone number of the protestor;
- b) The Project Name of the IFB being protested;
- c) A detailed statement setting forth the grounds for protest, which shall include, in sufficient detail to establish the merits of the protest, all the factual and legal documentation in support of the protest; and
- d) The desired resolution to the protest.

If the submitted Solicitation Protest Statement does not comply with the requirements set forth herein, then it will not be considered for evaluation and will be returned to the protestor. The Solicitation Protest Statement shall not be amended after filing, and AGENCY will not consider any unsolicited information provided after filing. Any argument not raised in the Solicitation Protest Statement shall be deemed waived, including as a part of the award protest. Failure to file the Solicitation Protest Statement within the time period specified herein shall constitute a waiver of the right to protest the specifications or requirements of the IFB.

Solicitation Protest Statements are public documents, and AGENCY will provide copies of the Solicitation Protest Statements to any interested person upon written request.

(2) Evaluation and Determination

No hearing will be held on the protest. AGENCY's Manager of Capital Projects, or designee, will review all material submitted, conduct an investigation of the facts, and may, but need not, request other Bidders to submit statements or arguments regarding the protest. AGENCY's Manager of Capital Projects, or designee, may in his/her sole discretion, discuss the protest with the protestor.

AGENCY's Manager of Capital Projects, or designee, shall issue a final written decision regarding any solicitation protest to each Bidder prior to Bid opening. The written decision will cite any actions that will or will not be taken in response to the Solicitation Protest Statement. The decision of the Manager of Capital Projects concerning the Solicitation Protest Statement shall be final, and there shall be no further administrative recourse.

B. Award Protest

(1) Contents and Requirements

Following the opening of the Bids any affected party, who has reason to believe that a free and open competition has not taken place in the Bid opening, evaluation of the Bids, and award recommendation, is permitted to protest AGENCY's award of the Contract by submitting the Award Protest Statement to the AGENCY's Manager of Capital Projects no later than 4:00p.m. (Pacific Time zone) on the fifth day after the AGENCY's posting of the Low Bidder Notice on the AGENCY's website. The Award Protest Statement must be submitted timely and contain all of the following to be considered:

- a) The name, address and telephone number of the protestor;
- b) The Project Name of the IFB being protested;
- c) The AGENCY action or recommendation that is being protested;
- d) The name(s) of all affected parties;
- e) A detailed statement setting forth the grounds, legal authority and facts in support of the protest, including all documents and evidence;
- f) Each and every ground on which the protestor bases the protest by specific references to parts of the IFB, which shall be attached as exhibits;
- g) Each and every reason that all other affected parties who may be in line for the purchase or Contract award should not be awarded the purchase or Contract;
- h) A clear statement of the relief requested and the statutory or case law basis for such relief; and
- i) Signed and sworn by a principal of the protestor.

If the submitted Award Protest Statement does not comply with the requirements set forth herein, then it will not be considered for evaluation, and will be returned to the protestor. The Award Protest Statement shall not be amended after filing, and the AGENCY will not consider any unsolicited information provided after filing. Any argument not raised in the Award Protest Statement shall be deemed waived.

Award Protest Statements are public documents. AGENCY will notify the affected parties when a protest has been submitted and will provide copies of the Protest Statements to the affected parties as soon as is reasonably practical.

(2) Evaluation and Determination

The affected parties may file responsive statements in support of or in opposition to the protest within three (3) business days after the receipt of the Award Protest Statement from AGENCY. The Manager of Capital Projects, or designee, shall review the facts and all submittals relative to the Award Protest Statement and shall issue a written decision setting

forth the basis for such decision. The written decision will be issued to the protestor and to all affected parties.

Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except in the sole discretion of the Manager of Capital Projects, or designee. In the event a hearing is conducted, the Manager of Capital Projects, or designee, shall issue written notice to the protestor and affected parties identifying the date and time for the hearing, along with rules concerning the hearing.

C. Delay in Award

Execution of any proposed contract shall be delayed pending the resolution of the protest unless one or more of the following conditions is present:

1. The items or services being procured are urgently required;
2. Delivery or performance will be unduly delayed by failure to make award promptly; or
3. Failure to make prompt award will otherwise cause undue harm to AGENCY.

D. No Limitation on Remedies

Nothing contained herein shall be construed to act as a limitation on AGENCY's choice of remedies or confer any right upon any interested party or affected party to a remedy.

E. Basis for Choice of Remedy

In determining the appropriate remedy, the AGENCY shall consider all the circumstances surrounding the IFB and/or award, including, but not limited to:

1. The seriousness of any deficiency found to exist in the contracting process;
2. The effect of the action on the competitive process;
3. Any urgency surrounding the Contract requirement; and
4. The effect that implementing the remedy will have on the AGENCY.

F. Remedies

If the AGENCY determines that the award or proposed award was not made in accordance with applicable statutes, regulations, policies and/or procedure, the AGENCY, in its sole discretion, may grant any of the following remedies or any other remedy it deems appropriate:

1. Prior to award, AGENCY may issue a new solicitation, make a new selection/award recommendation, or award the Contract consistent with applicable statutes, regulations, policies and procedures;

2. In its sole discretion, take no further action; or
3. Take any other action that is permitted by law to promote compliance.

15. **AGREEMENT:** The Agreement form (contract) which the successful Bidder as CONTRACTOR will be required to execute is included in the Bid Package and shall be carefully examined by the Bidder prior to submitting its proposal. At time of award, copies of the Agreement form and Attachments for final execution will be forwarded to CONTRACTOR.

Do not submit with the Bid copies of the Agreement or Bond Forms that are in the Bid Package.

16. **INTERPRETATION OF PLANS, DRAWINGS AND DOCUMENTS:** If any person contemplating submitting a Bid for the proposed Work is in doubt as to the true meaning of any part of the Bidding or Contract Documents, or finds discrepancies in or omissions from those documents, that person shall submit to the AGENCY a written request for an interpretation or correction thereof. The person submitting the request shall be responsible for its prompt delivery. Any interpretations of proposed documents will be made only by an Addendum duly issued, and a copy of such Addendum will be posted on the AGENCY's web site. AGENCY will not be responsible for any other explanation or interpretation of documents. Bidders are cautioned to accept interpretations in writing only.

The AGENCY will respond to written/faxed inquiries received at least eight (8) days before the scheduled Bid Opening Date for which, in its sole judgment, a response is in the best interest of the AGENCY. Where such interpretation or clarification requires a change in the Bid Documents, the AGENCY will prepare and issue an Addendum to the Bid Documents. The AGENCY will not be bound by, and Bidder shall not rely upon, any oral interpretation or clarification of the Bid Documents.

17. **SUBCONTRACTORS:** Bidders are hereby notified that the AGENCY will not recognize subcontractors as having any function in the Work other than as employees of the prime CONTRACTOR. Bidders shall refer to the General Conditions with reference to employees and to the Bidding Requirements and General Conditions with reference to subcontractors. The Bidders shall be responsible for subcontractors having read the General Conditions, General Project Requirements, and for being familiar with terms and conditions of the Contract Documents as said terms and conditions may affect their work, prior to submitting their Bid.

18. **LISTING SUBCONTRACTORS:** Each Bidder shall submit a list of the proposed subcontractors on the project as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code Sec. 4100 et seq.) on the forms provided with the Bidding Requirements. The business location, phone number, and license number are required for each subcontractor proposed or the Bid will be deemed non-responsive.

19. **DRAWINGS AND PROJECT MANUALS FURNISHED:** The AGENCY will furnish the successful Bidder with two (2) complete sets of the Drawings and Project Manuals pertinent to work for construction purposes. Additional copies required may be purchased for an amount equal to printing costs. Bidders are hereby notified that all such Drawings and Project Manuals are the property of the AGENCY and are loaned to the successful Bidder for duration of the Work. Any re-use of these documents, in whole or in part, for any purpose, is prohibited.

20. TIME FOR COMPLETION: Time is of the essence in execution of the Contract for this Work. Bidder shall refer in its bid to acceptance of the time of execution.

21. LIABILITY AND PROPERTY INSURANCE: Bidder's attention is specifically directed to requirements of the General Conditions and the General Project Requirements, with reference to liability and property insurance, and to the provisions in the Agreement for progress payments, hold harmless agreement, final payment, subsurface hazardous materials encountered and liquidated damages.

22. WORKERS' COMPENSATION: In accordance with the provisions of Section 3700 of the Labor Code, CONTRACTOR shall secure the payment of compensation to its employees. Prior to performing work under this contract, CONTRACTOR shall sign and file with AGENCY the "Certificate Regarding Workers Compensation", which includes the following: "I am aware of the provisions of §3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code, and I will comply with such provisions before commencing the performance of the work of this contract."

23. HOLD HARMLESS AGREEMENT: To the fullest extent permitted by law, the CONTRACTOR agrees to and does hereby indemnify, defend and hold harmless the AGENCY and each of their officers, agents, employees, and consultants (including the AGENCY's architects and engineers) from every claim or demand made and every liability, loss, damage, or expense of any nature whatsoever (including, but not limited to attorneys' fees and costs including fees of consultants) which may be incurred by reason of:

- A. Liability for damage for death or bodily injury to persons or injury to property sustained by the CONTRACTOR or any other person, firm or corporation employed by the CONTRACTOR upon or in connection with the work called for in this agreement, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the AGENCY, or each of their officers, agents or independent CONTRACTORS who are directly employed by the AGENCY or for defects in design furnished by such persons.
- B. Any injury to or death of persons or damage to property sustained by any person, firm or corporation, including the AGENCY, arising out of, or in any way connected with the work covered by this agreement, whether on or off AGENCY property, except for liability for damages which result from the sole negligence or willful misconduct of the AGENCY, and each of their officers, employees, agents or independent CONTRACTORS who are directly employed by the AGENCY or for design defects furnished by such persons.
- C. Any dispute between CONTRACTOR and CONTRACTOR's subcontractors, suppliers and sureties, including, but not limited to, stop notice actions.

The CONTRACTOR, at its own expense, cost, and risk, shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the AGENCY, and each of their officers, agents, employees or consultants on any such claim, demand or liability and shall pay or satisfy any judgment that may be rendered against the AGENCY, and each of their officers, agents or employees in any action, suit or other proceedings as a result thereof.

24. EXAMINATION OF SITE AND CONTRACT DOCUMENTS: Each Bidder shall visit the site of the proposed work and become fully acquainted with the conditions relating to the construction project so that he may fully understand the facilities, difficulties and environmental restrictions affecting the execution of the work under the contract. Bidders shall thoroughly examine and be familiar with the Contract Documents including the environmental permits that dictate the mitigation measure that must be enacted and maintained by the CONTRACTOR during the project. The failure or omission of any Bidder to obtain or examine any Contract Documents, Addenda, environmental permits, forms, instruments, or other documents, or to visit the site and acquaint themselves with existing conditions, shall in no way relieve any Bidder from obligations with respect to its Bid or to the Contract. The submission of a Bid will be taken by the AGENCY as evidence of compliance with all requirements of this section.

25. ANTI-DISCRIMINATION: It is the policy of the AGENCY that in connection with all work performed under contracts, there shall be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, medical conditions, sexual orientation or marital status. The CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Government Code 12900 and Labor Code 1735. In addition, the CONTRACTOR agrees to require like compliance by any subcontractors employed for the work by the CONTRACTOR.

26. NO TELEPHONE AVAILABILITY: Bidders are advised that on the Bid Due Date telephones WILL NOT be available at the AGENCY for use by Bidders, their sub-contract bidders, or other representatives.

27. LICENSE REQUIRED: Pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, all Bidders must possess proper licenses for performance of this Contract. At the time of bid, and for the duration of the Contract, if awarded, CONTRACTORS shall possess a valid City of San Bernardino business license and a valid California CONTRACTOR's license for the Class identified in the Notice Inviting Bids and the bid package scope of work in order to perform the specified Bid Package of Work. Subcontractors must possess the appropriate licenses for each specialty subcontracted. CONTRACTORS must verify license requirements of local jurisdictions.

28. CERTIFICATIONS AND OTHER ATTACHMENTS TO BID FORM: All Bidders are required to execute and submit with their bids the following certifications, affidavits, and other attachments to the Bid Form:

1. Bidder's Non-Collusion Affidavit, identified herein as Attachment No. 1 to Bid Form as required by Public Contract Code, Section 7106.
2. Site Visit Certification, identified herein as Attachment No. 2 to Bid Form.
3. CONTRACTOR Information Sheets, identified herein as Attachment No. 3 to Bid Form.
4. Proposed Subcontractors, identified herein as Attachment No. 4 to Bid Form.
5. Bid Bond Form, identified herein as Attachment No. 5 to Bid Form.
6. Bidder References and Responsibility Information, identified herein as Attachment No. 6 to Bid Form.

7. Supplemental Bid Information, identified herein as Attachment No. 7 to Bid Form

29. CERTIFICATIONS AND OTHER ATTACHMENTS TO AGREEMENT: Prior to execution of the AGREEMENT, the successful Bidder shall submit the following certifications:

- 1 Certificate Regarding Worker's Compensation, identified herein as Attachment No. 1 to Agreement.
- 2 Drug-Free Work Place Certification, identified herein as Attachment No. 2 to Agreement.
- 3 CONTRACTOR Prevailing Wage Compliance Certification, identified herein as Attachment No. 3 to Agreement.
- 4 Faithful Performance Bond Form, identified herein as Attachment No. 4 to Agreement.
- 5 Payment Bond Form, identified herein as Attachment No. 5 to Agreement.
- 6 Company Information Sheets, identified herein as Attachment No. 6 to Agreement.
- 7 General CONTRACTOR Project Contact Information, identified herein as Attachment No. 7 to Agreement.
- 8 Guarantee, identified herein as Attachment No. 8 to Agreement.
- 9 Form W-9 Request for Taxpayer Identification Number and Certification, identified herein as Attachment No. 8 to Agreement.

All Bidders are advised to retain the certifications until the successful Bidder has been confirmed and an Agreement for the work has been executed.

30. CERTIFICATIONS REQUIRED PRIOR TO COMMENCING WORK: Prior to commencing work on the Project, the successful Bidder shall submit the following certifications:

- A. Criminal Records Check Certification Form (Only if requested by AGENCY).
- B. Proof of Worker's Compensation and liability insurance.

31. BID DEPOSIT RETURN: Bid Security of three or more low Bidders, the number being at the discretion of the AGENCY, will be held for one hundred twenty (120) consecutive calendar days or until sixty (60) days after the AGENCY's issuance of a Notice of Award and the posting by the successful Bidder of the bonds and certificates of insurance required and return of executed copies of the Agreement, whichever first occurs, at which time the deposits will be returned. Bid Security of other Bidders will be returned after opening of the Bids.

32. WAGE RATES, TRAVEL AND SUBSISTENCE:

(a) The prevailing rate of per diem wages, as determined by the Director of Industrial Relations, applicable to the work to be done for the locality in which the work is to be performed in compliance with Section 1773 of the Labor Code of the State of California are on file in AGENCY's principal office at the address listed in the Notice Inviting Bids and will be made available to any interested party upon request. Once awarded, the CONTRACTOR shall obtain copies of the above-referenced prevailing wage sheets and post a copy of such wage rates at

appropriate, conspicuous, weatherproof points at the Site. The general prevailing rate of per diem wages can also be located on the internet at the following web address: www.dir.ca.gov

(b) Any worker employed to perform work on the Project and the specified work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

(c) Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1/2) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.

(d) It is the CONTRACTOR's responsibility to ensure that the appropriate prevailing rates of per diem wages are paid for each classification, both for the CONTRACTOR's employees and for all subcontractors' employees.

33. **LABOR COMPLIANCE:** Any CONTRACTOR to whom a contract for the Work is awarded by the AGENCY shall comply with the provisions of the California Labor Code, including, without limitation, the obligation to pay the general prevailing rates of wages in the locality in which the Work is to be performed in accordance with Sections 1773.1, 1774, 1775 and 1776 of the California Labor Code and the obligation to comply with Section 1777.5 of the California Labor Code governing employment of apprentices. The CONTRACTOR shall further comply with the requirements of Section 1771.4 of the California Labor Code to furnish directly to the Labor Commissioner on a monthly basis the records specified in Section 1776 of the California Labor Code

34. **IN-ELIGIBLE CONTRACTORS:** CONTRACTORS and subcontractors that are ineligible to bid or work on public works project pursuant to Section 1777.1 or 1777.7 of the California Labor Code may not bid on the Work and any bid submitted by an ineligible CONTRACTOR or which contains work to be performed by an ineligible subcontractor will be rejected by the AGENCY.

END OF DOCUMENT

BID COVER SHEET

BID DUE: January 30, 2020 at 2:00PM – PT

PROJECT NAME:

IVDA WATER TOWER REHABILITATION

THE WORK UNDER THIS BID IS A PROJECT OF:

Inland Valley Development Agency

**BIDDER/
CONTRACTOR:**

**BIDDER TELEPHONE
& CONTACT PERSON**

CONTENTS MUST INCLUDE: (Please Check Each Box)

Attachments:

- 1 - Bidder's Non-Collusion Affidavit**
- 2 - Site Visit Certification**
- 3 - Company Information Sheet**
- 4 - Proposed Subcontractors**
- 5 - Bid Bond Form**
- 6 - Bidder References & Responsibility Information**
- 7 - Supplemental Bid Information**

SUBMIT BID TO:

CLERK OF THE BOARD
INLAND VALLEY DEVELOPMENT AGENCY
1601 EAST, 3RD STREET, SUITE 100, SAN BERNARDINO CA,
92408

Each Bidder/CONTRACTOR must complete the information on this sheet and affix this sheet to the outside of their bid envelope by gluing or taping.

IVDA WATER TOWER REHABILITATION

BID FORM

TO: **INLAND VALLEY DEVELOPMENT AGENCY**, acting by and through its Governing Board, herein called the "AGENCY."

FROM: _____
(Proper Name of Bidder)

1. Pursuant to and in compliance with your Notice Inviting Bids and the other documents relating thereto, the undersigned Bidder, having familiarized himself/herself with the terms of the Contract and the Contract Documents, the environmental permit requirements, the local conditions affecting the performance of the Contract and the cost of the work at the place where the work is to be done, hereby proposes and agrees to perform within the time stipulated, the Work of the Contract, including all of its component parts, and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the work; the furnishing of tools, equipment, supplies, transportation, utilities, facilities, labor, superintendence and services required to perform and complete the work; bonds, insurance and submittals; and including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the Contract, including its acceptance by the AGENCY.

2. ADDENDA

The undersigned has thoroughly examined any and all Addenda (if any) issued during the bid period and is thoroughly familiar with all contents thereof and acknowledges receipt of the following Addenda: *(Bidder to list all addenda)*

ADDENDUM NO. _____	DATE RECEIVED _____
ADDENDUM NO. _____	DATE RECEIVED _____
ADDENDUM NO. _____	DATE RECEIVED _____
ADDENDUM NO. _____	DATE RECEIVED _____
ADDENDUM NO. _____	DATE RECEIVED _____
ADDENDUM NO. _____	DATE RECEIVED _____
ADDENDUM NO. _____	DATE RECEIVED _____

3. BID AMOUNTS:

Bid Item	Description	Unit	QTY	Unit Price	Total
001	Mobilization [Bonds and Insurance]	LS	1	\$ 15,000.00	\$ 15,000.00
002	Provide all labor, materials and equipment for the removal of lead contaminated soil for the Lump Sum Amount of.....	CF	11,100 cu ft	\$	\$
003	Provide all labor, materials and equipment to fill underground equipment structure with pea gravel and cover with minimum 1 foot clean soil for the lump sum amount of...	LS	1	\$	\$
004	Provide all labor, materials and equipment to perform additional soil testing for lead contamination at 10 locations for the lump sum amount of...	LS	1	\$	\$
005	Provide all labor, materials and equipment to prepare structure for painting (including lead abatement as necessary) for the lump sum amount of...	LS	1	\$	\$
006	Provide all labor, materials and equipment to prime and paint structure for the lump sum amount of...	LS	1	\$	\$
007	Provide all labor, materials and equipment to protect life and property for the lump sum price of...	LS	1	\$	\$
008	Allowance for undisclosed or unknown additional work items.	LS	1	\$50,000.00	\$50,000.00

BASE BID INCLUDING ALLOWANCES (Amount in Numbers)	\$
BASE BID INCLUDING ALLOWANCES (Amount in Writing)	

The undersigned Bidder agrees to achieve Final Completion of the Work and all Major Milestones within the Contract Time set forth in the Contract Documents.

Note: Allowances are for the sole use of the AGENCY.

4. ALTERNATES: (If applicable) The following amounts shall be added to or deducted from the Base Bid at the AGENCY's option. Refer to Section 01030 Alternates for description of work. **Undisclosed items.**
 - * Line out "add" or "deduct" depending on which is not applicable. However, any other method or designation which clearly identifies the nature of the item shall also be acceptable. In the absence of any clear indication of the additive or deductive nature of the item, it will be assumed that the item is intended to be deductive in nature.
5. TIME FOR COMPLETION: The entire Project shall be completed within **45 consecutive calendar days**. Bidder acknowledges liability for liquidated damages in the amount as stipulated herein for each calendar day of delay.
6. AGENCY'S RIGHT TO REJECT: It is understood that the AGENCY reserves the right to reject this bid and that the bid shall remain open to acceptance and is irrevocable for a period of **one hundred twenty (120) days**.
7. BID SECURITY: The required bid security in the amount of not less than ten percent (10%) of the bid is attached hereto.
8. PROPOSED SUBCONTRACTORS: The required list of proposed subcontractors is attached hereto. Bidder understands and acknowledges that all subcontractors providing goods and services in excess of \$100,000.00 must be bonded in accordance with the Subletting and Subcontracting Fair Practices Act.
9. NONCOLLUSION AFFIDAVIT: The required notarized Bidder's Non-collusion Affidavit is attached hereto.
10. SITE VISIT CERTIFICATION: The required Site Visit Certification is attached hereto.
11. CONTRACTOR INFORMATION SHEETS: The required CONTRACTOR Information Sheets are attached hereto.
12. CRIMINAL BACKGROUND CHECK CERTIFICATION: The required Criminal Background Check Certification will be submitted prior to CONTRACTOR commencing work on the project (only if requested) in accordance with the Notice Inviting Bids.
13. FAITHFUL PERFORMANCE AND PAYMENT BOND: It is understood and agreed that if Bidder is providing goods and services in excess of \$25,000.00 and written notice of the acceptance of this bid is mailed or delivered to the undersigned after the opening of the bid, and within the time this bid is required to remain open, or at any time thereafter before this bid is withdrawn, the undersigned will execute and deliver to the AGENCY a fully executed Form of Agreement (Contract) in the form attached hereto in accordance with the bid as accepted, and that it will also furnish and deliver to the AGENCY three (3) executed copies of a Faithful Performance Bond and a separate Payment Bond as specified, and certificates of insurance, all within ten (10) calendar days after receipt of notification of the acceptance. Bidder further agrees that the work under the Contract will be commenced by the Bidder, if awarded the Contract, on the date to be stated in the AGENCY's "Notice to Proceed" and will be completed within the time specified in the Contract documents.

14. PROPER ADDRESS: Notice of Award of Contract or other correspondence should be addressed to the undersigned at the address stated below.

15. NAME(S) OF PRINCIPALS: Principals of the Bidder's company are:

(IMPORTANT NOTICE: If Bidder is a corporation, state legal name of corporation, as well as names of the president, secretary treasurer, and general manager thereof; if a partnership, state true name of firm, also names of all individual partners composing firm; if an individual, state names in full.)

16. The undersigned bidder declares that the bidder is licensed in the State of California as required by the Business and Professional Code in accordance with the act providing for registration of CONTRACTORS and the documentation of licensure is as follows:

	License No.	Classification	Expiration Date
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

If the bidder is a joint venture, each member of the joint venture must include the above information.

Bidder certifies that the above-mentioned license(s) entitle(s) Bidder to provide the work required by the Contract, that such license will be in full force and effect throughout the duration of work under this Contract, and that any and all subcontractors to be employed for the work will have appropriate licenses.

17. FORFEITURE OF SECURITY: In the event the Bidder to whom the Notice of Award of Contract is given fails or refuses to post the required bonds and return executed copies of the Form of Agreement with all required attachments within ten (10) calendar days from the date of the Notice of Award, the AGENCY may declare the Bidder's bid deposit or bond forfeited as liquidated damages

18. ASSIGNMENT OF RIGHTS, TITLE AND INTEREST IN CAUSES OF ACTION: Pursuant to Section 4552 of the Government code, in submitting a bid to the AGENCY, the bidder offers and agrees that if the bid is accepted, it will assign to 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, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tender final payment to the bidder.
19. IRCA: The bidder hereby certifies that it is, and at all times during the performance of work hereunder will be, in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees and the bidder shall indemnify, hold harmless and defend the AGENCY against any and all actions, proceedings, penalties or claims arising out of the bidder's failure to comply strictly with the IRCA.
20. FINANCIAL STATEMENTS: It is understood and agreed that if requested by the AGENCY, the Bidder will furnish a notarized financial statement, references and other information required by the AGENCY sufficiently comprehensive to permit an appraisal of bidder's ability to perform the work of the Contract.
21. LIQUIDATED DAMAGES: The undersigned hereby warrants that all work shall be completed within **45 consecutive calendar days** from the date specified on the Notice to Proceed issued by the AGENCY. Time is of the essence. The undersigned agrees that failure to complete the work or any scheduled activity within the time set forth herein will result in the imposition of liquidated damages for each consecutive calendar day of delay in the amount of **\$1,000/calendar day**.
22. CHANGE ORDER REQUESTS: Bidder understands and agrees that all change order requests must be submitted in the form set forth in the Contract Documents. The amount of allowable charges submitted pursuant to a change order shall be limited to the charges allowed by the Conditions of the Contract. Indirect costs, consequential and incidental costs, project management costs, extended home office and field office overhead, administrative costs and profit and other charges not specifically authorized by the Contract Conditions will not be allowed.

The following documents must be submitted with this Bid Form.

1. Bidder's Non-Collusion Affidavit
2. Site Visit Certification
3. Company Information Sheets
4. Proposed Subcontractors
5. Bid Bond
6. Bidder References and Responsibility Information
7. Supplemental Bid Information

The undersigned declares and certifies under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Name of Corporation, Partnership or Sole Proprietor

Address

Telephone

Proper Name of Bidder Empowered to Sign On Behalf of the Corporation, Partnership or Sole Proprietor

Signature of Bidder

NOTE: If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signature of authorized officers of agents and the document shall bear the corporate seal; if bidder is a partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his or her name and signature shall be placed above.

ATTACHMENT NO. 1 TO BID FORM

BIDDERS' NONCOLLUSION AFFIDAVIT
(Public Contract Code Section 7106)

State of California

County of _____

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

CONTRACTOR

Signature of Officer

Typed Name of Officer

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20_____.

Notary Public

My Commission Expires: _____

ATTACHMENT NO. 2 TO BID FORM

SITE VISIT CERTIFICATION

I certify that I have visited the site of the proposed work and have fully acquainted myself with the conditions relating to construction, permitting requirements, environmental restrictions, mitigation measures required, and labor required to complete this project in accordance with the Contract Documents. I fully understand the facilities, difficulties and restrictions associated with the execution of the work under contract.

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

I fully indemnify the **INLAND VALLEY DEVELOPMENT AGENCY** and all of its officers, agents, employees and consultants from any damage or omissions, related to conditions that could have been identified during my visit to the site.

Signature of Bidder

Typed Name of Bidder

SUBSCRIBED BEFORE ME on this _____ day of _____, 20_____.

Notary Public

My Commission Expires: _____

ATTACHMENT NO. 3 TO BID FORM

COMPANY INFORMATION SHEET

DECLARATION

I declare under penalty of perjury under the laws of the State of California I have completed this Company Information Sheet and that the information contained herein is factual and accurate as of the date completed.

Completed and executed this _____ day of _____, 2020, in _____, _____
[day] [month] [city] [state]

By: _____
Print Name: _____
Print Title: _____

LEGAL NAME OF COMPANY: _____

ADDRESS: _____

TELEPHONE: _____ email: _____

CALIFORNIA CONTRACTORS LICENSE NUMBER: _____

DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION NUMBER: _____

TYPE OF BUSINESS (Check One):

- | | | | |
|--------------------------|---|--------------------------|---------------------------|
| <input type="checkbox"/> | CORPORATION | <input type="checkbox"/> | LIMITED LIABILITY COMPANY |
| <input type="checkbox"/> | PARTNERSHIP | <input type="checkbox"/> | JOINT VENTURE |
| <input type="checkbox"/> | INDIVIDUAL | | |
| <input type="checkbox"/> | INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME | | |
| <input type="checkbox"/> | OTHER _____ | | |

STATE OF INCORPORATION OR FORMATION:

PRINCIPALS/OFFICERS/PARTNERS/AGENCY OF COMPANY

(List All Principals/Officers/Partners [including Joint Venture Partners, Managing Partner], as well as investors/investment companies):

Name	Title
_____	_____
_____	_____
_____	_____

[PLEASE ATTACH ADDITIONAL SHEETS AS NECESSARY IN ORDER TO PROVIDE ALL REQUESTED INFORMATION.]

.....
IDENTIFICATION OF PRINCIPAL(S)/OFFICER(S)/REPRESENTATIVE(S) OF COMPANY – Execution of Legal Documents:

The Company has authorized and hereby designates the following individual(s) to execute legal documents on behalf of Company, including but not limited to contract documents, proposals and related documents:

Name	Title
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

IDENTIFICATION OF PRINCIPAL(S)/OFFICER(S)/REPRESENTATIVE(S) OF COMPANY – Representative and/or Management Capacity:

The Company has authorized and hereby designates the following individual(s) to serve in a representative and/or management capacity on behalf of Company relating to the concerned project, contract document, lease document, development document, or any other legal document or agreement, including but not limited to manager, project manager, site manager, etc.

Name	Title
_____	_____
_____	_____
_____	_____

.....
[PLEASE ATTACH ADDITIONAL SHEETS AS NECESSARY IN ORDER TO PROVIDE ALL REQUESTED INFORMATION.]
.....

ATTACHMENT NO. 4 TO BID FORM

PROPOSED SUBCONTRACTORS

In compliance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code commencing at Section 4100) and any amendments thereof, each Bidder shall set forth below:

- (a) The name, the location of the place of business, and California contractor license number of each subcontractor who will perform work or labor or render service to a prime CONTRACTOR in or about the construction of the work or improvement, or a subcontractor licensed by the State of California, who, under subcontract to a prime CONTRACTOR, specially fabricates and installs a portion of the work or improvement according to the Contract Documents in an amount in excess of one-half of 1 percent of the prime CONTRACTOR 's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

Any information requested by the officer, department, board or commission concerning any subcontractor who the prime CONTRACTOR is required to list under this subdivision, other than the subcontractor 's name, description of work, and location of business, may be submitted by the prime CONTRACTOR up to 24 hours after the deadline established by the officer, department, board or commission for receipt of bids by prime CONTRACTORS.

- (b) The portion of the work which will be done by each subcontractor.

General CONTRACTORS bidding this work shall require, pursuant to Public Contract code article 4108, all subcontractors providing labor and materials in excess of \$100,000.00 to supply an original signature and fully executed 100% Faithful Performance and 100% Payment Bond. All general CONTRACTORS bidding on this work must specify this requirement for subcontractor bonds in their written or published request for subcontractor bids. Failure to comply with this requirement shall not preclude CONTRACTOR from complying with the subcontractor bonding requirements.

DESIGNATION OF SUBCONTRACTORS

Portion of Work	Subcontractor Name	Phone Number & Address of Business	License No	DIR Number

NAME OF BIDDER

Signature: _____

Title: _____

ATTACHMENT NO. 5 TO BID FORM

BID BOND FORM

KNOW ALL PERSONS BY THESE PRESENTS, that we _____,
as CONTRACTOR/PRINCIPAL and _____,
as Surety, an admitted Surety insurer pursuant to Code of Civil Procedure, Section 995.120, legally
doing business in California at _____, are
held and firmly bound unto the **INLAND VALLEY DEVELOPMENT AGENCY**, hereinafter called the
AGENCY, in the penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID of the
CONTRACTOR/PRINCIPAL submitted to the said AGENCY for the work described below for the
payment of which sum is lawful money of the United States, well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly
by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the CONTRACTOR /PRINCIPAL
has submitted the accompanying bid dated _____, 20____, for construction of the project
known as:

IVDA WATER TOWER REHABILITATION

NOW THEREFORE, the CONTRACTOR/PRINCIPAL shall not withdraw said bid within **one hundred twenty (120)** calendar days after said opening; and the CONTRACTOR/PRINCIPAL, when given Notice of Award, shall within ten (10) calendar days after the prescribed forms are presented to him for signature, return executed copies of the Agreement to the AGENCY, in accordance with the bid as accepted and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract and for the payment for labor and materials used for the performance of the contract or in the event of the withdrawal of said bid within the period specified or the failure to enter into such contract and give such bonds within the time specified, the CONTRACTOR/PRINCIPAL shall pay the AGENCY the difference between the amount specified in said bid and the amount for which the AGENCY may procure the required work and/or supplies of the latter amount be in excess of the former, together with all costs incurred by the AGENCY in again calling for bids, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract on the call for bids or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or the specifications.

In the event suit is brought upon this bond by the AGENCY and judgment is recovered, CONTRACTOR/PRINCIPAL and Surety shall pay all costs incurred by the AGENCY in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF the above-bound parties have executed this instrument under their several seals this ____ day of _____, 2020 the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

CONTRACTOR/PRINCIPAL

By: (Signature)

Print Name

(Corporate Seal)

SURETY

By: (Signature)

Print Name

Title

Address

Telephone No.

(Attach Attorney-in-Fact Certificate)

(Attach All-Purpose Notary Acknowledgment for Surety Signature)

ATTACHMENT NO. 6 TO BID FORM

BIDDER REFERENCES AND RESPONSIBILITY INFORMATION

GENERAL INFORMATION REQUIRED FROM BIDDER

The AGENCY expressly reserves the right to reject the bid of any bidder who, upon investigation, has been determined to fail to complete similar contracts in a timely fashion or in a satisfactory matter. Such rejection would, if applicable, be based upon the principal that the bidder is "non-responsible" and poses a substantial risk of being unable to complete the work in a cost-effective, professional and timely manner.

In performing the above-described responsibility determination, the AGENCY reserves the right to utilize, and bidder agrees to provide AGENCY with all possible sources of information in assisting AGENCY to make its determination, including, but not limited to: inquiries to regulatory state Boards and agencies; Dun and Bradstreet credit reports; bidder's most recent financial statements (unaudited and audited, as requested by AGENCY); inquiries to companies and public entities for which the bidder has previously performed work; reference checks and examination of all public records.

The bidder must also demonstrate knowledge of similar project experience and construction techniques and should possess a working ability to perform similarly-sized construction work for a public agency. This knowledge and ability shall be shown by furnishing the names, current phone numbers, address, points of contact and scope of work of at least three (3) public agency customers served within the past three (3) years with requirements similar to the needs of the **INLAND VALLEY DEVELOPMENT AGENCY**.

FAILURE TO FURNISH THE REFERENCES AND OTHER INFORMATION AS REQUESTED (IN THE COMPLETE FORMAT REQUIRED) MAY CAUSE YOUR BID TO BE REJECTED AS NON-RESPONSIVE.

The Bidder shall furnish the following information. Failure to comply with this requirement will render the proposal non-responsive and may cause its rejection. Additional sheets may be attached if necessary. "You" or "your" as used herein refers to the bidder's firm and any of its officer, directors, shareholders, parties and principals.

Firm name and address:

Telephone: _____

1. Type of firm: (Check one)

Individual ____ Partnership ____ Corporation ____ Joint Venture ____

CONTRACTOR's License: Primary class _____

License No. _____ Expiration Date: _____

Supplemental classifications held, if any, and license number(s) and expiration date(s):

No payment shall be made for work or material under the contract unless and until the Registrar of CONTRACTORS verifies to the AGENCY that the CONTRACTOR was properly licensed at the time the contract was awarded and CONTRACTOR continues to be so licensed throughout the term of the Contract. Any CONTRACTOR not so licensed is subject to penalties under the law.

The AGENCY is required to verify license prior to awarding a bid. State law generally provides it is a misdemeanor to submit a bid to a public agency without having a license.

Have you ever been licensed under a different name or different license number? _____. If Yes, give name and license number. _____

Names and titles of all officers of the firm:

Number of years as a CONTRACTOR in construction work of this type: _____

Person who inspected site of the proposed work for your firm:

Name and Title: _____
Date of Inspection: _____

How many years' experience in similar type of construction and project size work has your organization had?

(a) as a general CONTRACTOR? _____
(b) as a subcontractor? _____

Has your firm or any of its principals defaulted so as to cause a loss to a surety? _____ If the answer is "Yes", give dates, name and address of surety and details.

Have you been assessed liquidated damages for any project in the past three years? If Yes, explain: _____

Have you been in litigation on a question relating to your performance on a contract during the past three years? _____ If Yes, explain, and provide case name and number:

Have you ever failed to complete a project in the last three years? _____ If so, give Agency and details:

List the names, addresses and telephone numbers of three Architects or Engineers whose jobs you have worked on in the past three years.

<u>Name</u>	<u>Address</u>	<u>Telephone</u>
_____	_____	(____) _____
_____	_____	(____) _____
_____	_____	(____) _____

15. Do you now or have you ever had any direct or indirect business, financial or other connection with any official, employee or consultant of the AGENCY or Architect/Engineer? _____ If so, please elaborate.

REFERENCE INFORMATION REQUIRED FROM BIDDER

The following information should contain persons or entities familiar with the Bidder's Work:

1. Name of Agency: _____
Agency Address and Telephone: _____
Contact Person: _____
Type of Construction Project: _____
Contract Amount: _____

2. Name of Agency: _____
Agency Address and Telephone: _____
Contact Person: _____
Type of Construction Project: _____
Contract Amount: _____

3. Name of Agency: _____
Agency Address and Telephone: _____
Contact Person: _____
Type of Construction Project: _____
Contract Amount: _____

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this _____ day of _____, 2014, State of _____, City of _____, County of _____.

Signature

Title

ATTACHMENT NO. 7 TO BID FORM
SUPPLEMENTAL BID INFORMATION

-ALLOWANCES-

The Bidders shall include in the base bid of the project all the allowances listed below. These allowances shall be included in the total base bid, written in numbers and spelled out in words on item 3 of the Bid Form.

Unknown items.

The lowest Bid shall be determined by the lowest Total Base Bid value indicated under item 3 of the bid form. The value listed on the bid form shall INCLUDE all allowances.

AGREEMENT BETWEEN AGENCY AND CONTRACTOR

THIS AGREEMENT made in **three (3)** copies on this _____, BY AND BETWEEN **INLAND VALLEY DEVELOPMENT AGENCY**, San Bernardino County, California, hereinafter called the AGENCY

and

_____. hereinafter called the CONTRACTOR.

(CONTRACTOR's License No. _____).

WITNESSETH: That the AGENCY and CONTRACTOR for the considerations hereinafter named agree as follows:

ARTICLE 1 - SCOPE OF THE WORK: CONTRACTOR shall perform within the time set forth in Article 2 of this Agreement and shall furnish all labor, materials, equipment, tools, utility services, and transportation and perform and complete all work required in connection with the construction as indicated on the drawings and as described in the Project Manual for the complete project at:

WATER TANK REHABILITATION PROJECT

and shall do everything required by the Agreement, the General Conditions of the Contract for Construction, General Project Requirements, Technical Specification Sections and Drawings and Addenda, all of which are incorporated herein by reference and made a part of this Agreement.

ARTICLE 2 - TIME FOR PROJECT COMPLETION: All work under this Contract shall be completed within a period of **45 consecutive calendar days** commencing with the Start Date indicated in the written Notice to Proceed received from the AGENCY and all work under this contract shall be performed in accordance with construction schedule and completed on or before completion date.

ARTICLE 3 - THE AGREEMENT SUM: The AGENCY shall pay the CONTRACTOR for the performance of this Contract, subject to the additions and deductions provided herein, the sum of:

(\$ _____)

ARTICLE 4 - PROGRESS PAYMENTS: Based upon Applications for Payment submitted to the Architect by the CONTRACTOR and Certificates for Payment issued by the Architect, the AGENCY shall make progress payments on account of the Agreement Sum to the CONTRACTOR as provided in Article 9 of the General Conditions and General Project Requirements.

ARTICLE 5 - RETENTION OF SECURITIES: Pursuant to Public Contract Code 7201 the retention amount withheld is five percent (5%) of the total value of the contract or work performed. Pursuant to Public Contract Code Section 22300, CONTRACTOR has the option to deposit securities with an escrow agent approved by the AGENCY as a substitute for retention earnings withheld by the AGENCY to ensure performance.

ARTICLE 6 - HOLD HARMLESS AGREEMENT: To the fullest extent permitted by law, the

CONTRACTOR agrees to and does hereby indemnify, defend and hold harmless the AGENCY and each of their officers, agents, employees, and consultants (including the AGENCY's architects and engineers) from every claim or demand made and every liability, loss, damage, or expense of any nature whatsoever (including, but not limited to attorneys' fees and costs including fees of consultants) which may be incurred by reason of:

- A. Liability for damage for death or bodily injury to persons or injury to property sustained by the CONTRACTOR or any other person, firm or corporation employed by the CONTRACTOR upon or in connection with the work called for in this agreement, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the AGENCY, or each of their officers, agents or independent CONTRACTORS who are directly employed by the AGENCY or for defects in design furnished by such persons.
- B. Any injury to or death of persons or damage, loss or theft of any property, sustained by any person, firm, or corporation, including the AGENCY, arising out of, or in any way connected with the work covered by this Agreement, whether said injury or damage occurs either on AGENCY property or not, except for liability for damages which result from the sole negligence or willful misconduct of the AGENCY, its officers, employees, agents or independent CONTRACTORS who are directly employed by the AGENCY, or for defects in design furnished by such persons.
- C. Any dispute between CONTRACTOR and CONTRACTOR'S subcontractors, suppliers, sureties, including, but not limited to, any stop notice actions.

The CONTRACTOR, at its own expense, cost, and risk, shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the AGENCY, and each of their officers, agents, employees or consultants on any such claim, demand or liability and shall pay or satisfy any judgment that may be rendered against the AGENCY, and each of their officers, agents or employees in any action, suit or other proceedings as a result thereof.

ARTICLE 7 – PREVAILING WAGES

- A. Wage rates for this project shall be in accordance with the General Wage Determination Made By the Director of Industrial Relations Pursuant To California Labor Code, Part 7, Chapter 1, Article 2, Sections 1770, et seq., for San Bernardino County. Wage rates shall conform to those posted in the AGENCY Office.
- B. The following labor code sections are hereby referenced and made a part of this agreement and are set forth in detail in the General Conditions:
 - 1. Section 1735, Anti-Discrimination Requirements.
 - 2. Section 1775, Penalty for Failure to Comply with Prevailing Wage Rates.
 - 3. Section 1776, Payroll Records.
 - 4. Section 1777.5 and 1777.6, Apprenticeship Requirements.
 - 5. Section 1810 and 1811, Working Hour Restrictions.
 - 6. Section 1813, Penalty for Failure to Pay Overtime.
 - 7. Section 1815, Overtime Pay.

- C. The CONTRACTOR shall provide Certified Payroll to the AGENCY upon written request, or if so requested by the AGENCY with each Application for Payment. If AGENCY has previously required Certified Payroll Records to be provided with each Application for Payment then submission of Certified Payroll Records as well as all related or subsequent requests for supporting documents made by the AGENCY shall be a condition precedent to receipt of progress, final, and or/retention payments on the Project. If the AGENCY has requested or otherwise required Certified Payroll Records the AGENCY may withhold any portion of the progress and/or final payments up to and including the entire payment until the Certified Payroll Records requirements is met by the CONTRACTOR. If the CONTRACTOR is determined to have failed to pay workers in compliance with the applicable prevailing wage sections of the Labor Code the AGENCY shall continue to withhold progress, final, or retention payments until sufficient funds have been withheld for payment of wages to workers and all applicable penalties.
- D. The CONTRACTOR shall further comply with the requirements of Section 1771.4 of the California Labor Code to furnish directly to the Labor Commissioner on a monthly basis certified payroll records and other records specified in Section 1776 of the California Labor Code.
- E. Forfeiture for Failure to Comply with Written Record Request. The CONTRACTOR shall have ten (10) days in which to comply subsequent to receipt of a written notice requesting Certified Payroll Records or supporting documents. In the event that the CONTRACTOR fails to comply within the 10-day period, he or she shall, as a penalty to the AGENCY forfeit one hundred dollars (\$100) per day under Labor Code 1776 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards (“DAS”) or the Department of Labor Standards and Enforcement (“DLSE”), these penalties shall be withheld from progress payments then due. A CONTRACTOR is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
- F. Non-Mandatory Attendance at Pre-Job Conference: CONTRACTOR and subcontractors are recommended to attend the AGENCY’s Pre-Job Conference. At the Pre-Job Conference, Labor Compliance requirements will be explained and reviewed. CONTRACTOR and subcontractors are required to sign the sign in sheet to verify attendance of the Pre-Job Conference.
- G. CONTRACTOR acknowledges that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

ARTICLE 8 - RECORD AUDIT: In accordance with Government Code, Section 8546.7, records of both the AGENCY and the CONTRACTOR shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

ARTICLE 9 – REGISTRATION FOR PUBLIC WORKS AND CERTIFICATIONS:

- A. CONTRACTOR acknowledges that this is a contract for a “public work”. No contractor or subcontractor may be awarded a contract for public work on a public works contract unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. CONTRACTOR and all subcontractors are required to be registered and qualified pursuant to California Labor Code Section 1725.5 to perform work on public work projects at all times during the term of this Contract. CONTRACTOR certifies to AGENCY that CONTRACTOR and all subcontractors performing work on the project are registered and qualified to work on public works contracts.
- B. Certifications of compliance with requirements for Worker's Compensation (Attachment No. 1 to Agreement), Drug-Free Work Place (Attachment No. 2 to Agreement), and Prevailing Wage Certification (Attachment No. 3 to Agreement) are hereby made a part of this Agreement.
- C. CONTRACTOR shall post on the job site all notices as prescribed by applicable regulations.

ARTICLE 10 - FINAL PAYMENT: Final payment, constituting the entire unpaid balance of the Agreement Sum together with all retentions shall be paid by the AGENCY to the CONTRACTOR in accordance with Article 9 of the General Conditions and will be paid within 60 days after completion of the Work as defined in California Public Contract Code § 7107.

ARTICLE 11 – CONTRACTOR’S FAILURE TO PROCURE COMPLETION OF PROJECT: In the event said CONTRACTOR fails to furnish tools, equipment, or labor in the necessary quantity or quality, or fails to prosecute the work or any part thereof contemplated by this Agreement in a diligent and workmanlike manner, and if the CONTRACTOR for a period of two (2) calendar days after receipt of written demand from AGENCY to do so, fails to furnish tools, equipment, or labor in the necessary quantity or quality, and to prosecute said work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said two (2) calendar days, fails to continue to do so, then the AGENCY may exclude the CONTRACTOR from the premises, or any portion thereof, and take possession of said premises or any portion thereof, together with all material and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work, either by furnishing the tools, equipment, labor or material necessary, or by letting the unfinished portion of said work, or the portion taken over by the AGENCY to another CONTRACTOR, or by a combination of such methods. In any event, the procuring of the completion of said work, or the portion thereof taken over by the AGENCY, shall be a charge against the CONTRACTOR, and may be deducted from any money due or becoming due to CONTRACTOR from the AGENCY, or the CONTRACTOR shall pay the AGENCY the amount of said charge, or the portion thereof unsatisfied. The sureties, provided for under this Agreement shall become liable for payment should CONTRACTOR fail to pay in full any said cost incurred by the AGENCY.

ARTICLE 12 – INSURANCE: CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this Agreement, insurance in accordance with Article 11 of the General Conditions and with the limits shown below. CONTRACTOR shall require all subcontractors, if any, whether primary or secondary, to take out and maintain insurance in accordance with the limits shown in General Conditions, Article 11.

General Liability Insurance for injuries including accidental death and property damage in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate. The policy coverage shall include (i) premises operations and mobile equipment, (ii) products and

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completed operations, (iii) broad form property damage (including completed operations), (iv) explosion, collapse and underground hazards, (v) personal injury, and (vi) contractual liability.

Automobile liability insurance (owned, non-owned, hired) with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and 1,000,000 property damage.

Worker's Compensation Insurance as required by applicable state law including employer's liability limits of not less than \$1,000,000.00

Umbrella Excess Liability Insurance with limits of not less than \$2,000,000. The umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

Insurance Covering Special Hazards: The following special hazards shall be covered by rider or riders to above-mentioned public liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance in amounts as follows:

- Automotive and truck where operated in amounts as above
- Material hoist where used in amounts as above

ARTICLE 13 – CONTRACTOR’S LICENSE: CONTRACTOR must possess a **CLASS “B or C with HAZ”** CONTRACTOR’s License, issued by the State of California, which is current and in good standing.

ARTICLE 14 – CORPORATION IN GOOD STANDING: If CONTRACTOR is a corporation or other legal entity, the undersigned hereby represents and warrants that such entity is duly formed in good standing, and authorized to conduct business in the State of California, and that _____ whose title is _____, is authorized to act for and bind the corporation.

ARTICLE 15 – PROVISIONS REQUIRED BY LAW: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

ARTICLE 16 - LIQUIDATED DAMAGES: Pursuant to Government Code Section 53069.85, if Work is not completed within the Contract Time or in strict accordance with the Project Schedule, It is understood, acknowledged and agreed that the AGENCY will suffer damage. It is therefore agreed that the CONTRACTOR will pay the AGENCY the sum of **\$1,000.00/day** for each and every calendar day of delay beyond the Contract Time, or beyond any completion schedule, construction schedule or Project milestones established in or pursuant to the Project Schedule, or beyond the time indicated in the PROJECT Schedule for any individual contract activity. CONTRACTOR expressly understands, acknowledges and agrees that such liquidated damages can and shall be imposed if the CONTRACTOR does not meet each and every aspect of any activity schedule, completion schedule, construction schedule or Project milestones established in or pursuant to the default by reason of delays, the acceptance of such work and/or payment(s) shall in no respect constitute a waiver or modification of any provisions regarding Contract Time, a completion schedule, the Project Schedule or liquidated damages. In the event the same is not paid, the CONTRACTOR further agrees that the AGENCY may deduct the amount thereof from any money due or that may become due the CONTRACTOR under the Agreement. This Article does not exclude recovery of damages under provisions of the Agreement Documents.

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ARTICLE 17 – COMPONENT PARTS OF THE AGREEMENT: The Agreement entered into by this Agreement consists of the following Agreement Documents, all of which are component parts of the Agreement as if herein set out in full or attached hereto:

- Notice Inviting Bids
- All Bid Forms Submitted
- Pre-Bid Addenda
- Certification of Workers' Compensation and Insurances
- Certification of Drug Free Workplace
- Performance Bond
- Labor and Materials Payment bond
- Prevailing Wage Compliance Certification
- Guarantee
- General Conditions
- General Project Requirements
- Scope of Work Summary
- Plans and Specifications
- Change Orders
- Shop Drawing Transmittals

All of the above named Agreement Documents are intended to be complementary. Work required by one of the above named Agreement Documents and to by others shall be done as if required by all.

ARTICLE 18 - BACKGROUND CHECK: CONTRACTOR agrees to comply with a criminal background check of all employees upon request. CONTRACTOR shall conduct criminal background check of all employees and sub-CONTRACTORs employees. CONTRACTOR must provide the AGENCY with a list of all employees providing services pursuant to this Agreement, and designate to which sites they will be assigned. Failure to comply with this law may result in, at AGENCY's sole discretion, termination of this Agreement.

ARTICLE 19 - DOCUMENT CONTROL PROGRAM: CONTRACTOR may be required (if implemented on this project) to utilize the AGENCY'S established standard, centralized, Internet-based document control program to record, attach, track and manager Transmittals, Requests for Information (RFIs), Submittals, Daily Reports, Meeting Minutes, Punch Lists and other documents as required. Software and training for the CONTRACTOR's document coordinator and managers will be provided by the AGENCY at no charge to the CONTRACTOR.

ARTICLE 20 - CONFLICT OF INTEREST – AGENCY REPRESENTATIVES. CONTRACTOR acknowledges that the AGENCY uses ethical business practices in the selection of its CONTRACTORS and in its other contracting practices. CONTRACTOR certifies that neither it nor its employees or agents have, with an intent to establish or maintain a business relationship with the AGENCY or any department thereof, provided any gift or sponsorship having a value of more than a fifty and 00/100 dollar (\$50.00) value, in total or aggregated total, to: (i) any person working on behalf of the AGENCY involved in the negotiation of this Agreement; (ii) any member of any department of the AGENCY procuring items or services from the CONTRACTOR under this Agreement; and/or (iii) any person with authority to negotiate this or any other contract on behalf of the AGENCY. Further, CONTRACTOR certifies that neither it nor its employees or agents shall at any time in the future, with an intent to establish or maintain a business relationship with the AGENCY or any department thereof, provide any gift or sponsorship having more than a fifty and 00/100 dollar (\$50.00) value, in total or aggregated total, to: (i) any person working on behalf of the AGENCY involved in the negotiation of this Agreement; (ii) any member of any department of the AGENCY procuring items or services from the CONTRACTOR under this Agreement; and/or (iii) any person with authority to negotiate this or any other contract on behalf of the AGENCY.

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The CONTRACTOR acknowledges the obligations as set forth in this Article by the initials of the agent signing on behalf of the CONTRACTOR appearing below:

(initial here)

ARTICLE 21 - CONFLICT OF INTEREST – CAMPAIGN CONTRIBUTIONS: The CONTRACTOR represents and warrants that it has reviewed and is familiar with the governing provisions of the California Government Code and the regulations promulgated there under by the Fair Political Practices Commission (“FPPC”) regarding campaign contributions to appointed members of the governing body of the AGENCY. The CONTRACTOR further represents and warrants that neither the CONTRACTOR, nor any number of individuals employed by the CONTRACTOR or other contractors and Subcontractors of the CONTRACTOR, or any others acting on behalf of or in concert with the CONTRACTOR, have contributed to: (i) any member of the governing body of the AGENCY, (ii) any election committee of any member of the governing body of the AGENCY, (iii) any “friends of” election committee of any member of the governing body of the AGENCY, or (iv) any political action committee (“PAC”) representing, acting with or on behalf of any member of the governing body of the AGENCY, an amount in the aggregate of more than Two Hundred Fifty and 00/100 Dollars (\$250.00) within the period commencing twelve (12) months prior to the date of the official action by the governing body of the AGENCY to approve this Agreement. The CONTRACTOR covenants and warrants that for the period of time commencing as of the date of the approval of this Agreement by the governing body of the AGENCY and for ninety (90) calendar days thereafter, similarly no such campaign and/or fund-raising contributions aggregating in excess of \$250.00 from the CONTRACTOR and other contractors and Subcontractors of the CONTRACTOR, or others action on behalf of or in concert with the CONTRACTOR, when aggregated with campaign contributions paid pursuant to the preceding sentence for the prior twelve (12) month period, shall be made to any member of the governing body who participated in the official action to approve this Agreement. Such \$250.00 limitation shall apply for the period of time commencing twelve (12) months prior to the date of the official action of the governing body of the AGENCY to approve this Agreement and for ninety (90) calendar days thereafter and all such campaign contributions within said fifteen (15) month period of time shall be aggregated for purposes of the FPPC rules and regulations. Any breach of this Article, whether intentional or unintentional, shall be deemed to be a material breach of this Agreement.

The CONTRACTOR acknowledges the obligations as set forth in this Article by the initials of the agent signing on behalf of the CONTRACTOR appearing below:

(initial here)

ARTICLE 22 - FAIR POLITICAL PRACTICES COMMISSION FORMS AND FILINGS: The provisions of this Article shall apply to the CONTRACTOR, its employees and/or agents providing or supervising the services to the AGENCY as set forth in this Agreement. The CONTRACTOR acknowledges and represents and warrants that the CONTRACTOR is aware of the requirements of the Fair Political Practices Commission (“FPPC”) of the State of California, including the statutory requirements and the rules and regulations promulgated pursuant thereto, and the obligations and duties of third party contractors such as the CONTRACTOR to complete and timely submit the required FPPC reporting forms.

By the execution and acceptance of this Agreement with the AGENCY, the CONTRACTOR hereby agrees that no later than the first day of April (April 1) of each calendar year, or any other date as

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designated by AGENCY legal counsel or the Clerk of the Board, the CONTRACTOR shall submit, and/or cause its employees and/or agents providing or supervising the services to the AGENCY as set forth in this Agreement to submit, to the Clerk of the Board any reporting form or filing published and/or required by the FPPC which AGENCY legal counsel or the Clerk of the Board should deem appropriate and so request of the CONTRACTOR, properly and fully completed in accordance with the instructions of the FPPC, which instructions shall be provided to CONTRACTOR by the Clerk of the Board, identifying the appropriate and necessary economic disclosures of the CONTRACTOR, its employees and/or agents who perform services by, through or on behalf of the CONTRACTOR to the AGENCY pursuant to this Agreement.

Further, the CONTRACTOR recognizes that it is neither the duty nor the responsibility of the AGENCY, its staff and/or legal counsel to review or seek additional information from the CONTRACTOR as to any information submitted to the AGENCY in the required FPPC reporting forms. The CONTRACTOR further understands that the CONTRACTOR, its principals, shareholders, and certain employees and/or agents could be subjected to fines and civil penalties imposed by the FPPC in the event any documentation submitted by the CONTRACTOR is deemed to be inadequate either by the FPPC or any other State or local prosecutorial office. Under some circumstances, such inadequacies for failure to comply with the FPPC requirements may also involve criminal sanctions.

The CONTRACTOR shall further defend, indemnify and hold harmless the AGENCY, its officers, employees, representatives, and agents, for any and all violations by the CONTRACTOR regarding FPPC reporting compliance requirements that result in any liability or financial loss to the AGENCY, its officers, employees, representatives, and agents, by reason of the failure of the CONTRACTOR to comply with the provisions of this Article, including staff costs, attorney fees and any and all other costs as may be incurred by the AGENCY, its officers, employees, representatives, and agents due to any alleged violations of the FPPC reporting requirements by the CONTRACTOR.

The CONTRACTOR acknowledges the obligations as set forth in this Article by the initials of the agent signing on behalf of the CONTRACTOR appearing below:

(initial here)

ARTICLE 23 - CONTRACTOR INTERESTS AVERSE TO THE AGENCY: CONTRACTOR hereby represents that it has no interests averse to the AGENCY or its individual member entities, at the time of execution of this Agreement. CONTRACTOR hereby agrees that, during the Term of this Agreement, the CONTRACTOR shall not enter into any agreement or acquire any interests detrimental or averse to the AGENCY or its individual member entities. Additionally, CONTRACTOR hereby represents and warrants to AGENCY that CONTRACTOR and any partnerships, individual persons or any other party or parties comprising CONTRACTOR, together with each subcontractor who may hereafter be designated to perform services pursuant to this Agreement, do not have and, during the Term of this Agreement, shall not acquire any property ownership interest, business interests, professional employment relationships, contractual relationships of any nature or any other financial arrangements relating to the AGENCY, property over which the AGENCY has jurisdiction or any members or staff of the AGENCY that have not been previously disclosed in writing to AGENCY, and that any such property ownership interests, business interests, professional employment relationships, contractual relationships or any nature or any other financial arrangements will not adversely affect the ability of the CONTRACTOR to perform the services to the AGENCY as set forth in this Agreement.

ARTICLE 24 - CONFIDENTIALITY OF MATERIALS AND INFORMATION: The CONTRACTOR shall keep confidential all reports, survey notes and observations, information, and data acquired or generated

in performance of the services set forth in the Scope of Services, which the AGENCY designates confidential. None of such designated confidential materials or information may be made available to any person or entity, public or private, without the prior written consent of the AGENCY. CONTRACTOR shall safeguard and not disclose confidential information of the AGENCY including any of the following: (a) patient, trademark or copyright information; (b) personnel information; (c) matters of a technical nature; (d) matters of a business nature; and, (e) other information of a similar nature which is not generally disclosed by the AGENCY, referred to collectively hereafter as "Confidential Information." CONTRACTOR further agrees not to use Confidential Information except as may be necessary to perform the services identified in this Agreement for the AGENCY. Upon termination or expiration of this Agreement, or otherwise as requested by the AGENCY, CONTRACTOR shall promptly deliver all Confidential Information to the AGENCY, if any, in whatever form, that may be in CONTRACTOR's possession or control.

ARTICLE 25 – ENTIRE AGREEMENT: The complete Agreement as set forth in Article 1 of this Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Governing Board of the AGENCY.

(CONTRACTOR)

By: _____

Official Title

Date: _____

Address

Official Seal

**INLAND VALLEY DEVELOPMENT
AGENCY
(AGENCY)**

By: _____
Michael Burrows

Executive Director
Official Title

Date: _____

Approved as to form and legal content:

By: _____

Michael Lewin
Mirau, Edwards, Cannon, Lewin &
Tooke

Attest:

Jennifer Farris
Clerk of the Board

ATTACHMENT NO. 1 TO AGREEMENT

CERTIFICATE REGARDING WORKERS' COMPENSATION

Every employer, shall secure the payment of compensation in one or more of the following ways:

- A. By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in the State of California.
- B. By securing from the Director of Industrial Relations, a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.
- C. For all political subdivisions of the State, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the State itself), by securing from the Director of Industrial Relations, a certificate of consent to self-insure against workers' compensation claims which certificate may be given upon furnishing proof satisfactory to the Director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before May 31, 1979, a political subdivision of the State, which on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702 of the Labor Code.

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer, including subcontractors, to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code, and I will comply with such provisions before commencing the performance of the work of this Contract.

CONTRACTOR

Signature

Printed Name

Official Title

ATTACHMENT NO. 2 TO AGREEMENT

DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is required from all successful bidders pursuant to the requirements mandated by Government Code, Section 8350 et. seq. the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any public agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each CONTRACTOR or grant awarded by a public agency may be subject to suspension of payments or termination of the contract or grant and the CONTRACTOR or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

I acknowledge that I am aware of the provisions of Government Code Section 8350 et. seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990. I also understand that if the AGENCY determines that I have either (A) made a false certification herein, or (B) violated this certification by failing to carry out the requirements of Section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350 et. seq.

CONTRACTOR Signature

Printed Name

Official Title

Date: _____

ATTACHMENT NO. 3 TO AGREEMENT

CONTRACTOR PREVAILING WAGE COMPLIANCE CERTIFICATION

To: INLAND VALLEY DEVELOPMENT AGENCY
1601 East 3rd Street, San Bernardino, CA 92408

I hereby certify that I will comply with the State of California Public Works Contract Requirements and Department of Industrial Relations Wage Orders regarding wages, benefits, on site audits with 48-hour notice, payroll records and apprentice and trainee employment requirements.

CONTRACTOR

CONTRACTOR'S PRINCIPAL'S SIGNATURE

DATED

ATTACHMENT NO. 4 TO AGREEMENT

FAITHFUL PERFORMANCE BOND FORM

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the **INLAND VALLEY DEVELOPMENT AGENCY** (hereinafter referred to as "AGENCY") has awarded to _____, hereinafter designated as the "CONTRACTOR/PRINCIPAL" an agreement for the work described as follows:

IVDA WATER TOWER REHABILITATION

(Hereinafter referred to as the "Public Work")

WHEREAS, the work to be performed by the CONTRACTOR/PRINCIPAL is more particularly set forth in that certain contract for the said Public Work dated _____, incorporated herein by this reference; and

WHEREAS, the CONTRACTOR/PRINCIPAL is required by said Contract to perform the terms thereof and to furnish a bond for the faithful performance of said contract.

NOW, THEREFORE, we, _____, the undersigned CONTRACTOR/PRINCIPAL and _____, Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the AGENCY in the sum of _____ DOLLARS (\$_____)

said sum being not less than one hundred percent (100%) of the total amount payable by the said AGENCY under the terms of the said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the bounded CONTRACTOR/PRINCIPAL, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract and any alteration thereof made as therein provided, on his or its part, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning; and shall faithfully fulfill the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the AGENCY, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect. In case suit is brought upon this bond, the said Surety will pay to AGENCY a reasonable attorney's fee to be fixed by the Court.

As a condition precedent to the satisfactory completion of the contract, the above obligation shall hold good for a period of one (1) year or longer if required by the Contract Documents after the acceptance of the work by AGENCY, during which time if CONTRACTOR/PRINCIPAL shall fail to make full, complete, and satisfactory repair and

replacements and totally protect the AGENCY from loss or damage made evident during this period from the date of completion of the work, and resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. The obligations of Surety hereunder shall continue so long as any obligation of CONTRACTOR/PRINCIPAL remains.

Whenever CONTRACTOR/PRINCIPAL shall be, and is declared by the AGENCY to be, in default under the contract, the AGENCY having performed the AGENCY's obligations thereunder, the Surety shall promptly remedy the default, or shall promptly, at the AGENCY's option:

1. Complete the contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a contract between such bidder and the AGENCY, and make available as work progresses sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amount set forth above. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to CONTRACTOR/PRINCIPAL by the AGENCY under the contract and any modifications thereto, less the amount previously properly paid by the AGENCY to the CONTRACTOR/ PRINCIPAL.

Surety expressly agrees that the AGENCY may reject any CONTRACTOR or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the CONTRACTOR/PRINCIPAL.

Surety shall not utilize CONTRACTOR/PRINCIPAL in completing the contract nor shall Surety accept a bid from CONTRACTOR/PRINCIPAL for completion of the work if the AGENCY, when declaring the CONTRACTOR/PRINCIPAL in default, notifies Surety of the AGENCY's objection to CONTRACTOR's/PRINCIPAL's further participation in the completion of the work.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the AGENCY named herein or the successors or assigns of the AGENCY. Any suit under this bond must be instituted within the applicable statute of limitations period.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

No final settlement between the AGENCY and the CONTRACTOR/PRINCIPAL shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

CONTRACTOR/PRINCIPAL and Surety agree that if the AGENCY is required to engage the services of any attorney in connection with the enforcement of this bond, each shall pay the AGENCY's reasonable attorney's fees incurred, with or without suit, in addition to the above sum.

IN WITNESS WHEREOF, we have hereunto set our hands and seals
this ____ day of _____, 20__.

CONTRACTOR/PRINCIPAL:

Name

By: _____

Signature: _____

SURETY:

Signature: _____

The rate of premium on this bond is \$_____ per thousand. The total amount of premium charges, \$_____.
(The above must be filled in by corporate attorney.)

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code, and if the work or project is financed, in whole or in part, with federal grant or loan funds, must also appear on the Treasury Department's most current list (Circular 750 as amended).

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

STATE OF CALIFORNIA

COUNTY OF _____,

On this _____ day of _____, in the year 20____, before me, _____ a Notary Public in and for said state, personally appeared _____, known to me to be the person whose name is subscribed to the within instrument as the Attorney-In-Fact of the _____ (Surety) acknowledged to me that he subscribed the name of the _____ (Surety) thereto and his own name as Attorney-In-Fact.

Notary Public in and for said State

(SEAL)

Commission expires: _____

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

ATTACHMENT NO. 5 TO AGREEMENT

PAYMENT BOND FORM

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the **INLAND VALLEY DEVELOPMENT AGENCY** (hereinafter referred to as "AGENCY") has awarded to _____, hereinafter designated as the "CONTRACTOR/PRINCIPAL" an agreement for the work described as follows:

IVDA WATER TOWER REHABILITATION

(Hereinafter referred to as the "Contract")

WHEREAS, said CONTRACTOR is required to furnish a bond in connection with said Contract, pursuant to Section 9550 et seq. of the California Civil Code.

NOW, THEREFORE, we, _____, the undersigned CONTRACTOR/PRINCIPAL and _____, Surety, a corporation organized and existing under the laws of the State of California, and duly authorized to transact business under the laws of the State of California as Surety, are held and firmly bound unto the **INLAND VALLEY DEVELOPMENT AGENCY** and to any and all persons, companies or corporations entitled to file stop notices under Section 9100 of the California Civil Code in the sum of _____ **DOLLARS**, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount payable by the said AGENCY under the terms of the said Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors, successors, administrators and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if, said CONTRACTOR/PRINCIPAL, his/her or its heirs, executors, administrators, successors, or assigns, or a subcontractor, shall fail to pay any person or persons named in Civil Code Section 9100 or fail to pay for any materials, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind, or shall fail to deduct, withhold and pay over to the Employment Development Department, any amounts required to be deducted, withheld and paid over by Section 13020 of the Unemployment Insurance Code with respect to work and labor thereon of any kind, then said Surety will pay for the same, in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond, such reasonable attorney's fees as shall be fixed by the court, awarded and taxed as provided in Division 4, Part VI, Title III, Chapter 5 (commencing at Section 9550) of the California Civil Code.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the California Civil Code, so as to give a right of action to such person or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications or agreement pertaining or relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the AGENCY and original CONTRACTOR/ PRINCIPAL or on the part of any obligee named in such bond, but the sole condition of recovery shall be that claimant is a person described in Section 9100 of the California Civil Code, and has not been paid the full amount of his/her or its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20____.

CONTRACTOR/PRINCIPAL:

Name

By: _____

Signature _____

SURETY:

By: _____

Attorney-In-Fact

Signature: _____

IMPORTANT: Surety companies executing Bonds must possess a certification of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code, and if the work or project is financed, in whole or in part, with federal grant or loan funds, must also appear on the Treasury Department 's most current list (Circular 570 as amended).

THIS IS A REQUIRED FORM

Water Tower Rehabilitation Project

Payment Bond Form
00250
Bid Issuance Set
Page 2 of 3

(Name and Address of Surety)

(Name and Address of Agent or Representative for service of process in California if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

STATE OF CALIFORNIA

COUNTY OF _____

On this _____ day of _____, in the year 20__ before me, _____ a Notary Public in and for said state, personally appeared _____, known to me to be the person whose name is subscribed to the within instrument as the Attorney-In-Fact of the (Surety) acknowledged to me that he subscribed the name of the (Surety) thereto and his own name as Attorney-In-Fact.

Notary Public in and for said State

(SEAL)

Commission expires: _____

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto

ATTACHMENT NO. 6 TO AGREEMENT

COMPANY INFORMATION SHEET

DECLARATION

I declare under penalty of perjury under the laws of the State of California I have completed this Company Information Sheet and that the information contained herein is factual and accurate as of the date completed.

Completed and executed this _____ day of _____, 20____, in _____, _____
[day] [month] [city] [state]

By: _____
Print Name: _____
Print Title: _____

LEGAL NAME OF COMPANY: _____

ADDRESS: _____

TELEPHONE: _____ EMAIL: _____

TYPE OF BUSINESS (Check One):

- CORPORATION
- PARTNERSHIP
- INDIVIDUAL
- INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME
- OTHER _____
- LIMITED LIABILITY COMPANY
- JOINT VENTURE

STATE OF CALIFORNIA CONTRACTOR'S LICENSE: _____

DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION NUMBER: _____

STATE OF INCORPORATION OR FORMATION:

PRINCIPALS/OFFICERS/PARTNERS/AGENCY'S OF COMPANY

(List All Principals/Officers/Partners [including Joint Venture Partners, Managing Partner], as well as investors/investment companies):

Name	Title
_____	_____
_____	_____
_____	_____

[PLEASE ATTACH ADDITIONAL SHEETS AS NECESSARY IN ORDER TO PROVIDE ALL REQUESTED INFORMATION.]

.....
IDENTIFICATION OF PRINCIPAL(S)/OFFICER(S)/REPRESENTATIVE(S) OF COMPANY – Execution of Legal Documents:

The Company has authorized and hereby designates the following individual(s) to execute legal documents on behalf of Company, including but not limited to contract documents, proposals and related documents:

Name	Title
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

IDENTIFICATION OF PRINCIPAL(S)/OFFICER(S)/REPRESENTATIVE(S) OF COMPANY – Representative and/or Management Capacity:

The Company has authorized and hereby designates the following individual(s) to serve in a representative and/or management capacity on behalf of Company relating to the concerned project, contract document, lease document, development document, or any other legal document or agreement, including but not limited to manager, project manager, site manager, etc.

Name	Title
_____	_____
_____	_____
_____	_____

.....
[PLEASE ATTACH ADDITIONAL SHEETS AS NECESSARY IN ORDER TO PROVIDE ALL REQUESTED INFORMATION.]
.....

**COMPANY INFORMATION SHEET
SUBCONTACTOR/VENDOR**

[One form must be submitted for each listed sub-CONTRACTOR or vendor]

DECLARATION

I declare under penalty of perjury under the laws of the State of California I have completed this Company Information Sheet and that the information contained herein is factual and accurate as of the date completed.

Completed and executed this _____ day of _____, 20____, in _____, _____
[day] [month] [city] [state]

By: _____
Print Name: _____
Print Title: _____



LEGAL NAME OF COMPANY: _____

ADDRESS: _____

TELEPHONE: _____ EMAIL: _____

TYPE OF BUSINESS (Check One):

- | | | | |
|--------------------------|---|--------------------------|---------------------------|
| <input type="checkbox"/> | CORPORATION | <input type="checkbox"/> | LIMITED LIABILITY COMPANY |
| <input type="checkbox"/> | PARTNERSHIP | <input type="checkbox"/> | JOINT VENTURE |
| <input type="checkbox"/> | INDIVIDUAL | | |
| <input type="checkbox"/> | INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME | | |
| <input type="checkbox"/> | OTHER _____ | | |

STATE OF CALIFORNIA CONTRACTOR'S LICENSE: _____

DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION NUMBER: _____

STATE OF INCORPORATION OR FORMATION:



PRINCIPALS/OFFICERS/PARTNERS/AGENCY'S OF COMPANY

(List All Principals/Officers/Partners [including Joint Venture Partners, Managing Partner], as well as investors/investment companies):

Name	Title
_____	_____
_____	_____
_____	_____



[PLEASE ATTACH ADDITIONAL SHEETS AS NECESSARY IN ORDER TO PROVIDE ALL REQUESTED INFORMATION.]



.....
IDENTIFICATION OF PRINCIPAL(S)/OFFICER(S)/REPRESENTATIVE(S) OF COMPANY – Execution of Legal Documents:

The Company has authorized and hereby designates the following individual(s) to execute legal documents on behalf of Company, including but not limited to contract documents, proposals and related documents:

Name	Title
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

IDENTIFICATION OF PRINCIPAL(S)/OFFICER(S)/REPRESENTATIVE(S) OF COMPANY – Representative and/or Management Capacity:

The Company has authorized and hereby designates the following individual(s) to serve in a representative and/or management capacity on behalf of Company relating to the concerned project, contract document, lease document, development document, or any other legal document or agreement, including but not limited to manager, project manager, site manager, etc.

Name	Title
_____	_____
_____	_____
_____	_____

.....
[PLEASE ATTACH ADDITIONAL SHEETS AS NECESSARY IN ORDER TO PROVIDE ALL REQUESTED INFORMATION.]

ATTACHMENT NO. 7 TO AGREEMENT
GENERAL CONTRACTOR PROJECT CONTACT INFORMATION

Company Name: _____

Mailing Address: _____

Delivery Address, if different: _____

COMPANY CONTACTS

General Correspondence:	_____	Phone:	_____
	Name & Title	Fax:	_____

Billing & Pay Requests:	_____	Phone:	_____
	Name & Title	Fax:	_____

Field Issues/Coordination:	_____	Phone:	_____
	Name & Title	Fax:	_____

Proposal Requests & Change Order Pricing:	_____	Phone:	_____
	Name & Title	Fax:	_____
		Phone:	_____

Submittals:	_____	Fax:	_____
	Name & Title	Phone:	_____

RFI's:	_____	Fax:	_____
	Name & Title	Phone:	_____

24-Hour Emergency Contact

Name: _____
Title: _____
Phone #: _____
Pager #: _____

ATTACHMENT NO. 8 TO AGREEMENT

GUARANTEE

To: **INLAND VALLEY DEVELOPMENT AGENCY**

Project: **IVDA WATER TOWER REHABILITATION**

We hereby guarantee all the work we will perform, install or construct, both labor and materials, on the above Project (whether listed below or not) and guarantee that such work will be done in accordance with the Project Drawings, Specifications, and other Contract Documents, and that the Work as installed/constructed will fulfill the requirements included in the Contract Documents.

The undersigned agrees to repair or replace, at no cost to the AGENCY, any or all of such work, together with any other adjacent work which may be displaced/damaged in connection with such replacement, that may prove to be defective in workmanship or material within the Guarantee Period, ordinary wear and tear and unusual abuse or neglect excepted.

The Guarantee Period shall commence on the date of completion as specified in the Notice of Completion approved by the AGENCY Board and shall continue for the longer of: (a) a period of one (1) year; (b) a period in excess of one (1) year, as specified or required in any Section of the Contract Documents; (c) the duration of a manufacturer's guarantee extending beyond one (1) year.

In the event of the undersigned's failure to comply with the above mentioned conditions within a reasonable period of time, as determined by the AGENCY, but not later than ten (10) days after being notified in writing by the AGENCY of defects requiring correction pursuant to this guarantee, the undersigned authorizes the AGENCY to proceed to have said defects repaired/corrected and made good at the expense of the undersigned, which will pay all costs and charges therefore upon demand.

General CONTRACTOR or Subcontractor: _____

Name of Authorized Person to Sign for the above: _____

Signature of Authorized Person: _____

INLAND VALLEY DEVELOPMENT AGENCY

SECTION 00700

GENERAL CONDITIONS

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ARTICLE 1

GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between INLAND VALLEY DEVELOPMENT AGENCY (hereafter referred to as the "AGENCY") and CONTRACTOR (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Bid Package Scope of Work, addenda issued prior to bid, instructions to bidders, notice to bidders and the requirements contained in the Bid Documents, all bid documents submitted, all requirements and mitigation measures outlined in associated permits from regulatory agencies, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive or a written order for a minor change in the Work issued by the AGENCY. The Contract Documents are complementary, and each obligation of the CONTRACTOR, subcontractors, and material or equipment suppliers in any one shall be binding as if specified in all.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the AGENCY and any subcontractor or sub-subcontractor or between any persons or entities other than the AGENCY and the CONTRACTOR.

1.1.3 THE WORK

The Work shall include all labor, materials and equipment necessary for the CONTRACTOR to fulfill all of its obligations pursuant to the Contract Documents. It shall include the initial obligation of any CONTRACTOR or subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restriction attending the Work under the Contract Documents. Each such CONTRACTOR or subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated bid documents.

1.1.4 THE SITE

The "Site" refers to the grounds of the Project as defined by the Contract Documents and includes any and all lands affected by the performance of the Work. Specifically, "onsite" shall refer to the area bounded by the property lines as identified by the Agency's Field Engineer. "Offsite" shall refer to any area outside of the defined property lines.

1.1.5 THE PROJECT

The Project is the total construction of the Work performed in accordance with the Contract Documents in whole or in part and which may include construction by the AGENCY or by separate CONTRACTORS.

1.1.6 THE DRAWINGS

The Drawings are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location and scope of the Work, generally including plans, elevations, sections, details, schedules and diagrams as drawn or approved by the AGENCY.

1.1.7 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship and performance of related services.

1.1.8 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work, which may include, without limitation, the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 THE PROJECT MANUAL

1.2.1.1 **Documents Complementary and Inclusive.** The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. Any item of work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by CONTRACTOR as if shown or mentioned in both.

1.2.1.2 **Coverage of the Drawings and Specifications.** The Drawings and Specifications generally describe the work to be performed by CONTRACTOR. Generally, the Specifications describe work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on either by the Drawings or the Specifications (or is reasonably inferable there from as being necessary to complete the Work), shall be provided by the CONTRACTOR whether or not the Work is expressly covered in either the Drawings and/or the Specifications. It is intended that the Work be of sound, quality construction, and the CONTRACTOR shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described or implied in the portion of the Work to be performed by them.

1.2.1.3 **Conflicts.** In the event there is a discrepancy between the various Contract Documents, the AGENCY/CONTRACTOR Agreement shall control. Without limiting CONTRACTOR's obligation to identify conflicts for resolution by the AGENCY in accordance with Section 1.2.15, it is intended that the more stringent, higher quality and greater quantity of Work shall apply.

1.2.1.4 **Conformance With Laws.** Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

1.2.1.5 **Ambiguity.** Before commencing any portion of the Work, CONTRACTOR shall carefully examine all Drawings and Specifications and other information given to CONTRACTOR as to materials and methods of construction and other Project requirements. CONTRACTOR shall immediately notify AGENCY ARCHITECT/ENGINEER and AGENCY in writing of any perceived or alleged error, inconsistency, ambiguity or lack of detail or explanation in the Drawings and Specification in the manner provided herein. If the CONTRACTOR or its subcontractors, material or equipment suppliers or any of their officers, agents, and employees performs, permits or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, CONTRACTOR shall bear any and all costs arising there from including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the time for performance. If CONTRACTOR performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of CONTRACTOR which is in error, inconsistent or ambiguous or not sufficiently detailed or explained, CONTRACTOR shall bear any and all resulting costs,

including, without limitation, the cost of correction, without increase to or adjustment in the Contract Price or the time for performance. In no case shall any subcontractor proceed with the Work if uncertain without the CONTRACTOR's written direction and/or approval.

1.2.2 ADDENDA AND DEFERRED APPROVALS

1.2.2.1 **Addenda.** Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified.

1.2.3 SPECIFICATION INTERPRETATION

1.2.3.1 **Approval** means written authorization by AGENCY or the AGENCY's authorized representative for specific applications.

1.2.3.2 **As Shown, Etc.** Where "as shown," "as indicated," "as detailed," or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as accepted," "as selected," or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance or selection by AGENCY is intended unless otherwise stated.

1.2.3.3 **Project** is the planned undertaking as provided for in the Project documents by AGENCY and CONTRACTOR.

1.2.3.4 **Provide.** "Provide" means "provided complete in place," that is, furnished, installed, tested and ready for operation and use.

1.2.3.5 **General Conditions.** The General Conditions and General Project Requirements are a part of each and every section of the Specifications.

1.2.3.6 **Abbreviations.** In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as "CONTRACTOR shall," "shall be," etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings.

1.2.3.7 **Plural.** Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.8 **Metric.** The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1" (25 mm), the U.S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the "International System of Units" (SI) and generally follow ASTM E 380, "Standard for Metric Practice."

1.2.3.9 **Work of the CONTRACTOR or Subcontractor** includes labor or materials (including, without limitation, equipment, fixtures and appliances) or both, incorporated in, or to be incorporated in the construction covered by the complete Contract Documents.

1.2.3.10 **Standard Specifications.** Any reference to standard specifications of any society, institute, association, or governmental authority, including CAL Trans is a reference to the organization's standard specifications, which are in effect at the date of the CONTRACTOR's proposal. If applicable specifications are revised prior to completion of any part of the Work, the CONTRACTOR may perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. AGENCY will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

1.2.3.11 **Absence of Modifiers.** In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.2.4 RULES OF DOCUMENTS INTERPRETATION

- A. In the event of conflict within the drawings, the following rules shall apply:
 - 1. General notes, when identified as such, shall be incorporated into other portions of drawings.
 - 2. Schedules, when identified as such, are complementary with other notes and other portions of drawings including those identified as general notes.
 - 3. Larger scale drawings shall take precedence over smaller scale drawings.
 - 4. Figured, derived or numerical dimensions shall govern. At no time shall the CONTRACTOR base construction on scaled drawings.
- B. Specifications shall govern as to materials, workmanship and installation procedures.
- C. In the case of disagreement or conflict between or within standards, specifications, and drawings, the more stringent, higher quality and greater quantity of work shall apply.

1.3 AGENCYSHIP AND USE OF AGENCY ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

The Drawings, Specifications and other documents prepared by an AGENCY ARCHITECT/ENGINEER on behalf of the AGENCY are instruments of the services of the AGENCY ARCHITECT/ENGINEER and its consultants and are the property of the AGENCY. The CONTRACTOR may retain one contract record set. Neither the CONTRACTOR nor any subcontractor, sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the AGENCY ARCHITECT/ENGINEER, and unless otherwise indicated the AGENCY ARCHITECT/ENGINEER shall be deemed the author of them. All copies of them, except the CONTRACTOR's record set, shall be returned or suitably accounted for to the AGENCY, upon request upon completion of the work. The Drawings, Specifications, and other documents prepared by the AGENCY ARCHITECT/ENGINEER and copies thereof furnished to the CONTRACTOR, are for use solely with respect to this Project. They are not to be used by the CONTRACTOR or any subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the work without the specific written consent of the AGENCY and the AGENCY ARCHITECT/ENGINEER. The CONTRACTOR, subcontractors, sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the AGENCY ARCHITECT/ENGINEER appropriate to and for use in the execution of their work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the AGENCY's property interest or other reserved right.

ARTICLE 2

AGENCY

2.1 DEFINITION

The term "AGENCY" means the **INLAND VALLEY DEVELOPMENT AGENCY and or INLAND VALLEY DEVELOPMENT AGENCY** as identified as such in the Agreement. The AGENCY is referred to throughout the Contract Documents as if singular in number. The term "AGENCY" means the AGENCY or the AGENCY's authorized representative.

2.2 INFORMATION AND SERVICES REQUIRED OF THE AGENCY

2.2.1 FINANCING AND FUNDING

At the request of the CONTRACTOR, the AGENCY will, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the CONTRACTOR reasonable evidence that financial arrangements have been made to fulfill the AGENCY's obligations under the Contract.

2.3 AGENCY'S RIGHT TO STOP THE WORK

If the CONTRACTOR fails to correct work, which is not in accordance with the requirements of the Contract Documents as required by paragraph 12.2, or persistently fails to carry out Work in accordance with the Contract Documents, the AGENCY, after providing notice pursuant to paragraph 2.4, by written order signed personally or by an agent specifically so empowered by the AGENCY in writing, may order the CONTRACTOR to stop the Work or any portion thereof, until the cause of such order has been eliminated. The right of the AGENCY to stop the Work shall not give rise to a duty on the part of the AGENCY to exercise this right for the benefit of the CONTRACTOR or any other person or entity, except to the extent required by Article 6.

2.4 AGENCY'S RIGHT TO CARRY OUT THE WORK

If the CONTRACTOR defaults or neglects to carry out the Work in accordance with the contract Documents and fails (within a two (2) calendar day period after receipt of written notice or the time period expressly stated in the written notice from the AGENCY) to commence and continue correction of such default or neglect with diligence and promptness, the AGENCY may correct such deficiencies without prejudice to other remedies the AGENCY may have. In such case, the CONTRACTOR will be invoiced the cost to correct such deficiencies, including compensation for additional professional and internally generated services and expenses made necessary by such default, neglect or failure. The invoice amount shall be deducted from the next payment due the CONTRACTOR. If payments then or thereafter due the CONTRACTOR are not sufficient to cover such amounts, the CONTRACTOR shall pay the difference to the AGENCY.

2.5 AGENCY'S RIGHT TO TERMINATE AGREEMENT

- A. If the CONTRACTOR refuses or fails to complete the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or fails to complete said work within such time, or if the CONTRACTOR should file a petition for relief as a debtor, or should relief be ordered against CONTRACTOR as a debtor under Title 11 of the United States Code, or if CONTRACTOR should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should refuse or should fail to supply enough properly skilled workers or proper materials to complete the work in the time specified, or if CONTRACTOR should fail to make prompt payment to subcontractors for materials or labor, or persistently disregards laws or ordinances or instructions of AGENCY, or if CONTRACTOR or its subcontractors should otherwise be guilty of a violation of any provision of this Agreement, then AGENCY may, without prejudice to any other right or remedy, serve written notice upon CONTRACTOR and its surety of AGENCY's intention

to terminate this Agreement. Such notice shall contain the reasons for such intention to terminate, and unless within three (3) calendar days after the service of such notice such condition or violation shall cease and satisfactory arrangements for the correction thereof be made to AGENCY, this Agreement shall upon the expiration of said three (3) calendar days, cease and terminate. In such case, CONTRACTOR shall not be entitled to receive any further payment until work is finished to AGENCY's satisfaction.

- B. In the event of any such termination, AGENCY shall immediately serve written notice thereof upon surety and CONTRACTOR, and surety shall have the right to take over and perform this Agreement, provided, however, that if surety within five (5) calendar days after service upon it of said notice of termination does not give AGENCY written notice of its intention to take over and perform this Agreement or does not commence performance thereof within seven (7) calendar days after date of serving such notice of termination by AGENCY on surety, AGENCY may take over the work and prosecute same to completion by Agreement or by any other method it may deem advisable for the account and at the expense of CONTRACTOR, and CONTRACTOR and its surety shall be liable to AGENCY for any excess cost or other damages occasioned by the AGENCY thereby. Time is of the essence in this Agreement. If the AGENCY takes over the work as hereinabove provided, the AGENCY may, without liability for so doing, take possession of and utilize in completing the Work such materials, supplies, equipment and other property belonging to the CONTRACTOR as may be on the site of the work and necessary therefore.
- C. If the expense of finishing the Work, including compensation for additional architectural or engineering work, managerial, and administrative services, shall exceed the unpaid balance of the Agreement, CONTRACTOR shall pay the difference to AGENCY. Expense incurred by AGENCY as herein provided, and damage incurred through CONTRACTOR's default, shall be certified to AGENCY by AGENCY ARCHITECT/ENGINEER. If the unpaid balance under the Agreement shall exceed expense of finishing the work, including compensation for additional architectural or engineering work,, managerial and administrative services, such excess shall be paid to CONTRACTOR.
- D. Should the AGENCY determine that environmental considerations mandate that the Work not go forward, AGENCY may notify CONTRACTOR that this Agreement is terminated due to environmental conditions and AGENCY shall only be obligated to pay CONTRACTOR for the work that the CONTRACTOR had performed at the time of notification of termination of this Agreement for environmental considerations.
- E. In the event that sufficient funds are not appropriated to complete the Project or the AGENCY determines that sufficient funds are not available to complete the Project, AGENCY may terminate or suspend the completion of the Project at any time by giving written notice to the CONTRACTOR. In the event that the AGENCY exercises this option, the AGENCY shall pay for any and all work and materials completed or delivered onto the site and the value of any and all work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials paid for shall include a factor of 15% for the CONTRACTOR's overhead and profit and there shall be no other costs or expenses or lost profit paid to CONTRACTOR. All work, materials and orders paid for pursuant to this provision shall become the property of the AGENCY. AGENCY may, without cause, order CONTRACTOR in writing to suspend, delay or interrupt the Project in whose, or in part for such period of time as AGENCY may determine. Adjustment shall be made for increases in the cost of performance of the Agreement caused by suspense, delay or interruption.
- F. AGENCY reserves the right to terminate this Agreement should the AGENCY determine not to proceed because of the discovery of hazardous or unknown conditions. The CONTRACTOR shall only receive payment for all Work performed to the date of termination.

- G. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the AGENCY.

ARTICLE 3

THE CONTRACTOR

3.1 DEFINITION

The CONTRACTOR is the person or entity identified as such in the Agreement and is referred to through the Contract Documents. The term "CONTRACTOR" means the CONTRACTOR or the CONTRACTOR's authorized representative. CONTRACTOR is and shall at all times be deemed to be an independent CONTRACTOR and shall be wholly responsible for the manner in which it performs the services required of it by the terms of the Project documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the AGENCY and CONTRACTOR or any of CONTRACTOR's agents or employees. To the extent that any portion of the Work is provided with the CONTRACTOR's own forces, any reference to subcontractors shall be equally applicable to the CONTRACTOR.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 CONTRACTOR

The CONTRACTOR shall supervise and direct the Work using the CONTRACTOR's best skill and attention. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and coordinating all portions of the Work under the contract, unless Contract Documents give other specific instructions concerning these matters. If any of the Work is performed by CONTRACTORS retained directly by the AGENCY, CONTRACTOR shall be responsible for the coordination and sequencing of the Work of those other CONTRACTORS so as to avoid any impact on the Project Schedule pursuant to the requirements of Article 6. Specific duties of the CONTRACTOR shall be in accordance with Title 24 of the California Code of Regulations.

3.2.2 CONTRACTOR LICENSING

CONTRACTORS are required by law to be licensed and regulated by the CONTRACTORS State License Board. Any CONTRACTOR not so licensed is subject to penalties under the law, and the contract will be considered void pursuant to Section 7028.7 of the Business and Professions Code. Any questions concerning a CONTRACTOR may be referred to the Registrar, CONTRACTORS State License Board, 3132 Bradshaw Road, P.O. Box 2600, Sacramento, CA 95826.

3.2.3 CONTRACTOR RESPONSIBILITY

The CONTRACTOR shall be responsible to the AGENCY for acts and omissions of the CONTRACTOR's employees, subcontractors, material and equipment suppliers and their agents, employees, invitees and other persons performing portions of the Work under direct or indirect contract with the CONTRACTOR or any of its subcontractors. CONTRACTOR, its agents and employees shall not be entitled to any rights or privileges of AGENCY employees and shall not be considered AGENCY employees. AGENCY shall be permitted to monitor the activities of the CONTRACTOR to determine compliance with the terms of the Contract Documents. 2.2.2

3.2.3.1 SITE SURVEY

When required by the scope of the Project, the CONTRACTOR will furnish, at its expense, a legal description and a land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site. Surveys to determine locations of construction, grading and site work shall be also be provided by the CONTRACTOR.

3.2.3.2 SOILS

Test borings and soils reports for the Project have been made for the AGENCY to indicate the subsurface materials that might be encountered at particular locations on the Project. The AGENCY has made these documents available to the CONTRACTOR and the CONTRACTOR has studied the results of such test borings and information that it has as to the subsurface conditions and site geology as set forth in the test borings and soils reports. The AGENCY does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the site of the Project, or any part thereof, or that unforeseen developments may not occur. At the AGENCY's request, the CONTRACTOR shall make available to the AGENCY the results of any site investigation, test borings, analyses, studies or other test conducted by or in the possession of the CONTRACTOR or any of its agents. Nothing herein contained shall be deemed a waiver by the CONTRACTOR to pursue any available legal right or remedy it may have at any time against any 3rd party who may have prepared any report and/or test relied upon by the CONTRACTOR.

3.2.3.2 EXISTING UTILITY LINES; REMOVAL, RELOCATION

Removal, Relocation. The AGENCY assumes the responsibility for removal, relocation, and protection of existing utilities located on the site at the time of commencement of construction under this Contract with respect to any such utility facilities, which are not identified in the Drawings and Specifications made part of the invitation to bid. However, it is the responsibility of the CONTRACTOR to pothole and take reasonable caution when excavating in areas where it is likely utilities may be present. The CONTRACTOR shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the AGENCY to provide for removal or relocation of such utility facilities.

Assessment. These subparagraphs shall not be construed to preclude assessment against the CONTRACTOR for any other delays in completion of the Work. Nothing in these subparagraph shall be deemed to require the AGENCY to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site can be inferred from the presence of other visible facilities, such as buildings, or meter junction boxes on or adjacent to the site.

Notification. If the CONTRACTOR, while performing work under this Contract, discovers utility facilities not identified by the AGENCY in the Contract plans or specifications, CONTRACTOR shall immediately notify the AGENCY and the utility company in writing.

Underground Utility Clearance. It shall be CONTRACTOR's sole responsibility to timely notify all public and private utilities serving the site prior to commencing Work. As part of the work to be performed, CONTRACTOR shall provide the notices and proceed in accordance with Government Code Sections 4216.2, 4216.3 and 4216.4 and pay all fees charged pursuant to Government Code Section 4216 et seq.

3.2.4 OBLIGATIONS NOT CHANGED BY AGENCY ARCHITECT /ENGINEER'S ACTIONS

The CONTRACTOR shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the AGENCY ARCHITECT/ENGINEER in the AGENCY ARCHITECT/ENGINEER's administration of the Contract or by tests, inspections, or approvals required or performed by persons other than the CONTRACTOR.

3.2.5 ACCEPTANCE/APPROVAL OF WORK

The CONTRACTOR shall be responsible to determine when any completed portions of the Work already performed under this Contract or provided pursuant to Article 6 are suitable to receive subsequent work thereon.

3.2.6 CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

Before CONTRACTOR makes any change in the name or legal nature of the CONTRACTOR's entity, CONTRACTOR shall first notify the AGENCY in writing and cooperate with AGENCY in making such changes as the AGENCY may request in the Project documents.

3.3 SUPERINTENDENT

3.3.1 FULL TIME SUPERINTENDENT

During progress of the Work, CONTRACTOR shall keep on the work site a competent full-time Superintendent satisfactory to AGENCY. The Superintendent shall be in attendance at the Project site during performance of the Work. Superintendent shall represent CONTRACTOR and all directions or communications given to Superintendent shall be as binding as if given to CONTRACTOR. Before commencing the Work herein, CONTRACTOR shall give written notice to the AGENCY of the name, qualifications and experience of such Superintendent. If Superintendent is found unsatisfactory by the AGENCY, CONTRACTOR shall replace the Superintendent with one acceptable to the AGENCY. The Superintendent shall not be changed except with the written consent of AGENCY, unless a superintendent proves to be unsatisfactory to CONTRACTOR and ceases to be in its employ, in which case, CONTRACTOR shall notify AGENCY and AGENCY ARCHITECT/ENGINEER in writing and replace said Superintendent with one acceptable to the AGENCY.

3.3.2 STAFF

The CONTRACTOR and each subcontractor shall furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents. Supervisory staff as designated in the AGREEMENT must be provided anytime work is being performed by CONTRACTOR or Subcontractor.

3.3.3 RESPONSIBILITY FOR ACTS AND OMISSIONS

CONTRACTOR shall be responsible to the AGENCY for acts and omissions of CONTRACTOR's employees, subcontractors, material and equipment suppliers and their agents, employees, invitees or other persons performing portions of the Work under direct or indirect contract with the CONTRACTOR or any of its subcontractors.

3.3.4 SUBSEQUENT WORK

CONTRACTOR shall be responsible to determine when any completed portions of the Work already performed under this Agreement are suitable to receive subsequent work thereon

3.3.5 RIGHT TO REMOVE

AGENCY shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent or employee of any CONTRACTOR, subcontractor, material or equipment supplier, etc., for any cause.

3.4 LABOR AND MATERIALS

3.4.1 CONTRACTOR TO PROVIDE

Unless otherwise provided in the Contract Documents, the CONTRACTOR shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 QUALITY

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The CONTRACTOR shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and shall be of such quality so that work in accordance with the standards of construction set forth in Contract Documents will result.

3.4.3 REPLACEMENT

Any work, materials or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved and rejected by the AGENCY, in which case, they shall be removed and replaced by the CONTRACTOR.

3.4.4 DISCIPLINE

The CONTRACTOR shall enforce strict discipline and good order among the CONTRACTOR's employees and other persons carrying out the Contract in accordance with paragraph 5.5.1 including, but not limited to, subcontractors and material or equipment suppliers retained for the Project. The CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.5 ORDERS

The CONTRACTOR shall, after issuance of the Notice to Proceed by AGENCY, place orders for materials and/or equipment as specified or approved by the submittal process so that delivery of same may be made without delays to the work. CONTRACTOR shall, upon demand from the AGENCY, furnish documentary evidence showing that orders have been placed.

3.4.6 NONCONFORMING WORK OR MATERIALS

Any work, materials or equipment which do not conform to these requirements or the standard set forth in the Project documents, may be disapproved and rejected by the AGENCY, in which case they shall be removed and replaced by the CONTRACTOR. All expenses, incidental to the procuring of said materials and/or equipment shall be paid for by the CONTRACTOR.

3.5 **WARRANTY**

The CONTRACTOR warrants to the AGENCY that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The CONTRACTOR's warranty does not cover damage or defect caused by abuse, modifications not executed by the CONTRACTOR, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. If required by the AGENCY ARCHITECT/ENGINEER, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 **TAXES**

CONTRACTOR will pay all applicable federal, state and local taxes on all materials, labor or services furnished by it, and all taxes arising out of its operations under the Contract Documents. AGENCY is exempt from Federal Excise Tax and a Certificate of Exemption shall be provided upon request.

3.7 **PERMITS, FEES AND NOTICES**

3.7.1 **PAYMENT**

The CONTRACTOR shall initiate and pursue the application process for obtaining all permits and licenses (including all required AGENCY signatures) necessary for the prosecution of the work, including utility fees.

AGENCY will reimburse CONTRACTOR the actual documented cost of such permits and fees, with no overhead or profit added. No reimbursement will be allowed for fees associated with City or County business licenses, disposals, trucking, etc.

3.7.2 **COMPLIANCE**

The CONTRACTOR shall comply with and give notices required by any law, ordinance, rule, regulation and lawful order of public authorities bearing on performance of the Work.

3.7.3 **CONTRACT DOCUMENTS**

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the Work in accordance with the Project documents. CONTRACTOR shall carefully study and compare all Project documents, plans, drawings, specifications and other instructions and shall at once report to AGENCY any error, inconsistency or omission which CONTRACTOR or its employees may discover. The CONTRACTOR represents itself to AGENCY as a skilled, knowledgeable and experienced CONTRACTOR. The CONTRACTOR shall be liable to the AGENCY for damage resulting from errors, inconsistencies or omissions in the Project documents that the CONTRACTOR recognized and which CONTRACTOR knowingly failed to report and which a similarly skilled, knowledgeable and experienced CONTRACTOR would have discovered.

3.7.4 **RESPONSIBILITY**

The CONTRACTOR shall verify all indicated dimensions before ordering materials or equipment or before performing Work. The CONTRACTOR shall take field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CONTRACTOR with the Project documents before commencing Work.

Errors, inconsistencies or omissions discovered shall be reported to the AGENCY at once. Upon commencement of any item of work, the CONTRACTOR shall be responsible for dimensions related to such item of work and shall make any corrections necessary to make work properly fit at no additional cost to AGENCY. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to subcontractors or agents.

3.8 ALLOWANCES

3.8.1 CONTRACT SUM

The CONTRACTOR shall include in the Contract Sum all allowance stated in the Contract Document. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the AGENCY may direct.

3.8.2 SCOPE

3.8.2.1 **Prompt Selection.** Materials and equipment under an allowance shall be selected promptly by the AGENCY to avoid delay to the Work.

3.8.2.2 **Cost.** Allowances shall cover the cost to the CONTRACTOR of materials and equipment delivered at the site and all required taxes, less applicable trade discounts, etc.

3.8.2.3 **Cost.** CONTRACTOR's costs for unloading and handling at the Site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the allowances.

3.8.2.4 **Contract Sum Adjustment.** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual cost and the allowances under paragraph 3.8.2.2 and the change in the CONTRACTOR's costs under paragraph 3.8.2.3.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.9.1 REQUIREMENTS

The Contract shall submit a project schedule to the AGENCY for approval within five (5) days of issuance of the Notice To Proceed.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The CONTRACTOR shall maintain at the Site for the AGENCY one applicable copy of California Building Code Titles 19 and 24 and a record copy of the Drawings, Specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction. In addition, the CONTRACTOR shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These documents shall be available to the AGENCY and shall be delivered to the AGENCY upon completion of the Work. CONTRACTOR shall be acquainted with and shall comply with the provisions of said regulations as they relate to the Contract. (See particularly the Duties of CONTRACTOR, 24 California Code of Regulations, Section 4343.) CONTRACTOR shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions of the Work, particularly Titles 8 and 17.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.11.1 SUBMITTALS DEFINED

3.11.1.1 **Shop Drawings.** The term “shop drawings” as used herein means drawings, diagrams, schedules, and other data, which are prepared by CONTRACTOR, subcontractors, manufacturers, suppliers or distributors illustrating some portion of the Work, and includes: illustrations, fabrication, erection, layout and setting drawings; manufacturer’s standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; writing and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment or systems and their position conform to the requirements of the Contract Documents. The CONTRACTOR shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. “Product data” as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CONTRACTOR to illustrate a material, product or system for some portion of the Work. As used herein, the term “manufactured” applies to standard unit usually mass-produced, and “fabricated” means items specifically assembled or made out of selected materials to meet individual design requirements.

Shop drawings shall establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.11.1.2 **Samples.** The term “samples” as used herein are physical examples furnished by CONTRACTOR to illustrate materials, equipment or quality and includes natural materials, fabricated items, equipment, devices, appliances or parts thereof as called for in the Specifications, and any other samples as may be required by the AGENCY ARCHITECT/ENGINEER to determine whether the kind, quality, construction, finish, color and other characteristics of the materials, etc., proposed by the CONTRACTOR conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

3.11.1.3 **CONTRACTOR’S Responsibility.** CONTRACTOR shall obtain and shall submit all required shop drawings and samples in accordance with CONTRACTOR’S “Schedule for Submission of Shop Drawings and Samples” as required in Division 1 of the Specifications with such promptness as to cause no delay in its own Work or in that of any other CONTRACTOR or subcontractor but in no event later than thirty-five (35) calendar days after the Notice of Award, unless noted otherwise. No extensions of time will be granted to CONTRACTOR or any subcontractor because of its failure to have shop drawings and samples submitted in accordance with the schedule. Each subcontractor shall submit all shop drawings, samples and manufacturer’s descriptive data for the review of the AGENCY, the CONTRACTOR and the AGENCY ARCHITECT/ENGINEER through the CONTRACTOR. By submitting shop drawings, product data and samples, the CONTRACTOR or submitting party (if other than CONTRACTOR) represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. At the time of submission, any deviation in the shop drawings, product data or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the submittal. However, submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in paragraph 3.11.4, “Substitutions.” Review by AGENCY and AGENCY ARCHITECT/ENGINEER shall not relieve the CONTRACTOR or any subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. CONTRACTOR’S review and approval of shop drawings shall include the following stamp:

“The Prime CONTRACTOR has reviewed and approved the construction criteria and has also made written notation regarding any information in these shop drawings that does not conform to the Project Contract Documents. The Prime CONTRACTOR shall verify actual dimensions. This shop drawing has been coordinated with the Contract Documents, and all other Shop Drawings within this Prime CONTRACTOR’s scope of work. The duty of coordination has not been delegated

to the prime CONTRACTOR's subcontractors, material suppliers, the AGENCY ARCHITECT/ENGINEER or the Engineers.

3.11.1.4 **Extent of Review.** In reviewing shop drawings, the AGENCY ARCHITECT/ENGINEER will not verify dimensions and field conditions. The AGENCY ARCHITECT/ENGINEER will review and approve shop drawings, product data and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The AGENCY ARCHITECT/ENGINEER's review shall neither be construed as a complete check nor relieve the CONTRACTOR, subcontractor, manufacturer, fabricator or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the CONTRACTOR has, in writing, called the AGENCY ARCHITECT/ENGINEER's attention to the deviations at the time of submission. The AGENCY ARCHITECT/ENGINEER's review shall not relieve the CONTRACTOR or subcontractors from responsibility for errors of any sort in shop drawing or schedules, for proper fitting of the Work or from the necessity of furnishing any Work required by the Contract Documents, which may not be indicated on shop drawings when reviewed. CONTRACTOR and subcontractors shall be solely responsible for any quantities, which may be shown on the shop drawings.

3.11.2 DRAWING SUBMISSION PROCEDURE

3.11.2.1 **Transmittal Letter and Other Requirements.** All shop drawings must be properly identified with the name of the project and dated and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures or deviations from the Contract Documents, if any. Shop drawings, for each section of the Work, shall be numbered consecutively, and the numbering system shall be retained throughout all revisions. All subcontractor submissions shall be made through the CONTRACTOR. Each drawing shall have a clear space for the stamps of AGENCY ARCHITECT/ENGINEER and CONTRACTOR. Only shop drawings required to be submitted by the Contract Documents shall be reviewed. All submittals are to be forwarded to the AGENCY.

3.11.2.2 **Copies Required.** Each submittal shall include one (1) legible, reproducible sepia and seven (7) legible prints of each drawing, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the CONTRACTOR, of: manufacturers' descriptive data for materials, equipment and fixtures, including catalog sheets showing dimensions, performance, characteristics and capacities; wiring diagrams and controls; schedules; all seismic calculations and other calculations; and other pertinent information as required.

3.11.2.3 **Corrections.** The CONTRACTOR shall make any corrections required by AGENCY ARCHITECT/ENGINEER and shall resubmit as required by AGENCY ARCHITECT/ENGINEER the required number of corrected copies of shop drawings or new samples until approved. CONTRACTOR shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the corrections required by the AGENCY ARCHITECT/ENGINEER on previous submissions. Professional services required for more than one (1) re-review of required submittals of shop drawings, product data, or samples are subject to charge to the CONTRACTOR pursuant to paragraph 4.4.

3.11.2.4 **Approval Prior to Commencement of Work.** No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been reviewed by AGENCY and approved by AGENCY ARCHITECT/ENGINEER unless specifically directed in writing by the AGENCY. All such portions of the Work shall be in accordance with approved shop drawings and samples.

3.11.2.5 **Responsibility for Errors.** The AGENCY ARCHITECT/ENGINEER's review shall not relieve the CONTRACTOR or any subcontractors from responsibility for errors of any sort

in shop drawings or schedules, for proper fitting of the work, nor from the necessity of furnishing any work required by the Project documents which may not be indicated on shop drawings when reviewed. CONTRACTOR and subcontractors shall be solely responsible for any quantities which may be shown on the shop drawings.

3.11.3 SAMPLE SUBMISSIONS PROCEDURE

3.11.3.1 **Samples Required.** In case a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by the CONTRACTOR to indicate the full range of characteristics, which will be present in the finished products; and products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples and unless otherwise called for in the various sections of the specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged or otherwise properly identified with the name of the submitting party, the name of the project, the purpose for which the samples are submitted and the date and shall be accompanied by a letter of transmittal containing similar information, together with the specification section number for identification of each item. Each tag or sticker shall have clear space for the review stamps of CONTRACTOR and AGENCY ARCHITECT/ENGINEER.

3.11.3.2 **Labels and Instructions.** Samples of materials, which are generally furnished in containers bearing the manufacturers descriptive labels and printed application instructions, shall, if not submitted in standard containers, be supplied with such labels and application instructions.

3.11.3.3 **AGENCY ARCHITECT/ENGINEER's Review.** The AGENCY ARCHITECT/ENGINEER will review and, if appropriate, approve submissions and will return them to the CONTRACTOR with the AGENCY ARCHITECT/ENGINEER's stamp and signature applied thereto, indicating the appropriate action in compliance with the AGENCY ARCHITECT/ENGINEER's standard procedures.

3.11.3.4 **Record Drawings and Annotated Specifications.** The CONTRACTOR will prepare and maintain on a current basis an accurate and complete set of record drawings showing clearly all changes, revisions and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions and other significant features, and annotated specifications showing clearly all changes, revisions and substitutions during construction. A copy of such record drawings and annotated specifications will be delivered to AGENCY in accordance with the schedule prepared by CONTRACTOR. In the event of a specification that allows CONTRACTOR to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the CONTRACTOR has furnished. The CONTRACTOR will update the record drawings and annotated specifications as often as necessary to keep them current but no less often than weekly. The record drawings and annotated specifications shall be kept at the site and available for inspection by the AGENCY & AGENCY ARCHITECT/ENGINEER.

On completion of the CONTRACTOR's portion of the work and prior to application for final payment, the CONTRACTOR will provide one complete set of record drawings and annotated specifications to the AGENCY. Certifying them to be a complete and accurate reflection of the actual construction conditions of the work.

3.11.3.5 **Equipment Manuals.** CONTRACTOR shall obtain and furnish three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the contract documents and any additional data specifically requested under the various sections of the specifications for each division of the work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the completion of its work, the CONTRACTOR shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its work. Prior to submittal of CONTRACTOR's application for final payment, and as a further condition to its approval by the

AGENCY ARCHITECT/ENGINEER, each subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the CONTRACTOR, who shall assemble these manuals for all divisions of the work, review them for completeness and submit them to the AGENCY.

3.11.3.6 **Agency's Property.** All shop drawings and samples submitted shall become the AGENCY's property.

3.11.4 SUBSTITUTIONS

3.11.4.1 **One Product Specified.** Unless the specifications state that no substitution is permitted, whenever in the contract documents any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction is indicated or specified by name, make, trade name or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of material, process or article desired and shall be deemed to be followed by the words "or equal." CONTRACTOR may, unless otherwise stated, offer any material process or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the contract documents.

3.11.4.2 **Two or More Products Specified.** When two or more acceptable products are specified for an item of the work, the choice will be up to the CONTRACTOR. CONTRACTOR shall utilize the same product throughout the project. If the required notice is not provided and an "or equal" substitution is requested, the AGENCY, at its sole discretion, may refuse to consider the substitution unless the product specified is no longer commercially available. If the AGENCY allows the substitution to be proposed despite the lack of proper notice, the CONTRACTOR will be invoiced by the AGENCY for the professional fees incurred by the AGENCY ARCHITECT/ENGINEER or AGENCY ARCHITECT/ENGINEER's consultants in reviewing the proposed substitution.

3.11.4.3 **Substitution Request Form.** Requests for substitutions of products, materials, or processes other than those specified must be made on the substitution request form available from the AGENCY ARCHITECT/ENGINEER within five (5) calendar days of the date of the Notice to Award. Consideration of substitution does not modify the project schedule regarding shop drawing submission date. Any requests submitted after the five (5) calendar days will not be considered, except as noted in paragraph 3.11.4.2 or at the sole discretion of the AGENCY. A substitution request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to AGENCY; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the CONTRACTOR. The CONTRACTOR shall furnish with its request all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the AGENCY ARCHITECT/ENGINEER and the AGENCY in determining whether the proposed substitution is acceptable. The final decision shall be the AGENCY's. AGENCY may condition its approval of the substitution upon delivery to AGENCY of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to the division of the state AGENCY ARCHITECT/ENGINEER's, or any other governmental agency having jurisdiction, approval of a requested substitution shall be on the requesting party.

3.11.4.4 **List of Manufacturers and Products Required.** The subcontractor shall prepare and submit to the CONTRACTOR within thirty-five (35) calendar days of Notice of Award, comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the project, including information on materials, equipment, and fixtures required by the contract documents, as may be required for CONTRACTOR's or AGENCY ARCHITECT/ENGINEER's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data and samples, which are required by the contract

documents, but rather as a base from which more detailed submittals shall be developed for the final review of the CONTRACTOR and the AGENCY ARCHITECT/ENGINEER.

3.11.5 DEFERRED APPROVALS OF SUBSTITUTIONS

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the specifications. All risks of delay due to the AGENCY ARCHITECT/ENGINEER or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the requesting party.

3.12 CUTTING AND PATCHING

3.12.1 SCOPE

The CONTRACTOR shall be responsible for cutting, fitting or patching required to complete the work or to make its parts fit together properly. Refer to individual scope of work sheets for more detailed information.

3.12.2 CONSENT

The CONTRACTOR shall not damage or endanger a portion of the work or fully or partially completed construction of the AGENCY or separate CONTRACTORS by cutting, patching, or otherwise altering such construction, or by excavation. The CONTRACTOR shall not cut or otherwise alter such construction by the AGENCY or a separate CONTRACTOR except with written consent of the AGENCY and of such separate CONTRACTOR; such consent shall not be unreasonably withheld. The CONTRACTOR shall not unreasonably withhold from the AGENCY or a separate CONTRACTOR the CONTRACTOR's consent to cutting or otherwise altering the work. All cutting shall be done promptly. And all repairs shall be made as necessary.

3.12.3 STRUCTURAL MEMBERS

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the AGENCY ARCHITECT/ENGINEER. Work done contrary to such authority is at the CONTRACTOR's risk, subject to replacement at its own expense and without reimbursement under the contract. Agency approvals shall be obtained by the AGENCY ARCHITECT/ENGINEER, not by the CONTRACTOR.

3.12.4 SUBSEQUENT REMOVAL

Permission to patch any areas or items of the work shall not constitute a waiver of the AGENCY's or the AGENCY ARCHITECT/ENGINEER's right to require complete removal and replacement of the areas or items of the work if, in the opinion of the AGENCY ARCHITECT/ENGINEER or the AGENCY, the patching does not satisfactorily restore quality and appearance of the work or does not otherwise conform to the contract documents.

3.13 CLEANING UP

3.13.1 CONTRACTOR'S RESPONSIBILITY

The CONTRACTOR at all times shall keep the site and surrounding area free from accumulation of waste material or rubbish caused by operations under the contract. The site shall be maintained in a neat and orderly condition. All crates, cartons, paper and other flammable waste materials shall be removed from work areas and properly disposed of at the end of each day. The CONTRACTOR shall remove from and about the site the waste materials, rubbish, tools, construction equipment, machinery and materials no longer required for the work.

3.13.2 FAILURE TO CLEANUP

If the CONTRACTOR fails to clean up as provided in the contract documents, the AGENCY may do so, and the cost thereof shall be invoiced to the CONTRACTOR and deducted from the next progress payment. Each subcontractor shall have the responsibility for the cleanup of its own work. If the subcontractor fails to clean up, the CONTRACTOR may do so and back-charge the subcontractor.

3.13.3 CONSTRUCTION BUILDINGS

When directed by the AGENCY or the AGENCY ARCHITECT/ENGINEER, CONTRACTOR and subcontractor shall dismantle temporary structures, if any, and remove from the site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish and supplies belonging to CONTRACTOR or subcontractor. If the CONTRACTOR does not remove the tools, equipment, machinery and materials within fifteen (15) calendar days after completion of its work, then they shall be deemed abandoned and the AGENCY can dispose of them for its own benefit in whatever way it deems appropriate.

3.14 ACCESS TO WORK

The CONTRACTOR shall provide the AGENCY, the AGENCY ARCHITECT/ENGINEER and the inspector, access to the work in preparation and progress wherever located.

3.15 ROYALTIES AND PATENTS

3.15.1 PAYMENT AND INDEMNITY

The CONTRACTOR shall pay all royalties and license fees. The CONTRACTOR shall defend suits or claims of infringement of patent rights and shall hold the AGENCY and the AGENCY ARCHITECT/ENGINEER harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the contract documents. However, if the CONTRACTOR has reason to believe the required design, process, or product is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless such information is promptly furnished to the AGENCY ARCHITECT/ENGINEER.

3.15.2 REVIEW

The review by the AGENCY ARCHITECT/ENGINEER of any method of construction, invention, appliance, process, article, device or material of any kind shall be for its adequacy for the work and shall not be an approval for the use by the CONTRACTOR in violation of any patent or other rights of any person or entity.

3.16 INDEMNIFICATION

3.16.1 SCOPE: CONTRACTOR

To the fullest extent permitted by law, the CONTRACTOR agrees to and does hereby indemnify, defend and hold harmless the AGENCY and each of their officers, agents, employees, and consultants (including the AGENCY's architects and engineers) from every claim or demand made and every liability, loss, damage, or expense of any nature whatsoever (including, but not limited to attorneys' fees and costs including fees of consultants) which may be incurred by reason of:

A. Liability for damage for death or bodily injury to persons or injury to property sustained by the CONTRACTOR or any other person, firm or corporation employed by the CONTRACTOR upon or in connection with the work called for in this agreement, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the AGENCY, or each of their officers, agents or independent CONTRACTORS who are

directly employed by the AGENCY or for defects in design furnished by such persons.

B. Any injury to or death of persons or damage to property sustained by any person, firm or corporation, including the AGENCY, arising out of, or in any way connected with the work covered by this agreement, whether on or off AGENCY property, except for liability for damages which result from the sole negligence or willful misconduct of the AGENCY, and each of their officers, employees, agents or independent CONTRACTORS who are directly employed by the AGENCY or for design defects furnished by such persons.

C. Any dispute between CONTRACTOR and CONTRACTOR's subcontractors, suppliers and sureties, including, but not limited to, stop notice actions.

The CONTRACTOR, at its own expense, cost, and risk, shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the AGENCY, and each of their officers, agents or employees on any such claim, demand or liability and shall pay or satisfy any judgment that may be rendered against the AGENCY, and each of their officers, agents or employees in any action, suit or other proceedings as a result thereof.

3.16.2 SCOPE: SUBCONTRACTORS

3.16.2.1 *Indemnity.*

To the fullest extent permitted by law, the subcontractors shall indemnify, defend and hold harmless the AGENCY and each of their officers, agents, employees, and consultants (including the AGENCY's architects and engineers) from every claim or demand made and every liability, loss, damage, or expense of any nature whatsoever (including, but not limited to attorneys' fees and costs including fees of consultants) which may be incurred by reason of:

A. Liability for damage for death or bodily injury to persons or injury to property sustained by the subcontractor or any other person, firm or corporation employed by the subcontractor upon or in connection with the work called for in this agreement, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the AGENCY, or each of their officers, agents or independent CONTRACTORS who are directly employed by the AGENCY or for defects in design furnished by such persons.

B. Any injury to or death of persons or damage to property sustained by any person, firm or corporation, including the AGENCY, arising out of, or in any way connected with the work covered by this agreement, whether on or off AGENCY property, except for liability for damages which result from the sole negligence or willful misconduct of the AGENCY, and each of their officers, employees, agents or independent CONTRACTORS who are directly employed by the AGENCY or for design defects furnished by such persons.

C. Any dispute between subcontractor and the CONTRACTOR, including, but not limited to, stop notice actions.

The subcontractor, at its own expense, cost, and risk, shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the AGENCY, and each of their officers, agents, employees or consultants on any such claim, demand or liability and shall pay or satisfy any judgment that may be rendered against the AGENCY, and each of their officers, agents or employees in any action, suit or other proceedings as a result thereof.

3.16.2.2 ***Joint and Several Liability.*** In the event more than one subcontractor is connected with an accident or occurrence covered by this indemnification, then all such subcontractors shall be jointly and severally responsible to each of the indemnities for indemnification, and the ultimate responsibility among such indemnifying subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnity. The provisions of the indemnity provided for herein shall not be construed to indemnify any party

claiming indemnification for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any indemnity has by law or equity.

3.16.3 NO LIMITATION

The CONTRACTOR's and the subcontractor's obligation to indemnify and defend the indemnities hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property and death of any person; for breach of any warranty, express or implied; for failure of the CONTRACTOR or the subcontractor to comply with any applicable governmental law, rule, regulation or other requirement; and for products installed in or used in connection with the work.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 AGENCY ARCHITECT/ENGINEER

4.1.1 DEFINITION

The AGENCY ARCHITECT/ENGINEER is the person lawfully licensed to perform architectural and engineering services on the agency's behalf or an entity lawfully practicing these services identified as such in the agreement and is referred to throughout the contract documents as if singular in number. The term "AGENCY ARCHITECT/ENGINEER" means the AGENCY ARCHITECT/ENGINEER or the AGENCY ARCHITECT/ENGINEER's authorized representative, and shall also refer to all engineering consultants under the AGENCY ARCHITECT/ENGINEER's direction and control.

4.1.2 MODIFICATION

Duties, responsibilities, and limitations of authority of the AGENCY ARCHITECT/ENGINEER as set forth in the contract documents shall not be restricted, modified, or extended without written consent of the AGENCY and AGENCY ARCHITECT/ENGINEER. Consent shall not be unreasonably withheld.

4.1.3 TERMINATION

In the case of the termination of the AGENCY ARCHITECT/ENGINEER, the AGENCY may appoint an AGENCY ARCHITECT/ENGINEER or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement AGENCY ARCHITECT/ENGINEER under the contract documents shall be that of the former AGENCY ARCHITECT/ENGINEER.

4.2 AGENCY ARCHITECT/ENGINEER'S ADMINISTRATION OF THE CONTRACT

4.2.1 STATUS

The AGENCY ARCHITECT/ENGINEER will provide administration of the contract as described in the contract documents and will be the AGENCY's representative during construction, until final payment is due, and during the one (1) year period following the commencement of any warranties. The AGENCY ARCHITECT/ENGINEER will advise and consult with the AGENCY. The AGENCY ARCHITECT/ENGINEER will have authority to act on behalf of the AGENCY only to the extent provided in the contract documents, unless otherwise modified by in writing in accordance with other provisions of the AGENCY/AGENCY ARCHITECT/ENGINEER agreement. The AGENCY

ARCHITECT/ENGINEER will have all responsibilities and power established by law including California Code of Regulations, Title 24.

4.2.2 SITE VISITS

The AGENCY ARCHITECT/ENGINEER will visit the site at intervals necessary in the judgment of the AGENCY ARCHITECT/ENGINEER or as otherwise agreed by the AGENCY and the AGENCY ARCHITECT/ENGINEER in writing to become generally familiar with the progress and quality of the completed work and to determine in general if the work is being performed in a manner indicating that the work, when completed, will be in accordance with the contract documents. However, the AGENCY ARCHITECT/ENGINEER will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the work. On the basis of its on-site observations, the AGENCY ARCHITECT/ENGINEER will keep the AGENCY informed of the progress of the work.

4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY

The AGENCY ARCHITECT/ENGINEER shall not have control over, charge of, or be responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, installation or for safety precautions and programs in connection with the work, since these are solely the CONTRACTOR's responsibility under the contract documents. The AGENCY ARCHITECT/ENGINEER shall not be responsible for the CONTRACTOR's, subcontractors', material or equipment suppliers' or any other person's schedules or failure to carry out the work in accordance with the contract documents. The AGENCY ARCHITECT/ENGINEER shall not have control over or charge of acts or omissions of the CONTRACTOR, subcontractors, their agents or employees, or any other persons or entities performing or supplying portions of the work. The CONTRACTOR shall not be relieved of obligations to perform the work in accordance with the contract documents either by activities or duties of the AGENCY ARCHITECT/ENGINEER in the AGENCY ARCHITECT/ENGINEER's administration of the contract documents, or by tests, inspections, or approvals required or performed by persons other than the CONTRACTOR. The AGENCY ARCHITECT/ENGINEER's duties shall not extend to the receipt, inspection and acceptance on behalf of the AGENCY of furniture, furnishings and equipment at the time of their delivery to the premises and their installation.

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the contract documents or when direct communications are warranted by special circumstances, the AGENCY and the CONTRACTOR shall communicate directly. Where direct communication is necessary between the AGENCY and the CONTRACTOR, AGENCY shall be promptly informed and shall receive copies of all written communications. Communications by and with the AGENCY ARCHITECT/ENGINEER's consultants shall be through the AGENCY and then through the AGENCY ARCHITECT/ENGINEER. Communications by and with subcontractors and material or equipment suppliers shall be through the CONTRACTOR.

4.2.5 PAYMENT APPLICATIONS

Pursuant to Article 9, based on the AGENCY ARCHITECT/ENGINEER's observations, the CONTRACTOR's applications for payment and the Inspector's approval, the AGENCY ARCHITECT/ENGINEER will review and make recommendations to the AGENCY regarding the amounts due the CONTRACTOR on the certificates for payment.

4.2.6 REJECTION OF WORK

In addition to the rights, duties and obligations of the inspector under this article, the AGENCY ARCHITECT/ENGINEER may recommend to the AGENCY that the AGENCY reject work which does not conform to the contract documents. Whenever the AGENCY ARCHITECT/ENGINEER

considers it necessary or advisable to achieve the intent of the contract documents, the AGENCY ARCHITECT/ENGINEER may recommend to the AGENCY that the AGENCY require additional inspection or testing of the Work, whether or not such work is fabricated, installed, or completed. However, neither this authority of the AGENCY ARCHITECT/ENGINEER nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the AGENCY ARCHITECT/ENGINEER to the CONTRACTOR, subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

4.2.7 CHANGE ORDERS

The AGENCY ARCHITECT/ENGINEER will prepare change orders and construction change directives and may authorize minor changes in the work as provided in paragraph 7.1.2.

4.2.8 WARRANTIES UPON COMPLETION

The AGENCY ARCHITECT/ENGINEER in conjunction with the inspector will conduct field reviews of the work to determine the date of completion, shall receive and forward to the AGENCY for the AGENCY's review and records written warranties and related documents required by the contract and assembled by the CONTRACTOR, and will issue a final certificate for payment when the AGENCY believes the work has been completed in compliance with the requirements of the contract documents. The handling by the AGENCY of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the AGENCY any responsibilities or liabilities required by the contract documents of the CONTRACTOR or other entities, parties, or persons performing or supplying the work.

The AGENCY ARCHITECT/ENGINEER will conduct a field review of the CONTRACTOR's comprehensive list of items to be completed or corrected (final punch list) and one (1) follow-up field review if required. The cost incurred by the AGENCY for further field reviews or the preparation of further punch lists by the AGENCY ARCHITECT/ENGINEER shall be invoiced to the CONTRACTOR and deducted from the final payment.

4.2.9 INTERPRETATION

The AGENCY ARCHITECT/ENGINEER will interpret and decide matters concerning performance under and requirements of the contract documents on written request of either the AGENCY or the CONTRACTOR. The AGENCY ARCHITECT/ENGINEER's response to such a request will be made with reasonable promptness, while allowing sufficient time in the AGENCY ARCHITECT/ENGINEER's professional judgment, to permit adequate review and evaluation of the request.

4.2.10 ADDITIONAL INSTRUCTIONS

4.2.10.1 ***AGENCY ARCHITECT/ENGINEER's Interpretations and Decisions.*** Interpretations and decisions of the AGENCY ARCHITECT/ENGINEER will be consistent with the intent of and reasonably inferable from the contract documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the AGENCY ARCHITECT/ENGINEER will endeavor to secure faithful performance by both the AGENCY and the CONTRACTOR, and will not show partiality to either. The AGENCY ARCHITECT/ENGINEER will not be liable for the result of interpretations or decisions so rendered in good faith. The work shall be executed in conformity with and the CONTRACTOR shall do no work without, approved drawings, AGENCY ARCHITECT/ENGINEER's clarifying instructions and/or submittals.

4.2.10.2 ***Typical Parts and Sections.*** Whenever typical parts or sections of the work are completely detailed on the drawings and other parts or sections, which are essentially of the same construction are shown in outline only, the complete details shall apply to the work which is shown in outline.

4.2.10.3 **Dimensions.** Dimensions of work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on drawings, AGENCY ARCHITECT/ENGINEER shall supply them on request. The AGENCY ARCHITECT/ENGINEER's decisions on matters relating to aesthetic effect will be final if consistent with the contract documents.

4.3 **INSPECTOR OF RECORD**

4.3.1 **GENERAL**

Unless otherwise noted in the project specifications, the inspector (s) of record shall be the inspector assigned to the project by the agency having jurisdiction for quality control/assurance, code compliance, and fire/life/safety over the project.

4.3.3 **INSPECTOR'S AUTHORITY TO REJECT OR STOP WORK**

The inspector shall have the authority to reject work that does not comply with the provisions of the contract documents. In addition, the inspector may stop any work, which poses a probable risk of harm to persons or property. The CONTRACTOR shall instruct its employees, subcontractors, material and equipment suppliers, etc., accordingly. The absence of any stop work order or rejection of any portion of the work shall not relieve the CONTRACTOR from any of its obligations pursuant to the contract documents.

4.4 **RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE AGENCY FOR PROFESSIONAL SERVICES**

If at any time prior to the completion of the requirements under the contract documents, through no fault of its own, the AGENCY is required to provide or secure additional professional services for any reason by any act of the CONTRACTOR, the CONTRACTOR shall be invoiced by the AGENCY for any costs incurred for any such additional services, which costs shall be deducted from the next progress payment. Such invoicing shall be independent from any other AGENCY remedies. If payment, then or thereafter, due to the CONTRACTOR are not sufficient to cover such amounts, the CONTRACTOR shall pay the difference to the AGENCY. Additional services shall include, but shall not be limited to, the following:

- A. Services made necessary by the default of the CONTRACTOR.
- B. Services made necessary due to the defects or deficiencies in the work of the CONTRACTOR.
- C. Services required by failure of the CONTRACTOR to perform according to any provision of the contract documents.
- D. Services in connection with evaluating substitutions of products, materials, equipment, subcontractors proposed by the CONTRACTOR, and making subsequent revisions to drawings, specifications and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- E. Services for evaluating and processing claims submitted by the CONTRACTOR in connection with the work outside the established change order process.
- F. Services required by the failure of the CONTRACTOR to prosecute the work in a timely manner in compliance within the specified time of completion.

- G. Services in conjunction with the testing, adjusting, balancing and startup of equipment other than the normal amount customarily associated for the type of work involved.
- H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data and samples.

4.5 CLAIMS AND DISPUTES

4.5.1 DEFINITION

A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the terms of the contract. The term "claim" also includes other disputes and matters in question between the AGENCY and the CONTRACTOR arising out of or relating to the contract documents. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.

4.5.2 DECISION OF AGENCY ARCHITECT/ENGINEER

Claims, including those alleging an error or omission by the AGENCY ARCHITECT/ENGINEER, shall be referred initially to the AGENCY ARCHITECT/ENGINEER for review. A decision by the AGENCY ARCHITECT/ENGINEER, as provided in paragraph 4.6.4, shall be required as a condition precedent to mediation of a claim between the CONTRACTOR and the AGENCY as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the work, or the extent to which the work has been completed. The decision by the AGENCY ARCHITECT/ENGINEER in response to a claim shall not be a condition precedent to mediation in the event: if the position of AGENCY ARCHITECT/ENGINEER is vacant; the AGENCY ARCHITECT/ENGINEER has not received evidence or has failed to render a decision within agreed time limit; the AGENCY ARCHITECT/ENGINEER has failed to take action required under paragraph 4.6.4 within thirty (30) calendar days after the claim is made, forty-five (45) calendar days have passed after the claim has been referred to the AGENCY ARCHITECT/ENGINEER; or the claim relates to a stop notice claim.

4.5.3 TIME LIMIT ON CLAIMS

Claims by either party must be made within ten (10) calendar days after occurrence of the event giving rise to such claim or within ten (10) calendar days after the claimant first recognizes the condition giving rise to the claim, whichever is later. Claims must be made by written notice. An additional claim made after the initial claim has been implemented by change order will not be considered. The failure of the CONTRACTOR to provide the required notice shall constitute an express waiver of any right to assert such claim, whether affirmatively or defensively.

4.5.4 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a claim including mediation, arbitration, or litigation, unless otherwise agreed to in writing, the CONTRACTOR shall proceed diligently with performance of the contract, and the AGENCY shall continue to make any undisputed payments in accordance with the contract.

4.5.5 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

4.5.5.1 ***Trenches or Excavations Less Than Four (4) Feet Below The Surface.*** If conditions are encountered at the site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the contract documents or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the contract documents, then notice by the observing party shall be given to the other party promptly

before conditions are disturbed and in no event later than twenty-one (21) calendar days after first observance of the conditions. The AGENCY ARCHITECT/ENGINEER will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the CONTRACTOR's cost of, time required for or performance of any part of the work, will recommend an equitable adjustment in the contract sum, contract time, or both. If the AGENCY ARCHITECT/ENGINEER determines that the conditions at the site are not materially different from those indicated in the contract documents and that no change in the terms of the contract is justified, the AGENCY ARCHITECT/ENGINEER shall so notify the AGENCY and the CONTRACTOR in writing, stating the reasons. Claims by either party in opposition to such determination must be made within ten (10) calendar days after the AGENCY ARCHITECT/ENGINEER has given notice of the decision. If the AGENCY and the CONTRACTOR cannot agree on an adjustment in the contract sum or the contract time, the adjustment shall be referred to the AGENCY ARCHITECT/ENGINEER for initial determination, subject to other proceedings pursuant to paragraph 4.6.

4.5.5.2 Trenches or Excavation Greater Than Four (4) Feet Below The Surface.
Pursuant to Public Contract Code § 7104, when any excavation or trenching extends greater than four (4) feet below the surface:

- A. The CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:
 - (1) material that the CONTRACTOR believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with the provisions of existing law.
 - (2) subsurface or latent physical conditions at the site differing from those indicated.
 - (3) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- B. The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste and cause a decrease or increase in the CONTRACTOR's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.
- C. In the event that a dispute arises between the public entity and the CONTRACTOR whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the CONTRACTOR's cost of, or time required for performance of any part of the work, the CONTRACTOR shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The CONTRACTOR shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.5.6 CLAIMS FOR ADDITIONAL COST

If the CONTRACTOR wishes to make claim for an increase in the contract sum, written notice as provided herein shall be given before proceeding to execute the work. Each claim for additional cost must include any claim for additional time and its associated costs. Prior notice is not required for claims relating to an emergency endangering life or property arising under paragraph 10.4. 1. If the CONTRACTOR believes additional cost is involved for reasons, including, but not limited to the following: a written interpretation from the AGENCY ARCHITECT/ENGINEER, an order by the AGENCY to stop the work where the CONTRACTOR was not at fault, a written order for a minor

change in the work issued by the AGENCY ARCHITECT/ENGINEER, failure of payment by the AGENCY, termination of the contract by the AGENCY, the AGENCY's suspension of the work or other reasonable grounds, a claim shall be filed in accordance with the procedure established herein.

4.5.7 CLAIMS FOR ADDITIONAL TIME

4.5.7.1 **Notice and Extent of Claim.** If the CONTRACTOR wishes to make a claim for an increase in the contract time, written notice as provided herein shall be given. The CONTRACTOR's claim shall include the cost associated with the extension and effect of delay on progress of the work. In the case of a continuing delay, only one (1) claim is necessary.

4.5.7.2 **Adverse Weather Claims.** If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. All extensions of time granted for adverse weather conditions will be non-compensable.

4.5.7.3 **No Reservation Allowed.** In no event will the CONTRACTOR be allowed to reserve its rights to assert a claim for time extension later than as required by paragraph 4.5.3 unless the AGENCY agrees in writing to allow such reservation.

4.5.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party to the contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) calendar days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be made as provided in paragraphs 4.5.6 or 4.5.7.

4.6 RESOLUTION OF CLAIMS AND DISPUTES

4.6.1 AGENCY ARCHITECT/ENGINEER'S REVIEW

The AGENCY ARCHITECT/ENGINEER will review claims and take one or more of the following preliminary actions within ten (10) calendar days of receipt of a claim: request additional supporting data from the claimant; submit a schedule to the parties indicating when the AGENCY ARCHITECT/ENGINEER expects to take action; reject the claim in whole or in part, stating reasons for rejection; recommend approval of the claim by the other party; or suggest a compromise. The AGENCY ARCHITECT/ENGINEER may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

4.6.2 DOCUMENTATION IF RESOLVED

If a claim has been resolved, the AGENCY ARCHITECT/ENGINEER will prepare or obtain appropriate documentation.

4.6.3 ACTIONS IF NOT RESOLVED

If a claim has not been resolved, the party making the claim shall, within ten (10) calendar days after the AGENCY ARCHITECT/ENGINEER's preliminary response, take one or more of the following actions: submit additional supporting data requested by the AGENCY ARCHITECT/ENGINEER; modify the initial claim; or notify the AGENCY ARCHITECT/ENGINEER that the initial claim stands.

4.6.4 AGENCY ARCHITECT/ENGINEER'S WRITTEN DECISION

If a claim has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the AGENCY ARCHITECT/ENGINEER, the AGENCY ARCHITECT/ENGINEER will notify the parties in writing that the AGENCY ARCHITECT/ENGINEER's decision will be made within seven (7) calendar days. Upon expiration of such time period, the AGENCY ARCHITECT/ENGINEER will render to the parties its written decision relative to the claim, including any change in the contract sum or contract time or both. The AGENCY ARCHITECT/ENGINEER may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.7 ALTERNATE DISPUTE RESOLUTION OF CLAIMS OF \$375,000.00 OR LESS

4.7.1 CLAIMS LESS THAN \$375,000.00

Notwithstanding any other provision herein, claims of \$375,000.00 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code § 20104, *et seq.* "Claim" for this purpose means a separate demand by the CONTRACTOR for a time extension, payment of money or damages arising from work done by or on behalf of the CONTRACTOR pursuant to the contract, for which payment is expressly provided, or the CONTRACTOR is otherwise entitled to, or an amount the payment of which is disputed by the AGENCY.

4.7.2 SUBMISSION OF CLAIMS LESS THAN \$375,000.00

The CONTRACTOR shall submit its claim of \$375,000.00 or less to the AGENCY in writing, within the time frames established under paragraph 4.5.3, but no later than before the final payment is made. The AGENCY shall respond within the time provided by statute. If the CONTRACTOR disagrees with the response or the AGENCY fails to respond within the time permitted. The CONTRACTOR shall notify the AGENCY of the disagreement in writing within fifteen (15) calendar days from the date of the response or expiration of the time permitted to respond and demand a meet-and-confer conference as detailed in paragraph 4.8.1. The AGENCY shall schedule a meet-and-confer conference within thirty (30) calendar days of the demand. If not resolved at the meet-and-confer conference, then the claim shall be submitted to mediation pursuant to the procedures set forth in paragraph 4.9. if the dispute is not resolved at the mediation, the CONTRACTOR may initiate a civil action as set forth in Public Contract Code § 20104 *et seq.*

4.7.3 TIME LIMITS NOT EXTENDED

Nothing in subdivision (a) of Public Contract Code § 20104.2 shall extend the time limit or supersede the notice requirements provided in this contract for filing claims by the CONTRACTOR.

4.8 DISPUTE RESOLUTION OF CLAIMS IN EXCESS OF \$375,000.00

As a condition precedent to the initiation of litigation and subsequent to the fulfillment of the claims procedures established in paragraph 4.5 of this Article, disputes in excess of a total value of \$375,000.00 shall first be submitted to mediation pursuant to the procedures set forth in paragraph 4.9.

4.8.1 MEET AND CONFER CONFERENCE

Following action by the AGENCY ARCHITECT/ENGINEER under Paragraph 4.6, the parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior executives of the parties who have authority to settle the controversy. The party disputing the AGENCY ARCHITECT/ENGINEER's action shall give the other party written notice of the dispute. Within ten (10) calendar days after delivery of said notice,

executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within twenty (20) calendar days of the disputing party's notice, or if the party receiving such notice will not meet within ten (10) calendar days, either party may initiate mediation of the controversy or claim under paragraph 4. 9.

4.9 **MEDIATION PROCEDURES.**

4.9.1 **NEGOTIATIONS BEFORE MEDIATION**

Negotiations to resolve disputes before mediation is initiated are for settlement purposes only and are not binding.

4.9.2 **MEDIATION**

4.9.2.1 **Authorization.** In the event of a dispute or issue that cannot be resolved by negotiation, the AGENCY and the CONTRACTOR agree to attempt to resolve the matter by mediation. Said mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable solution. These provisions relating to voluntary mediation shall not be construed or interpreted as mandatory arbitration.

4.9.2.2 **Initiation of Mediation.** Either party may initiate mediation by notifying the other party or parties in writing.

4.9.2.3 **Request for Mediation.** A request for mediation shall contain a brief statement of the nature of the dispute or claim and the names, addresses and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the mediation.

4.9.2.4 **Selection of Mediator.** Within fourteen (14) calendar days after execution of the contract for construction, the parties will meet-and-confer to select an appropriate mediator agreeable to all parties and two (2) alternate mediators, who will serve for the entire project. If the parties cannot agree on a mediator, they hereby agree to accept a mediator appointed by a recognized association such as the American Arbitration Association.

4.9.2.5 **Qualifications of a Mediator.** Any mediator selected shall have expertise in the area of the dispute and be knowledgeable in the mediation process. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation. Before accepting an appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the parties shall meet and confer and decide whether to select another mediator.

4.9.2.6 **Vacancies.** If any mediator shall become unable or unwilling to serve, the first alternate mediator shall be selected unless the parties agree otherwise.

4.9.2.7 **Representation.** Any party may be represented by persons of its choice, who shall have full authority to negotiate. The names and addresses of such persons shall be communicated in writing to all parties and to the mediator.

4.9.2.8 **Time and Place of Mediation.** The mediator shall set the time of each mediation session. The mediation shall be held at any convenient location agreeable to the mediator and the parties, as the mediator shall determine. All reasonable efforts will be made by the parties and the mediator to schedule the first session within thirty (30) calendar days after initiation of mediation.

4.9.2.9 **Identification of Matters in Dispute.** At least ten (10) calendar days before the first scheduled mediation session, each party shall provide the mediator a brief memorandum

setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator such memoranda may be mutually exchanged by the parties.

At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may require each party to supplement such information.

4.9.2.10 **Authority of Mediator.** The mediator does not have authority to impose a settlement on the parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.

The mediator is authorized to end the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

4.9.2.11 **Privacy.** Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

4.9.2.12 **Confidentiality.** Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received by a mediator while serving as mediator shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceedings: views expressed or suggestions made by the other party with respect to the possible settlement of the dispute; statements made by the other party in the course of the mediation proceedings; proposals made or views expressed by the mediator; and whether the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

4.9.2.13 **No Stenographic Record.** There shall be no stenographic record of the mediation.

4.9.2.14 **Termination of Mediation.** The mediation shall be terminated: by the execution of a settlement agreement by the parties; by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

4.9.2.15 **Exclusion of Liability.** No mediator shall be a necessary party in judicial proceedings related to the mediation. No mediator shall be liable to any party for any act or omission in connection with any mediation conducted hereunder.

4.9.2.16 **Interpretation and Application of These Mediation Provisions.** The mediator shall interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibility.

4.9.2.17 **Expenses.** The expenses of witnesses for each party shall be paid by the party producing the witnesses. All other expenses of the mediation, including, required travel and other expenses of the mediator, the expenses of any witness called by the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by all parties to the mediation.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 SUBCONTRACTOR

A subcontractor is a person or entity, who has a contract with the CONTRACTOR to perform a portion of the work at the site. The term subcontractor is referred to throughout the contract documents as if singular in number and means a subcontractor or an authorized representative of the subcontractor. The term "subcontractor" does not include a separate CONTRACTOR or subcontractors of a separate CONTRACTOR.

5.1.2 SUB-SUBCONTRACTOR

A sub-subcontractor is a person or entity who has a direct or indirect contract with a subcontractor to perform a portion of the work at the site. The term "sub-subcontractor" is referred to throughout the contract documents as if singular in number and means a sub-subcontractor or an authorized representative of the sub-subcontractor.

5.1.3 SPECIALTY CONTRACTORS

If a subcontractor is designated as a "specialty CONTRACTOR" as defined in § 7058 of the Business and Professions Code, all of the work outside of that subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code § 4100, et seq.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF AGENCY

In accordance with Public Contract Code § 4107 and 4107.5, no CONTRACTOR whose bid is accepted shall, without the written consent of the AGENCY: substitute any person or entity as a subcontractor in place of the subcontractor designated in the original bid; permit any such subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original subcontractor listed in the original bid; sublet or subcontract any portion of the work in excess of one-half of one percent (.5%) of the CONTRACTOR's total bid as to which its original bid did not designate a subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority shall be void, and the assignees shall acquire no rights in the contract. Any consent, if given, shall not relieve CONTRACTOR or its subcontractors from their obligations under the terms of the contract documents.

5.2.2 GROUNDS FOR SUBSTITUTION

Pursuant to Public Contract Code § 4107 and the procedure set forth therein, no CONTRACTOR whose bid is accepted may request to substitute any person or entity as a subcontractor in place of a subcontractor listed in the original bid except in the following instances:

- A. When the subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written contract when that written contract for the scope of work specified in the subcontractor's bid and the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime CONTRACTOR;

- B. When the listed subcontractor becomes bankrupt or insolvent;
- C. When the listed subcontractor fails or refuses to perform his or her subcontract;
- D. When the listed subcontractor fails or refuses to meet the bond requirements of the prime CONTRACTOR set forth in Public Contract Code § 4108.
- E. When the CONTRACTOR demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions of Public Contract Code § 4107.5, that the name of the subcontractor was listed as the result of inadvertent clerical error;
- F. When the listed subcontractor is not licensed pursuant to the CONTRACTOR's license law; or
- G. When the awarding authority or its duly authorized officer, determines that the work being performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or the subcontractor is substantially delaying or disrupting the progress of the work.
- H. When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- I. When the awarding authority determines that a listed subcontractor is not a responsible CONTRACTOR.

5.2.2.1 **No Change in Contract.** Any substitutions of subcontractors shall not result in any increase in the contract sum or result in the granting of any extension of time for the completion of the project.

5.2.2.2 **Substitution Due to Clerical Error.** The CONTRACTOR, as a condition of asserting a claim of inadvertent clerical error in the listing of a subcontractor, shall, pursuant to Public Contract Code § 4107.5, within two (2) working days after the time of the prime bid opening by the awarding authority, give written notice to the awarding authority and copies of such notice to both the subcontractor it claims to have listed in error, and the intended subcontractor who had bid to the CONTRACTOR prior to bid opening. Any listed subcontractor who has been notified by the CONTRACTOR in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the awarding authority and to the CONTRACTOR written objection to the CONTRACTOR's claim of inadvertent clerical error.

In all other cases, the CONTRACTOR must make a request in writing to the awarding authority for the substitution of a subcontractor, giving reasons therefore. The awarding authority shall mail a written notice to the listed subcontractor giving reasons for the proposed substitution. The listed subcontractor shall have five (5) working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a waiver of objection to the substitution by the listed subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed subcontractor that an inadvertent clerical error was made.

If written objections are filed, the awarding authority shall give five (5) days' notice to the CONTRACTOR and to the listed subcontractor of a hearing by the awarding authority on the CONTRACTOR's request for substitution as provided in Public Contract Code § 4107. The determination by the awarding authority shall be final

5.3 **SUBCONTRACTUAL RELATIONS**

By appropriate agreement, written where legally required for validity, the CONTRACTOR shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the CONTRACTOR by terms of the contract documents, and to assume toward the CONTRACTOR all obligations and responsibilities, which the CONTRACTOR, by the contract documents, assumes toward the AGENCY and the AGENCY ARCHITECT/ENGINEER. Each subcontract agreement shall preserve and protect the rights of the, AGENCY and the AGENCY ARCHITECT/ENGINEER under the Contract documents with respect to the work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the CONTRACTOR that the CONTRACTOR, by the contract documents, has against the AGENCY. Where appropriate, the CONTRACTOR shall require each subcontractor to enter into similar agreements with sub subcontractors.

The CONTRACTOR shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the contract documents to which the subcontractor will be bound. Upon written request of the subcontractor, the CONTRACTOR shall identify to the subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the contract documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub subcontractors.

5.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

Each subcontract agreement for a portion of the work is assigned by the CONTRACTOR to the AGENCY provided that:

- A. Assignment is effective only after termination of the contract with the CONTRACTOR by the AGENCY for cause pursuant to Article 14 and only for those subcontract agreements which the AGENCY accepts by notifying the subcontractor in writing; and
- B. Assignment is subject to the prior rights of the Surety, if any, obligated under any bond relating to the contract.

5.5 **SUBCONTRACTOR'S RESPONSIBILITIES**

Every subcontractor is bound to the following provisions, unless specifically noted to the contrary in the subcontractor's contract subject to the limitations of paragraph 5.3 above.

5.5.1 **SUPERVISION BY SUBCONTRACTORS**

Subcontractors shall efficiently supervise their work, using their best skill and attention. Each of them shall carefully study and compare all drawings specifications, and other instructions, shall at once report to CONTRACTOR any error or omission which any of them may discover, and shall subsequently proceed with the work in accordance with instructions from the CONTRACTOR concerning such error or omission. Each subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

5.5.2 **DISCIPLINE AND ORDER**

Each subcontractor shall at all times enforce strict discipline and good order among its subcontractors, material or equipment suppliers or their agents, employees and invitees and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution or unsightly conditions relative to property areas adjacent to or in the vicinity of the site. The subcontractor shall not employ on the work any unfit person or anyone not skilled in the task assigned. The CONTRACTOR shall have the right to remove from the work

any employee of a subcontractor for any reason including, without limitation, incompetence or carelessness.

5.5.3 DEFECTS DISCOVERED

Should the proper and accurate performance of the work depend upon the proper and accurate performance of other work not included in its contract, each subcontractor shall use all necessary means to discover any defect in such other work and shall allow the CONTRACTOR, the AGENCY ARCHITECT/ENGINEER or other subcontractors as CONTRACTOR elects a reasonable amount of time to remedy such defects. If the subcontractor should proceed with its work, it shall be considered to have accepted such other work, unless the subcontractor shall have proceeded pursuant to instructions in writing by the CONTRACTOR over its written objection.

5.5.4 SUBCONTRACTOR INFORMATION

Each subcontractor shall submit to the AGENCY, the CONTRACTOR, or the AGENCY ARCHITECT/ENGINEER, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities and titles of the principal members of its staff, the adequacy of the subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with CONTRACTOR in its periodic review of the adequacy of subcontractor's supervision, personnel and equipment and the availability of necessary materials and supplies and shall promptly comply with the requirements of the CONTRACTOR with respect thereto.

5.5.5 TEMPORARY STRUCTURES

Each subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the CONTRACTOR in the subcontract agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the AGENCY. When it becomes necessary due to the progress of the project for the subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to CONTRACTOR or AGENCY. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall or sheet metal.

5.5.6 CHARGES TO SUBCONTRACTOR

Each subcontractor may be subject to the CONTRACTOR's reasonable charges for hoisting, repair to other work caused by the fault or negligence of subcontractor, removal of subcontractor's rubbish and clean-up occasioned by subcontractor.

5.5.7 FINES IMPOSED

Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, environmental impact report mitigation requirement and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

5.5.8 PROJECT SIGNS

Each subcontractor shall not display on or about the project any sign, trademark, or other advertisement. The AGENCY will permit a single project sign, which shall be subject to the AGENCY's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

5.5.9 REMEDIES FOR FAILURE TO PERFORM

Without limitation of any other right or remedy available to CONTRACTOR under the contract documents or at law, should: the subcontractor fail to perform its portion of the work in a skilled and expeditious manner in accordance with the terms of the contract documents with sufficient labor, materials, equipment and facilities; delays the progress of the job or otherwise fail in any of its obligations; or either a receiver is appointed for the subcontractor or the subcontractor is declared to be bankrupt or insolvent and such appointment, bankruptcy or insolvency proceedings or declaration is not set aside within thirty (30) calendar days, then the CONTRACTOR, upon three (3) calendar days' notice to the subcontractor (subject to the requirements of Public Contract Code § 4107), may provide such labor, materials or perform such work.

5.5.10 DISPUTES NOT TO AFFECT WORK

In the event of any dispute as to whether or not any portion of the work is within the scope of the work to be performed by a subcontractor, or any dispute as to whether or not the subcontractor is entitled to a change order for any work requested of it, the subcontractor shall continue to proceed diligently with the performance as required by the CONTRACTOR. Regardless of the size or nature of the dispute, the subcontractor shall not under any circumstances cease or delay performance of its portion of the work during the existence of the dispute. The CONTRACTOR shall continue to pay the undisputed amounts called for under the subcontract agreement during the existence of the dispute. Any party stopping or delaying the progress of the work because of a dispute shall be responsible in damages to the AGENCY, the AGENCY ARCHITECT/ENGINEER, and the CONTRACTOR for any losses suffered as a result of the delay.

5.5.11 APPLICATION FOR PAYMENT

CONTRACTOR agrees to advise the subcontractor if any documentation in connection with the subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

5.5.12 COMPLIANCE WITH PROCEDURES

Each subcontractor shall comply with all procedures established by the CONTRACTOR for coordination among the AGENCY, the AGENCY's consultants, AGENCY ARCHITECT/ENGINEER, CONTRACTOR and the various subcontractors for coordination of the work with all local municipal authorities, government agencies, utility companies and any other agencies with jurisdiction over all or any portion of the work. The subcontractor shall cooperate fully with all of the foregoing parties and authorities.

5.5.13 ON-SITE RECORD KEEPING

Subcontractor shall comply with all on-site record keeping systems established by the CONTRACTOR and shall, upon the request of the CONTRACTOR, provide the CONTRACTOR with such information and reports as the CONTRACTOR may deem appropriate. Without limitation of the foregoing, the subcontractor shall assemble all required permits and certificates so that they are readily accessible at the site.

5.5.14 NON-EXCLUSIVE OBLIGATIONS

The specific requirements of Article 5 are not intended to exclude the obligation of the subcontractor to comply with any of the other provisions of the general conditions and the other contract documents which are relevant to the proper performance of its portion of the work.

ARTICLE 6

CONSTRUCTION BY AGENCY OR BY SEPARATE CONTRACTORS

6.1 AGENCY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 AGENCY'S RIGHTS

The AGENCY reserves the right to perform work related to the project with the AGENCY's own forces and to award separate contracts in connection with other portions of the project or other construction or operations on the site under conditions of the contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. The project will be performed with multiple prime CONTRACTORS. Notwithstanding anything to the contrary in the Contract Documents, CONTRACTOR shall have the absolute obligation to work cooperatively with the Agency and all other CONTRACTORS, subcontractors, suppliers and other entities working on any portion of the project or performing any operations on or off the Site, including, but not limited to, those provided for in the Project Schedule.

6.1.2 DESIGNATION AS CONTRACTOR

When separate contracts are awarded for different portions of the project or other construction or operations on the site, the term "CONTRACTOR" in the contract documents in each case shall mean the CONTRACTOR who executes each separate AGENCY/CONTRACTOR agreement.

6.1.3 CONTRACTOR DUTIES

The CONTRACTOR shall have overall responsibility for coordination and scheduling of the activities of the AGENCY's own forces and of each separate CONTRACTOR with the work of the CONTRACTOR, who shall cooperate with them. The CONTRACTOR shall participate with other separate CONTRACTORS and the AGENCY in reviewing their construction schedules when directed to do so.

6.1.4 OBLIGATIONS

Unless otherwise provided in the contract documents, when the AGENCY performs work related to the project with the AGENCY's own forces, the AGENCY shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the CONTRACTOR under the general conditions, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 DELIVERY AND STORAGE

The CONTRACTOR shall afford the AGENCY and separate CONTRACTORS reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate CONTRACTORS' construction and operations with theirs as required by the contract documents.

6.2.2 NOTICE BY CONTRACTOR

If part of the CONTRACTOR's work depends upon proper execution or results from work by the AGENCY or a separate CONTRACTOR, the CONTRACTOR shall, prior to proceeding with that portion of the work, promptly report to the AGENCY ARCHITECT/ENGINEER apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the CONTRACTOR to so report shall constitute an acknowledgment that the AGENCY's or separate CONTRACTOR'S completed or partially

completed construction is fit and proper to receive the CONTRACTOR'S work, except as to defects not then reasonably discoverable.

6.2.3 COSTS INCURRED

Costs, expenses and damages caused by delays, improperly timed activities, defective construction or damages to another's work shall be borne by the party responsible. The AGENCY shall deduct said costs from the CONTRACTOR's next progress payment.

6.2.4 CORRECTION OF DAMAGE

The CONTRACTOR shall promptly remedy damage wrongfully caused by the CONTRACTOR to completed or partially completed construction or to property of the AGENCY or separate CONTRACTORS. Failure to do so will be grounds for deduction of costs from CONTRACTOR'S next progress payment.

6.3 AGENCY'S RIGHT TO CLEAN UP

If a dispute arises among the CONTRACTOR, separate CONTRACTORS, and the AGENCY as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in paragraph 3.13, the AGENCY may clean up and allocate the cost among those responsible as the AGENCY determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 NO CHANGES WITHOUT AUTHORIZATION

There shall be no change whatsoever in the drawings, specifications, or in the work without an executed change order, construction change directive, or order by the AGENCY or authorized representative for a minor change in the work as herein provided. The AGENCY shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the drawings and specifications unless the same shall have been authorized by and the cost thereof approved in writing by change order or executed construction change directive. No extension of time for performance of the work shall be allowed hereunder unless claim for such extension is made at the time changes in the work are ordered, and such time duly adjusted in writing in the change order. The provisions of the contract documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the drawings and specifications. Notwithstanding anything to the contrary in this Article 7, all change orders shall be prepared and issued by the AGENCY ARCHITECT/ENGINEER and shall become effective when executed by the AGENCY, the AGENCY ARCHITECT/ENGINEER and the CONTRACTOR and, if required, approved by the AGENCY governing board

7.1.2 AGENCY ARCHITECT/ENGINEER AUTHORITY

The AGENCY ARCHITECT/ENGINEER will have authority to order minor changes in the work **not** involving any adjustment in the contract sum, an extension of the contract time, or a change, which is inconsistent with the intent of the contract documents. Such changes shall be effected by written change order and shall be binding on the AGENCY and the CONTRACTOR. The CONTRACTOR shall carry out such written orders promptly.

7.2 **CHANGE ORDERS (“CO”)**

A CO is a written instrument prepared by the CONTRACTOR and signed by the AGENCY, the CONTRACTOR, and the AGENCY ARCHITECT/ENGINEER stating their agreement upon all of the following:

- A. A change in the work;
- B. The amount of the adjustment in the contract sum, if any; and
- C. The extent of the adjustment in the contract time, if any.

7.3 **CONSTRUCTION CHANGE DIRECTIVES (“CCD”)**

7.3.1 **DEFINITION**

A CCD is a written order prepared by the AGENCY ARCHITECT/ENGINEER and signed by the AGENCY and the AGENCY ARCHITECT/ENGINEER, directing a change in the work and stating a proposed basis for adjustment, if any, in the contract sum or contract time, or both. The AGENCY may by CCD, without invalidating the contract, order changes in the work within the general scope of the contract consisting of additions, deletions or other revisions within, the contract sum and contract time being adjusted accordingly.

7.3.2 **USE TO DIRECT CHANGE**

A CCD shall be used in the absence of agreement on the terms of a CO.

7.4 **REQUEST FOR INFORMATION (“RFI”)**

7.4.1 **DEFINITION**

An RFI a written request prepared by the CONTRACTOR asking the AGENCY or AGENCY ARCHITECT/ENGINEER to provide additional information necessary to clarify an item, which the CONTRACTOR feels is not clearly shown or called for in the drawings or specifications or to address problems which have arisen under field conditions.

7.4.2 **SCOPE**

The RFI shall reference all the applicable contract documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. the CONTRACTOR shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the contract cost, contract time or the contract documents.

7.4.3 **RESPONSE TIME**

The AGENCY or AGENCY ARCHITECT/ENGINEER must respond to an RFI within fourteen (14) calendar days after receiving such request. If the AGENCY ARCHITECT/ENGINEER’s response results in a change in the work, then such change shall be effected by a written CO or CCD. If the AGENCY ARCHITECT/ENGINEER cannot respond to the RFI within fourteen (14) calendar days, the AGENCY ARCHITECT/ENGINEER shall notify the CONTRACTOR, with a copy to the inspector and the AGENCY, of the amount of time that will be required to respond.

7.4.4 COSTS INCURRED

The CONTRACTOR shall be invoiced by the AGENCY for any costs incurred for professional services, which shall be deducted from the next progress payment, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

7.5 REQUEST FOR PROPOSAL (“RFP”)

7.5.1 DEFINITION

An RFP is a written request prepared by the AGENCY or AGENCY ARCHITECT/ENGINEER asking the CONTRACTOR to submit to the AGENCY and the AGENCY ARCHITECT/ENGINEER an estimate of the effect of a proposed change on the contract price and the contract time.

7.5.2 SCOPE

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable CONTRACTOR to provide the cost breakdowns required by paragraph 7.7. The CONTRACTOR shall not be entitled to any additional compensation for preparing a response to an RFP, whether ultimately accepted or not.

7.6 CHANGE ORDER REQUEST (“COR”)

7.6.1 DEFINITION

A COR is a written request prepared by the CONTRACTOR asking the AGENCY and the AGENCY ARCHITECT/ENGINEER to incorporate a proposed change called for in an RFP or a claim per paragraph 7.7.6 into a CO.

7.6.2 CHANGES IN PRICE

A COR shall include breakdowns per paragraph 7.7 to validate any change in contract price due to proposed change or claim.

7.6.3 CHANGES IN TIME

A COR shall also include any additional time required to complete the project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the project schedule as defined in paragraph 3.9 and Division 1 of the specifications.

7.7 COST OF CHANGE ORDERS

7.7.1 SCOPE

Within ten (10) calendar days or such lesser period of time as may be required by AGENCY after a request is made for a change that impacts the contract sum or the contract time, the CONTRACTOR shall provide to the AGENCY and the AGENCY ARCHITECT/ENGINEER in writing an estimate of the effect of the proposed CO upon the contract price and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change and the effect upon the contract time of such CO. Changes may be made by AGENCY by an appropriate written CO, or, at the AGENCY’s option, such changes shall be implemented immediately upon the CONTRACTOR’s receipt of an appropriate written CCD.

7.7.2 DETERMINATION OF COST

The amount of the increase or decrease in the contract price resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

Value of any such extra work, change or deduction shall be determined at the sole discretion of the AGENCY in the following ways:

1. Acceptable lump sum proposal from CONTRACTOR properly itemized and supported by sufficient substantiating data to permit evaluation. Estimates for lump sum proposals shall be limited to direct expenditures necessitated specifically by the subject extra work and shall be segregated into categories, which follow those outlined in article 7.7.2.3. In addition, the CONTRACTOR and subcontractor will be paid a lump sum for overhead, profit, and bond. Such lump sum shall conform to the percentages outlined in article 7.7.2.3 E. For added or omitted work by subcontractors, the CONTRACTOR shall furnish to the AGENCY the subcontractor's detailed estimate of the cost for labor, material, and equipment, including the markup by the subcontractor for overhead and profit. Such estimate of cost shall be signed by the subcontractor. The same requirement shall apply to any sub-subcontractor or material supplier.
2. By unit prices as utilized in CONTRACTOR's original bid and incorporated into contract documents or fixed by subsequent agreement between AGENCY and CONTRACTOR. Unit prices shall include all necessary labor, material, overhead, profit and applicable taxes.
3. Time and material. Force account for direct costs for labor, material, and equipment rental plus markups for overhead and profit for prime CONTRACTOR, subcontractor and sub-subcontractors as applicable. The following outline shall be utilized for all time and material and lump sum proposals.
 - A. Labor: attach itemized direct hourly rates in accordance with certified payroll records times total hours expended. Separately show dollar amount for employer-paid payroll taxes/ insurance benefits. Enter total as direct labor time.
 - B. Material: attach receipts, invoices or itemized quantity and unit costs plus tax and delivery. Enter total as material item.
 - C. Equipment: attach receipts, invoices or tear tickets indicating unit costs and total hours or loads charged, (small tools with a value of less than five hundred dollars (\$500.00) are to be included in markup). Enter total as equipment rental time.
 - D. SUBTOTALS (lines A + B + C)
 - E. The allowance for the combined overhead and profit included in the total cost to the AGENCY shall be based on the following schedules.
 - Schedule 1. Twenty percent (20%) combined overhead and profit, of the total estimated costs of the extra work to be performed. All subcontracted work included within the total estimated costs shall not exceed ten percent (10%) combined overhead and profit of the work performed by the subcontractor. This schedule #1 shall apply to all changes totaling less than five hundred dollars (\$500.00).

Schedule 2. Fifteen percent (15%) combined overhead and profit, of the total estimated costs of the extra work to be performed.

All subcontracted work included within the total estimated costs shall not exceed ten percent (10%) combined overhead and profit of the work performed by the subcontractor. This schedule #2 shall apply to all changes totaling more than five hundred dollars (\$500.00) but less than seven thousand five hundred dollars (\$7,500.00).

Schedule 3. Ten percent (10%) combined overhead and profit of the total estimated costs of the extra work to be performed.

All subcontracted work included within the total estimated costs shall not exceed ten percent (10%) combined overhead and profit of the work performed by the subcontractor.

This schedule #3 shall apply to all changes totaling more than seven thousand five hundred dollars (\$7,500.00), but less than fifteen thousand dollars (\$15,000.00).

Schedule 4. Five percent (5%) combined overhead and profit, of the total estimated costs of the extra work to be performed.

All subcontracted work included within the total estimated costs shall not exceed five percent (5%) combined overhead and profit of the work performed by the subcontractor.

This schedule #4 shall apply to all changes totaling more than fifteen thousand dollars (\$15,000.00).

The combined overhead and profit allowances referenced in schedules 1 through 4 are to include the following costs: home office overhead, off-site supervision, change order preparation, negotiation/research, time delays, project interference and disruption, additional guarantee and warranty durations, on site supervision, additional temporary protection, additional construction facilities, additional material handling costs, additional safety equipment costs and small tools with a daily rental rate of less than two hundred and fifty dollars (\$250.00).

- F. SUBTOTAL (lines D + E)
- G. GENERAL CONTRACTOR'S BOND (NTE 1% line F)
- H. GENERAL CONTRACTOR'S INSURANCE (NTE 1% line F)
- I. TOTAL CHANGE ORDER REQUEST (lines F + G + H)

7.7.3 AMOUNT OF CREDIT

The amount of credit to be allowed by the CONTRACTOR to the AGENCY for a deletion or change which results in a net decrease in the contract sum shall be actual net cost. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the CONTRACTOR's costs and expenses, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project.

7.7.4 DISCOUNTS, REBATES AND REFUNDS

For purposes of determining the cost, if any, of any change, addition or omission to the work hereunder, all trade discounts, rebates, refunds and all returns from the sale of surplus materials and equipment shall accrue and be credited to the CONTRACTOR, and the CONTRACTOR shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the CONTRACTOR's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the work as provided herein.

7.7.5 ACCOUNTING RECORDS

With respect to portions of the work performed by CO'S and CCDs on a time and materials, unit-cost, or similar basis, the CONTRACTOR shall keep and maintain cost accounting records satisfactory to the AGENCY, which shall be available to the AGENCY on the same terms as any other books and records the CONTRACTOR is required to maintain under the contract documents.

7.7.6 NOTICE REQUIRED

If the CONTRACTOR desires to make a claim for an increase in the contract price, or any extension in the contract time for completion, it shall give the AGENCY and the AGENCY ARCHITECT/ENGINEER written notice thereof within ten (10) calendar days after the occurrence of the event giving rise to the claim, together with detailed estimates of the impact on the contract price and/or the contract time. This notice shall be given by the CONTRACTOR before proceeding to execute the work, except in an emergency endangering life or property, in which case the CONTRACTOR shall proceed in accordance with paragraph 10.3 hereof. No claim shall be considered unless made in accordance with this subparagraph; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the contract time, and/or the increase in the contract price. CONTRACTOR shall proceed to execute the work even though the adjustment has not been agreed upon. Any change in the contract price or extension of the contract time resulting from such claim shall be authorized by a CO.

7.7.7 APPLICABILITY TO SUBCONTRACTORS

Any requirements under this Article 7 shall be equally applicable to CO'S or CCDs issued to subcontractors by the CONTRACTOR to the same extent required of the CONTRACTOR.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 CONTRACT TIME

Unless otherwise provided, contract time is the period of time, including authorized adjustments, allotted in the contract documents for completion of the work for the entire project.

8.1.2 NOTICE TO PROCEED

The date of commencement of the work is the date established in the notice to proceed. The date shall not be postponed by the failure to act of the CONTRACTOR or of persons or entities for whom the CONTRACTOR is responsible.

8.1.3 DAYS

The term "day" as used in the contract documents shall mean calendar day unless otherwise specifically defined.

8.2 HOURS OF WORK

8.2.1 SUFFICIENT FORCES

CONTRACTORS and subcontractors shall furnish sufficient forces to ensure the prosecution of the work in accordance with the construction schedule.

8.2.2 PERFORMANCE DURING WORKING HOURS

Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the work in accordance with job progress, work may be performed outside of regular working hours with the advance written consent of the AGENCY. Regular working hours shall be from 7:00 a.m. to 4:00 p.m., Monday through Friday. However, all work shall comply with local ordinance for hours of work.

8.2.3 LABOR CODE APPLICATION

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

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

8.2.4 COSTS FOR AFTER HOURS INSPECTIONS

If the work done after hours is required by the contract documents to be done outside the CONTRACTOR's or the inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the AGENCY.

If the AGENCY allows the CONTRACTOR to do work outside regular working hours for the CONTRACTOR's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the CONTRACTOR by the AGENCY and deducted from the next progress payment.

If the CONTRACTOR elects to perform work outside the inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the CONTRACTOR by the AGENCY and deducted from the next progress payment.

8.2.5 TIME FOR COMMENCEMENT BY SUBCONTRACTORS

Unless otherwise provided in the contract documents, all subcontractors shall commence their work within two (2) consecutive business days after notice to them by the CONTRACTOR and shall prosecute their work in accordance with the progress of the work.

8.3 PROGRESS AND COMPLETION

8.3.1 TIME OF THE ESSENCE

Time limits stated in the contract documents and durations stated in the Project Schedule are of the essence of the contract. By executing the Agreement, the CONTRACTOR confirms that the contract time and schedule durations are a reasonable period for performing the work.

8.3.2 NO COMMENCEMENT WITHOUT INSURANCE

The CONTRACTOR shall not knowingly, except by agreement or instruction of the AGENCY, in writing, commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the CONTRACTOR. The date of commencement of the work shall not be changed by the effective date of such insurance.

8.3.3 EXPEDITIOUS COMPLETION

The CONTRACTOR shall proceed expeditiously with adequate forces and shall achieve completion within the contract time and schedule durations.

8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

8.4.1 EXCUSABLE DELAY

The CONTRACTOR shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of the work due to unforeseeable causes beyond the control and without the fault or the negligence of CONTRACTOR, including, but not restricted to, acts of god, acts of public enemy, acts of government, acts of the AGENCY or anyone employed by it, acts of another CONTRACTOR in performance of a contract (other than this contract) with the AGENCY, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather or delays of subcontractors due to such causes.

8.4.2 NOTICE BY CONTRACTOR REQUIRED

The CONTRACTOR shall within seven (7) calendar days of beginning of any such delay (unless AGENCY grants in writing a further period of time to file such notice prior to the date of final payment under the contract) notify the AGENCY in writing of causes of delay. AGENCY will then ascertain the facts and extent of the delay and grant an extension of time for completing the work when, in its judgment, the findings of fact justify such an extension. The AGENCY's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the work affected by the delay and shall not apply to other portions of the work not so affected. The sole remedy of CONTRACTOR for extensions of time under paragraph 8.4.1 shall be an extension of the contract time at no cost to the AGENCY.

8.4.3 CONDITIONS FOR EXTENSION OF TIME

If the CONTRACTOR is delayed at any time in progress of the work by an act or neglect of the AGENCY, the AGENCY ARCHITECT/ENGINEER, an employee of either or of a separate CONTRACTOR employed by the AGENCY, by changes ordered in the work, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the CONTRACTOR's control, by delay authorized by the AGENCY pending arbitration, or by other causes which the AGENCY ARCHITECT/ENGINEER determines may justify delay, then the contract time shall be extended by change order for such reasonable time as the AGENCY

ARCHITECT/ENGINEER may determine. Claims relating to time extensions shall be made in accordance with applicable provisions of Article 7.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The contract sum is stated in the agreement and, including authorized adjustments, is the total amount payable by the AGENCY to the CONTRACTOR for performance of the work under the contract documents.

9.2 COST BREAKDOWN

9.2.1 REQUIRED INFORMATION

In addition to the bid schedule, on forms approved by the AGENCY, the CONTRACTOR shall furnish the following:

- A. Within ten (10) calendar days of the award of the contract, a detailed breakdown of each lump sum item indicated in the bid schedule shall be provided in the form of a schedule of values. CONTRACTOR's overhead and profit shall be apportioned over each line item or separate activity of the Schedule of Values. The amount of overhead and profit apportioned to each line item or separate activity shall be proportionate to the line item percentage of the overall contract amount.

9.2.2 AGENCY APPROVAL REQUIRED

The AGENCY shall review all submissions received pursuant to paragraph 9.2.1 in a timely manner. All submissions must be approved by the AGENCY before becoming the basis of any payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 PROCEDURE

On or before the twenty-fifth (25th) day of each calendar month during the progress of the portion of the work for which payment is being requested, the CONTRACTOR shall submit to the AGENCY an itemized application for payment for operations completed in accordance with the schedule of values. All work will be billed on the AGENCY's standard pay application.

9.3.2 PURCHASE OF MATERIALS AND EQUIPMENT

As the CONTRACTOR is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from AGENCY, to assure that there will be no delays, payment by the AGENCY for stored material shall be made only in unusual circumstances where the AGENCY ARCHITECT/ENGINEER specifically recommends, and AGENCY specifically approves, the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the work, but delivered and suitably stored at the site or at some other location agreed upon in writing by the AGENCY, the payments shall be conditioned upon submission by the CONTRACTOR, subcontractor, or vendor of bills of sale and such other documents satisfactory to the AGENCY ARCHITECT/ENGINEER and the AGENCY to establish the AGENCY's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the AGENCY's interest, including, without limitation, provision of applicable

insurance and transportation to the site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the AGENCY by sureties of the CONTRACTOR and the subcontractor and, if stored "off-site" stored only in a bonded warehouse or other location suitable to the Agency.

9.3.3 **WARRANTY OF TITLE**

The CONTRACTOR warrants that title to all work covered by an application for payment will pass to the AGENCY no later than the time of payment. The CONTRACTOR further warrants that upon submittal of an application for payment all work for which certificates for payment have been previously issued and payments received from the AGENCY shall, to the best of the CONTRACTOR's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the CONTRACTOR, subcontractors, material and equipment suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the work.

9.4 **REVIEW OF PROGRESS PAYMENT**

9.4.1 **APPROVAL**

The AGENCY will, within seven (7) days after receipt of the CONTRACTOR's application for payment, either approve such payment or notify the CONTRACTOR in writing of the AGENCY ARCHITECT/ENGINEER's or inspector's reasons for withholding approval in whole or in part as provided in paragraph 9.5. 1. AGENCY, or AGENCY ARCHITECT/ENGINEER, has the discretion to require from CONTRACTOR any of the following information with the application for payment: (i) certified payroll covering the period of the previous application for payment; (ii) unconditional waivers and releases from all subcontractors/ suppliers for which payment was requested under the previous application for payment; or (iii) material invoices, evidence of equipment purchases, rentals and other support and details of cost, including conditional releases

9.4.2 **AGENCY ARCHITECT/ENGINEER'S REVIEW**

The review of the CONTRACTOR's application for payment by the AGENCY ARCHITECT/ENGINEER is based on the AGENCY ARCHITECT/ENGINEER's observations at the site and the data comprising the application for payment that the work has progressed to the point indicated and that, to the best of the AGENCY ARCHITECT/ENGINEER's knowledge, information, and belief, the quality of the work is in accordance with the contract documents. The foregoing representations are subject to an evaluation of the work for conformance with the contract documents, to results of subsequent tests and inspections, to minor deviations from the contract documents correctable prior to completion, and to specific qualifications expressed by the AGENCY ARCHITECT/ENGINEER. The issuance of a certificate for payment will further constitute a representation that the CONTRACTOR is entitled to payment in the amount certified. However, the review by the AGENCY ARCHITECT/ENGINEER will not be a representation that the AGENCY ARCHITECT/ENGINEER has:

- A. Made exhaustive or continuous on-site inspections to check the quality or quantity of the work;
- B. Reviewed construction means, methods, techniques, sequences or procedures;
- C. Reviewed copies of requisitions received from subcontractors, material and equipment suppliers and other data requested by the AGENCY to substantiate the CONTRACTOR's right to payment; or
- D. Made an examination to ascertain how or for what purpose the CONTRACTOR has used money previously paid on account of the contract sum.

9.4.3 INVOICE GENERATION, COMPLETION AND RETURN

The billing process outlined below shall supersede any other billing procedures contained in the project specifications.

Based on billing percentages approved by the AGENCY, AGENCY ARCHITECT/ENGINEER and the Inspector of Record (if applicable), individual CONTRACTOR billings will be generated by the CONTRACTOR.

Upon receipt, CONTRACTORS are required to make five (5) copies of the billing, wet sign all copies as indicated, and return the billings to the AGENCY within three (3) days of the date received for further processing.

Important Note: Billings must be returned to the AGENCY office within the specified time frame. It is strongly recommended that CONTRACTORS use one of the following delivery methods:

- Hand delivered
- Express mail (overnight) to street address
- U.P.S. next day service
- Federal Express next day service

9.5 DECISIONS TO WITHHOLD PAYMENT

9.5.1 REASONS TO WITHHOLD PAYMENT

The AGENCY may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the AGENCY if, in the AGENCY's opinion, the representations to the AGENCY required by paragraph 9.4.2 cannot be made. The AGENCY may withhold payment, in whole, or in part, to such extent as may be necessary to protect the AGENCY from loss because of:

- A. Defective work not remedied;
- B. Stop notices filed, unless the CONTRACTOR at its sole expense provides a bond or other security satisfactory to the AGENCY in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the AGENCY, which protects the AGENCY against such claims;
- C. Liquidated damages assessed against the CONTRACTOR;
- D. Reasonable doubt that the work can be completed for the unpaid balance of any contract price or by the completion date;
- E. Damage to the AGENCY, another CONTRACTOR, or subcontractor;
- F. Unsatisfactory prosecution of the work by the CONTRACTOR;
- G. Failure to store and properly secure materials;
- H. Failure of the CONTRACTOR to submit on a timely basis, proper and sufficient documentation required by the contract documents, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders and verified reports;
- I. Failure of the CONTRACTOR to maintain record drawings;
- J. Erroneous estimates by the CONTRACTOR of the value of the work performed, or other false statements in an application for payment;

- K. Unauthorized deviations from the contract documents; or
- L. Failure of the CONTRACTOR to prosecute the work in a timely manner in compliance with established progress schedules and completion dates.
- M. Failure to provide information when requested in accordance with Article 9.4.1.above.

9.5.2 WRITTEN REASONS FOR WITHHOLDING PROVIDED

Upon request of the CONTRACTOR whose payment is deferred, the CONTRACTOR shall be given a written copy of AGENCY's reasons for withholding payment.

9.5.3 PAYMENT AFTER CURE

When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the CONTRACTOR to perform in accordance with the terms and conditions of the contract documents.

9.6 PROGRESS PAYMENTS

9.6.1 PAYMENTS TO CONTRACTOR

Within thirty (30) calendar days after receipt of an undisputed and properly submitted request for payment, CONTRACTOR shall be paid a sum equal to ninety-five percent (95%) of the value of the work performed up to the last day of the previous month, less the aggregate of previous payments. For purposes of this article, a payment request is not considered late if payment is beyond thirty (30) calendar days if the payment request is delayed due to an audit inquiry by the financial officer of the AGENCY or any county or government agency included in the processing of the payment request. The value of the work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the CONTRACTOR, or any bondsman, from damages arising from such work or from enforcing each and every provision of this contract and the AGENCY shall have the right subsequently to correct any error made in any estimate for payment.

Payment of CONTRACTORS. It is understood by the Parties that the AGENCY, subject to the approval of its governing board, may elect to cause and to establish a CONTRACTOR Payment Trust Account ("TCP/Trust Account") at no additional cost to the AGENCY for the purpose of making payments, subject to the AGENCY'S approval, to all CONTRACTORS. The AGENCY will then remit an amount adequate for payment of all Trade CONTRACTOR payments to the ("Trustee") of the TCP/Trust Account, who will then make progress payments to the various CONTRACTORS for the Project, pursuant to the applicable Trade Contract. It is agreed by the Parties that interest, if any, earned on deposits in the TCP/Trust Account shall ensure to the benefit of the AGENCY.

The CONTRACTOR shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the AGENCY concerning the work, or any portion thereof, remains incomplete. At any time after fifty percent (50%) of the work has been completed, if the AGENCY, by action of its governing body, finds that satisfactory progress is being made, the AGENCY may make any of the remaining payments in full for actual work completed or may withhold any amount up to five percent (5%) thereof as the AGENCY may find appropriate based on the CONTRACTOR's progress.

9.6.2 PAYMENTS TO SUBCONTRACTORS

No later than seven (7) calendar days after receipt, pursuant to Public Contract Code 7107, the CONTRACTOR shall pay to each subcontractor, out of the amount paid to the CONTRACTOR on account of such subcontractor's portion of the work, the amount to which said subcontractor is entitled, reflecting percentages actually retained from payments to the CONTRACTOR on account of such subcontractor's portion of the work. The CONTRACTOR shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner.

9.6.3 PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION

The AGENCY will, on request, furnish to a subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the CONTRACTOR, and action taken thereon by the AGENCY, on account of portions of the work done by such subcontractor.

9.6.4 NO OBLIGATION FOR SUBCONTRACTOR PAYMENT

The AGENCY shall have no obligation to pay, or to see to the payment of, money to a subcontractor except as may otherwise be required by law.

9.6.5 PAYMENT TO SUPPLIERS

Payment to material or equipment suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE

An approved request for payment, a progress payment or partial or entire use or occupancy of the project by the AGENCY shall not constitute acceptance of work not in accordance with the contract documents.

9.6.7 JOINT CHECKS

AGENCY shall have the right, if necessary for the protection of the AGENCY, to issue joint checks made payable to the CONTRACTOR and subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the AGENCY and a subcontractor of any tier, any obligation from the AGENCY to such subcontractor, or rights in such subcontractor against the AGENCY.

9.7 COMPLETION OF THE WORK

9.7.1 CLOSEOUT PROCEDURES

When the CONTRACTOR considers that the work, or a portion thereof which the AGENCY agrees to accept separately, is complete, the AGENCY ARCHITECT/ENGINEER shall prepare and submit to the AGENCY a comprehensive list of minor items to be completed or corrected (punch list). The CONTRACTOR and/or its subcontractors shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CONTRACTOR to complete all work in accordance with the contract documents. Upon receipt of the AGENCY ARCHITECT/ENGINEER s list, the AGENCY will make an inspection to determine whether the work or designated portion thereof, is complete.

If the AGENCY's inspection discloses any item, whether or not included on the AGENCY ARCHITECT/ENGINEER s list, is not completed in accordance with the requirements of the contract documents, the CONTRACTOR shall, before AGENCY's issuance of the notice of completion, complete or correct such item. The CONTRACTOR shall then submit a request for an

additional inspection by the AGENCY to determine completion. When the work, or designated portion thereof, is complete, the AGENCY will prepare a notice of completion which shall establish the date of completion, establish the responsibilities of the AGENCY and CONTRACTOR for security, maintenance, heat, utilities, damage to the work and insurance and fix the time within which the CONTRACTOR shall finish all items on the list accompanying the notice of completion. Warranties required by the contract documents shall commence on the date of completion of the work or designated portion thereof, unless otherwise provided in the notice of completion. The notice of completion shall be submitted to the AGENCY and the CONTRACTOR for their written acceptance of responsibilities assigned to them in such notice.

9.7.2 PAYMENT UPON COMPLETION

Upon completion of the work, or designated portion thereof, and upon application by the CONTRACTOR, the AGENCY shall make payment reflecting adjustment in retainage, if any, for such work, or portion thereof, as provided in the contract documents.

9.7.3 COSTS OF MULTIPLE INSPECTIONS

More than two (2) requests of the AGENCY to make inspections required under paragraph 9.7. 1 shall be considered an additional service of AGENCY ARCHITECT/ENGINEER and all subsequent costs will be invoiced to CONTRACTOR and withheld from remaining payments.

9.8 PARTIAL OCCUPANCY OR USE

9.8.1 AGENCY'S RIGHTS

The AGENCY may occupy or use any completed or partially completed portion of the work at any stage. The AGENCY and the CONTRACTOR shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the work, insurance, the period for correction of the work, and the commencement of warranties required by the contract documents.

9.8.2 INSPECTION PRIOR TO OCCUPANCY OR USE

Immediately prior to such partial occupancy or use, the AGENCY, the CONTRACTOR, and the AGENCY ARCHITECT/ENGINEER shall jointly inspect the area to be occupied or portion of the work to be used in order to determine and record the condition of the work.

9.8.3 NO WAIVER

Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the work shall not constitute acceptance of the work not complying with the requirements of the contract documents.

9.9 COMPLETION AND FINAL PAYMENT

9.9.1 FINAL INSPECTION

CONTRACTOR shall immediately upon receipt of the punch list, initiate work on all items therein related to CONTRACTOR's work and diligently complete the same. Upon receipt of CONTRACTOR's written notice that all of the punch list items have been fully completed and the work is ready for final inspection and acceptance, AGENCY ARCHITECT/ENGINEER shall inspect the work and shall submit to CONTRACTOR, and AGENCY a final inspection report noting the work, if any, required in order to complete the work in accordance with the contract documents. Absent unusual circumstances, this report shall consist of the punch list items not yet satisfactorily completed.

Upon completion of the work contained in the final inspection report, the CONTRACTOR shall so notify the AGENCY, who shall again inspect such work. If the AGENCY finds the work contained in such final inspection report acceptable under the contract documents and, therefore, the work fully completed, it shall so notify CONTRACTOR, who shall then submit to the AGENCY ARCHITECT/ENGINEER its final application for payment.

Upon receipt and approval of such final application for payment, the AGENCY ARCHITECT/ENGINEER shall issue a final certificate of payment stating that to the best of its knowledge, information, and belief and on the basis of its observations, inspections and all other data accumulated or received by the AGENCY ARCHITECT/ENGINEER in connection with the work, such Work has been completed in accordance with the contract documents. The AGENCY shall thereupon inspect such work and either accept the work as complete or notify the AGENCY ARCHITECT/ENGINEER and the CONTRACTOR in writing of reasons why the work is not complete. Upon acceptance of the work of the CONTRACTOR as fully complete (which, absent unusual circumstances, will occur when the punch list items have been satisfactorily completed), the AGENCY shall record a notice of completion with the county recorder, and the CONTRACTOR shall, upon receipt of payment from AGENCY, pay the amounts due subcontractors within seven (7) days.

9.9.2 RETAINAGE

Pursuant to Public Contract Code 7201 the retention amount withheld is five percent (5%) of the total value of the contract or work performed. The retainage, less any amounts disputed by the AGENCY or which the AGENCY has the right to withhold, shall be paid after approval of the AGENCY of the AGENCY ARCHITECT/ENGINEER's certificate of payment referred to in paragraph 9.9.1, after the satisfaction of the conditions set forth in paragraph 9.9, and no later than sixty (60) calendar days after the acceptance of the work and recording of the notice of completion by AGENCY. No interest shall be paid on any retainage, or on any amounts withheld due to a failure of the CONTRACTOR to perform, in accordance with the terms and conditions of the contract Documents, except as provided to the contrary in any escrow agreement between the AGENCY and the CONTRACTOR pursuant to Public Contract Code § 22300.

9.9.3 PROCEDURES FOR APPLICATION FOR FINAL PAYMENT

The application for final payment shall be accompanied by the same details as set forth in paragraph 9.3, and in addition, the following conditions must be fulfilled:

- A. A full and final waiver or release of all stop notices in connection with the work shall be submitted by CONTRACTOR, including a release of stop notice in recordable form, together with (to the extent permitted by law) a copy of the full and final waiver of all stop notices or a stop notice release bond from a surety acceptable to the AGENCY as defined by the contract documents, including a release of stop notice in recordable form, in connection with the work obtained by CONTRACTOR from each person to receive a payment thereunder, which waivers of stop notice shall be in a form as approved by AGENCY.
- B. The CONTRACTOR shall have made, or caused to have been made, all corrections to the work which are required to remedy any defects therein, to obtain compliance with the contract documents or any requirements of applicable codes and ordinances or to fulfill any of the orders or directions of AGENCY required under the contract.
- C. Each subcontractor shall have delivered to the CONTRACTOR all written guarantees, warranties, applications and bonds required by the Contract documents for its portion of the work.
- D. The CONTRACTOR shall deliver to the AGENCY reproducible final record drawings and annotated specifications showing the CONTRACTORS work as

built, with the CONTRACTOR's certification of the accuracy of the record drawings and annotated specifications, all guarantees, and operation and maintenance instructions for equipment and apparatus.

- E. AGENCY ARCHITECT/ENGINEER shall have issued a final certificate of payment.
- F. The CONTRACTOR shall have delivered to the AGENCY all manuals and materials required by the contract documents.
- G. The CONTRACTOR shall have removed or caused to be removed, all waste materials and rubbish from and about the site, as well as all tools, construction equipment, machinery, surplus material, scaffolding equipment and any other similar materials of the CONTRACTOR or any subcontractor, shall have cleaned or caused to be cleaned, all glass surfaces and shall have left the work broom-clean, except as otherwise provided in the contract documents.

9.10 SUBSTITUTION OF SECURITIES

In accordance with §22300 of the Public Contract Code, the AGENCY will permit the substitution of securities for any monies withheld by the AGENCY to ensure performance under the contract. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the AGENCY, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to the CONTRACTOR. Upon satisfactory completion of the contract, the securities shall be returned to the CONTRACTOR.

Securities eligible for investment under this section shall include those listed in Government Code §16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit or any other security mutually agreed to by the CONTRACTOR and the AGENCY.

The CONTRACTOR shall be the beneficial Agency of any securities substituted for monies withheld and shall receive any interest thereon.

The escrow agreement used for the purposes of this section shall be the form set forth in Public Contract Code § 22300.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 CONTRACTOR RESPONSIBILITY

The CONTRACTOR shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the contract. Each CONTRACTOR shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various subcontractors employed to ensure that all employees understand and comply with the programs. Refer also to specification Section 01 52 00 CONTRACTOR's safety for additional safety requirements. In the event that sections differ, the most stringent safety practice will be enforced.

10.1.2 CONTRACTOR NOTICES

The CONTRACTOR shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.

10.1.3 SAFETY BARRIERS AND SAFEGUARDS

The CONTRACTOR shall erect and maintain, as required by existing conditions and performance of the contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying AGENCY and users of adjacent sites and utilities.

10.1.4 USE OR STORAGE OF HAZARDOUS MATERIALS

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the work, the CONTRACTOR shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The CONTRACTOR shall notify the AGENCY and AGENCY ARCHITECT/ENGINEER any time that explosives or hazardous materials are expected to be stored on site. Location of storage shall be coordinated with the AGENCY, AGENCY ARCHITECT/ENGINEER and local fire authorities.

10.2 PROTECTION OF WORK AND PROPERTY

10.2.1 PROTECTION FROM ELEMENTS

The CONTRACTOR and subcontractors shall continuously protect the work, the AGENCY's property, and the property of others, from damage, injury or loss arising in connection with operations under the contract documents. The CONTRACTOR and subcontractors shall make good any such damage, injury or loss, except such as may be solely due to, or caused by, agents or employees of the AGENCY.

10.2.2 PROTECTION FOR ELEMENTS

The CONTRACTOR will remove all mud, water or other elements as may be required for the proper protection and prosecution of its work. The CONTRACTOR shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the work, materials, equipment, apparatus and fixtures free from injury or damage.

10.2.3 SHORING AND STRUCTURAL LOADING

The CONTRACTOR shall not impose structural loading upon any part of the work under construction or upon existing construction on or adjacent to the site in excess of safe limits or loading such as to result in damage to the structural, mechanical, electrical or other components of the work. The design of all temporary construction equipment and appliances used in construction of the work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring and temporary bracing of structural steel, is the sole responsibility of the appropriate CONTRACTOR. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations and orders of all authorities having jurisdiction. The CONTRACTOR shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the work. The installation of such bracing or shoring shall not damage or cause damage to the work in place or the work installed by others. Any damage which does occur shall be promptly repaired by the CONTRACTOR at no cost to the AGENCY.

10.2.4 CONFORMANCE WITHIN ESTABLISHED LIMITS

The CONTRACTOR and subcontractors shall confine their construction equipment, the storage of materials and the operations of workers to the limits indicated by laws, ordinances, permits and the limits established by the AGENCY ARCHITECT/ENGINEER and shall not unreasonably encumber the premises with construction equipment or materials.

10.2.5 SUBCONTRACTOR ENFORCEMENT OF RULES

Subcontractors shall enforce the AGENCY and the CONTRACTOR's instructions, laws and regulations regarding signs, advertisements, fires, smoking, the presence of liquor and the presence of firearms by any person at the site.

10.2.6 SITE ACCESS

The CONTRACTOR and the subcontractors shall use only those ingress and egress routes designated by the AGENCY ARCHITECT/ENGINEER, observe the boundaries of the site designated by the AGENCY, park only in those areas designated, which areas may be on or off the site, and comply with any parking control program established by the AGENCY such as furnishing license plate information and placing identifying stickers on vehicles.

10.2.7 PROTECTION OF MATERIALS

The CONTRACTOR and the subcontractors shall receive, count, inspect for damage, record, store and protect construction materials for the work and promptly send to the CONTRACTOR evidence of receipt of such materials, indicating thereon any shortage, change or damage (failure to so note shall constitute acceptance by the subcontractor of financial responsibility for any shortage).

10.3 EMERGENCIES

10.3.1 EMERGENCY ACTION

In an emergency affecting the safety of persons or property, the CONTRACTOR shall take any action necessary, at the CONTRACTOR'S discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the CONTRACTOR on account of an emergency shall be determined as provided in Article 7.

10.3.2 ACCIDENT REPORTS

The CONTRACTOR shall promptly report in writing to the AGENCY ARCHITECT/ENGINEER all accidents arising out of or in connection with the work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the AGENCY ARCHITECT/ENGINEER.

10.4 HAZARDOUS MATERIALS

10.4.1 DISCOVERY OF HAZARDOUS MATERIALS

In the event the CONTRACTOR encounters or suspects the presence on the site material reasonably believed to be asbestos, polychlorinated biphenyl ("pcb"), or any other material defined as being hazardous by § 25249.5 of the California Health and Safety Code, which has not been rendered harmless, the CONTRACTOR shall immediately stop work in the area affected and report the condition to the AGENCY and the AGENCY ARCHITECT/ENGINEER in writing, whether or not such material was generated by the CONTRACTOR or the AGENCY. The work in the affected area shall not thereafter be resumed, except by written agreement of the AGENCY and the CONTRACTOR, if in fact the material is asbestos, polychlorinated biphenyl (pcb) or other hazardous material, and has not been rendered harmless. The work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (pcb) or other hazardous

material, or when it has been rendered harmless by written agreement of the AGENCY and the CONTRACTOR.

10.4.2 HAZARDOUS MATERIAL WORK LIMITATIONS

In the event that the presence of hazardous materials is suspected or discovered on the site, the AGENCY shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The CONTRACTOR shall not be required pursuant to Article 7 to perform without consent any work in the affected area of the site relating to asbestos, polychlorinated biphenyl (pcb), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by AGENCY, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

10.4.3 INDEMNIFICATION BY FOR HAZARDOUS MATERIAL NOT CAUSED BY CONTRACTOR

In the event the presence of hazardous materials on the project site is not caused by the CONTRACTOR, AGENCY shall pay for all costs of testing and remediation, if any. In addition, AGENCY shall defend, indemnify and hold harmless the CONTRACTOR and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, or arising out of, or relating to the performance of the work in the area affected by the hazardous material.

10.4.4 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL CAUSED BY CONTRACTOR

In the event the hazardous materials on the Project site is caused by the CONTRACTOR, the CONTRACTOR shall pay for all costs of testing and remediation, if any, and shall compensate the AGENCY for any additional costs incurred as a result of CONTRACTOR's generation of hazardous material on the Project site. In addition, the CONTRACTOR shall defend, indemnify and hold harmless the AGENCY and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of or relating to, the presence of hazardous material on the Project site.

10.4.5 TERMS OF HAZARDOUS MATERIAL PROVISION

The terms of this hazardous material provision shall survive the completion of the work and/or any termination of this contract.

ARTICLE 11

INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 INSURANCE REQUIREMENTS

Before the commencement of the work, the CONTRACTOR shall purchase from and maintain, in a company or companies lawfully authorized by the State of California, Department of Insurance, to do business in California either i) as admitted carriers or ii) as approved for the List of Eligible Surplus Line Insurers ("LESLI"), insurance as set forth under this Article 11 and as amended by the General Project Requirements. For Liability and Workers' Compensation insurance, the insurance provider must also have an A.M. Best Rating of A VIII. The insurance shall protect the CONTRACTOR and AGENCY from claims set forth below, which may arise out of or result from the CONTRACTOR's operations under the contract and for which the CONTRACTOR may be legally liable, whether such operations are by the CONTRACTOR, by a subcontractor, by anyone

directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- A. Claims for damages because of bodily injury, sickness, disease, or death of any person other than the CONTRACTOR's employees;
- B. Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the CONTRACTOR or by another person;
- C. Claims for damages because of injury or destruction of tangible property, including loss of use resulting there from, arising from operations under the contract documents;
- D. Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the work;
- E. Claims involving blanket contractual liability applicable to the CONTRACTOR's obligations under the contract documents, including liability assumed by and the indemnity and defense obligations of the CONTRACTOR and the subcontractors; and claims involving completed operations, independent Contractors' coverage, and broad form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, or excavating.

F. Insurance Limits

1. CONTRACTOR's Liability Insurance

a. Worker's Compensation

State: California	Statutory
Voluntary Compensation (by any exempt entities):	Same as State Workers Compensation
Employer's Liability	Statutory
Benefits required by union labor contracts:	\$1,000,000.00 Each accident As applicable

- b. General Liability Insurance covering all operations performed by or on behalf of the CONTRACTOR providing coverage for bodily injury and property damage with limits of not less than the amounts set forth below per occurrence (can be combined single limit (CSL). The policy coverage shall include (i) premises operations and mobile equipment, (ii) products and completed operations, (iii) broad form property damage (including completed operations), (iv) explosion, collapse and underground hazards, (v) personal injury, and (vi) contractual liability.

1. Bodily Injury:

\$ 1,000,000.00	Each Occurrence
\$ 2,000,000.00	Aggregate

Or such great amounts as specified in the Agreement

2. Property Damage:

\$ 1,000,000.00	Each Occurrence
\$ 2,000,000.00	Aggregate

Or such great amounts as specified in the Agreement

3. Products and Completed Operations Insurance shall be maintained for a minimum period of one (1) year after final payment and the

CONTRACTOR shall continue to provide evidence of such coverage to the AGENCY on an annual basis during the aforementioned period.

4. Property Damage Liability Insurance shall include coverage for the following hazards:

X X (Explosion)
X C (Collapse)
X U (Underground)

5. Contractual Liability (Hold Harmless Coverage): Include in CSL Form

- a. Bodily Injury:

\$ 1,000,000.00 Each Occurrence
\$ 2,000,000.00 Aggregate

Or such great amounts as specified in the Agreement

- b. Property Damage:

\$ 1,000,000.00 Each Occurrence
\$ 2,000,000.00 Aggregate

Or such great amounts as specified in the Agreement

6. Personal Injury (with Employment Exclusion deleted, if applicable):

\$1,000,000.00 per occurrence
Aggregate subject to CSL Aggregate

7. If the General Liability policy includes a General Aggregate, such General Aggregate shall be not less than \$2,000,000.00. Policy shall be endorsed to have General Aggregate apply to this Project only: No

If CONTRACTOR's Contract (Total Bid Price) is expected to be more than \$500,000.00, the following excess liability coverage is required:

- a. Umbrella Excess Liability:

\$ 2,000,000.00 (or such greater amount as provided in the Agreement) over primary insurance

\$ 10,000.00 Retention

- b. Automobile Liability (owned, non-owned, hired):

1. Bodily Injury: \$1,000,000.00 CSL

\$ 1,000,000.00 Each Person
\$ 1,000,000.00 Each Accident

2. Property Damage:

\$ 1,000,000.00 Each Occurrence

11.1.2 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

11.1.2.1 **CONTRACTOR's Responsibility.** CONTRACTOR shall take out and maintain during the life of this Agreement such public liability and property damage insurance as shall protect CONTRACTOR and AGENCY from all claims for personal injury, including accidental death, to any person (including, as to AGENCY, injury or death to CONTRACTOR'S or subcontractor's employees), as well as from all claims for property damage arising from operations under this Agreement, in amounts as set forth in the General Project Requirements and stated in the Agreement.

11.1.2.2 **Proof of Insurance.** CONTRACTOR shall submit proof of insurance and shall provide certificates and endorsements for AGENCY approval. Such endorsements shall be submitted concurrently with the Project documents.

11.1.3 SUBCONTRACTOR INSURANCE REQUIREMENTS

The CONTRACTOR shall either include subcontractors of all tiers as insureds under its policies or the CONTRACTOR shall furnish separate certificates and endorsements for each subcontractor of all tiers to the AGENCY for review and approval. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of paragraphs 11.1.1 or 11.1.2.

11.1.4 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS

The CONTRACTOR shall name, on any policy of insurance required under paragraphs 11.1.1 and 11.1.2, the AGENCY, , as additional insured. Subcontractors of all tiers shall name the CONTRACTOR, the AGENCY as additional insured. The additional insured endorsement included on all such insurance policies shall state that the coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

11.2 WORKERS' COMPENSATION INSURANCE

During the term of this contract, the CONTRACTOR shall provide workers' compensation insurance for all of the CONTRACTORS employees engaged in work under this contract on or at the site of the Project and, in case any of the CONTRACTOR's work is sublet, the CONTRACTOR shall require subcontractors of all tiers to provide workers' compensation insurance for all the subcontractor's employees engaged in work under the subcontract. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the CONTRACTOR's insurance. In case any class of employees engaged in work under this contract on or at the site of the Project is not protected under the workers compensation laws, the CONTRACTOR shall provide or cause a subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The CONTRACTOR shall file with the AGENCY certificates of insurance as required under paragraph 11.5 and in compliance with Labor Code § 3700.

11.3 BUILDER'S RISK "ALL RISK" INSURANCE

11.3.1 COURSE OF CONSTRUCTION INSURANCE REQUIREMENTS

AGENCY is to provide coverage in the amount of the full value of the project for losses due to fire, vandalism and theft with a maximum deductible of five thousand dollars (\$5,000) per loss. Each CONTRACTOR is responsible for a share of the deductible proportionate to its portion of the total loss. Any portions of CONTRACTOR'S work and materials stored offsite are not to be covered under such insurance. In addition, CONTRACTOR is required to provide evidence that stored

materials are covered under a separate policy. Property and equipment owned by CONTRACTOR or others which are not to be installed in the project are not afforded coverage by the AGENCY's insurance. The CONTRACTOR shall be responsible for the securing and maintaining of fire insurance and other insurance on any tool, equipment, or supplies which are expected to remain its property. Coverage under the AGENCY's policy is not construed to extend to earthquake, flood, pollution, and other commonly excluded perils.

11.3.2 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE

Partial occupancy or use in accordance with Article 9 shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The AGENCY and the CONTRACTOR shall take reasonable steps to obtain consent of the insurance company and shall not, without mutual consent, take any action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

11.4 OTHER INSURANCE

The CONTRACTOR shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, regulations, or other conditions of the Contract between the AGENCY and the CONTRACTOR.

11.5 PROOF OF CARRIAGE OF INSURANCE

The CONTRACTOR shall not commence work nor shall it allow any subcontractor to commence work under this contract until all required insurance, certificates, and additional insured endorsements have been delivered in duplicate to the AGENCY for approval subject to the following requirements:

- A. Certificates of insurance shall state in particular those insured, the type of insurance, limits of liability, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices, and shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the AGENCY.
- B. Certificates of insurance shall clearly state that the AGENCY is named as additional insured under the General Liability policy described in the certificate, using an additional insured endorsement certificate or another form with similar language, and that such insurance policy shall be primary and non-contributory to any insurance or self-insurance maintained by the AGENCY. The CONTRACTOR and its subcontractors (whereas separate policies are provided) shall submit the appropriate certificates of insurance along with the additional insured endorsement for the AGENCY'S approval.
- C. CONTRACTOR and its subcontractors of all tiers (whereas separate policies are provided) shall also include an endorsement to the Commercial General Liability policy which states that the General Liability Aggregate Limit is specifically designated to this construction project.
- D. The CONTRACTOR and its subcontractors of all tiers (whereas separate policies are provided) shall provide a certified copy of any insurance policy required under this section upon written request of the AGENCY.

11.6 COMPLIANCE

In the event of the failure of any CONTRACTOR to furnish and maintain any insurance required by this Article 11, the CONTRACTOR shall be in default under the contract and AGENCY has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the AGENCY will be promptly reimbursed by the CONTRACTOR or AGENCY's payments to the CONTRACTOR will be reduced to pay for AGENCY's purchased insurance. Compliance by CONTRACTOR with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the CONTRACTOR from liability assumed under any provision of the contract documents, including, without limitation, the obligation to defend and indemnify and hold harmless the AGENCY and the AGENCY ARCHITECT/ENGINEER.

11.7 PERFORMANCE AND PAYMENT BONDS

11.7.1 BOND REQUIREMENTS

Unless otherwise specified in the General Project Requirements, prior to commencing any portion of the work, the CONTRACTOR shall apply for and furnish separate payment and performance bonds for its portion of the work which shall cover 100% faithful performance of and payment of all obligations arising under the contract documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the work.

To the extent, if any, that the contract price is increased in accordance with the contract documents, the amount of the bonds provided by the CONTRACTOR shall be increased automatically and accordingly and the CONTRACTOR shall promptly deliver satisfactory evidence of such increase to the AGENCY. To the extent available, the bonds shall further provide that no change or alteration of the contract documents (including, without limitation, an increase in the contract price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the CONTRACTOR will release the surety. If the CONTRACTOR fails to furnish the required bond, the AGENCY may terminate the contract for cause.

11.7.2 SURETY QUALIFICATION

Only bonds executed by admitted surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U. S. Treasury with a bonding capacity in excess of the Project cost.

11.8 WAIVER OF SUBROGATION RIGHTS.

The CONTRACTOR shall require the carriers of required coverages to waive all rights of subrogation against the AGENCY and its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the CONTRACTOR and CONTRACTOR'S employees or agents from waiving the right of subrogation prior to a loss or claim. The CONTRACTOR hereby waives all rights of subrogation against the AGENCY.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS

If a portion of the work is covered contrary to the inspector's request, the AGENCY ARCHITECT/ENGINEER's request, or to requirements specifically expressed in the contract

documents, it must, if required in writing by the inspector or the AGENCY ARCHITECT/ENGINEER, be uncovered for the inspector's or the AGENCY ARCHITECT/ENGINEER's observation and be replaced at the CONTRACTOR's expense without change in the contract sum or time.

12.1.2 COSTS FOR INSPECTIONS NOT REQUIRED

If a portion of the work has been covered which the inspector or the AGENCY ARCHITECT/ENGINEER has not specifically requested to observe prior to its being covered, the inspector or the AGENCY ARCHITECT/ENGINEER may request to see such work, and it shall be uncovered by the CONTRACTOR. If such work is in accordance with the contract documents, costs of uncovering and replacement shall, by appropriate change order, be charged to the AGENCY. If such work is not in accordance with the contract documents, the CONTRACTOR shall pay such costs unless the condition was caused by the AGENCY or a separate CONTRACTOR, in which event the AGENCY shall be responsible for payment of such costs to the CONTRACTOR.

12.2 CORRECTION OF WORK

12.2.1 CORRECTION OF REJECTED WORK

The CONTRACTOR shall promptly correct the work rejected by the inspector or the AGENCY upon recommendation of the AGENCY ARCHITECT/ENGINEER or failing to conform to the requirements of the contract documents, whether observed before or after completion and whether or not fabricated, installed or completed. The CONTRACTOR shall bear the costs of correcting the rejected work, including additional testing, inspections and compensation for the inspector's or the AGENCY ARCHITECT/ENGINEER's services and expenses made necessary thereby.

12.2.2 ONE YEAR WARRANTY CORRECTIONS

If, within one (1) year after the date of AGENCY's acceptance of the work as complete under paragraph 9.9.1, or a designated portion thereof, or by terms of an applicable special warranty required by the Contract documents, any of the work is found to be not in accordance with the requirements of the contract documents, the CONTRACTOR shall correct it promptly after receipt of written notice from the AGENCY to do so unless the AGENCY has previously given the CONTRACTOR a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of the work first performed after completion by the period of time between completion and the actual performance of the work. This obligation under this Section 12.2.2 shall survive acceptance of the work under the contract and termination of the contract. The AGENCY shall give such notice promptly after discovery of the condition.

12.2.3 REMOVAL OF NONCONFORMING WORK

The CONTRACTOR shall remove from the site portions of the work, which are not in accordance with the requirements of the contract documents and are not corrected by the CONTRACTOR or accepted by the AGENCY.

12.2.4 AGENCY'S RIGHTS IF CONTRACTOR FAILS TO CORRECT

If the CONTRACTOR fails to correct nonconforming work within a reasonable time, the AGENCY may correct it in accordance with paragraph 2.4.1. In addition, if the CONTRACTOR does not proceed with correction of such nonconforming work within the time fixed by written notice from the inspector, and the AGENCY may remove it and store the salvageable materials or equipment at the CONTRACTOR's expense. If the CONTRACTOR does not pay costs of such removal and storage within ten (10) calendar days after written notice, the AGENCY may, upon ten (10) additional calendar days written notice, sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the CONTRACTOR, including compensation for the AGENCY ARCHITECT/ENGINEER's services and expenses made necessary thereby. If such proceeds of sale do not cover costs, which the CONTRACTOR should have borne, the CONTRACTOR shall

be invoiced for the deficiency. If payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the AGENCY.

In addition to work not in conformance, if the CONTRACTOR fails to perform the contractual scope of the CONTRACTOR's work in conformance with the project schedule, and said failure to perform is detrimental to the project completion, the AGENCY reserves the right to complete the work in question upon written 48-hour notice of AGENCY's intent to complete outstanding work. All costs incurred by such action will be deducted from the CONTRACTOR's next progress payment. Should the remaining progress payment prove to be inadequate to cover the AGENCY's costs incurred for completing the work, the AGENCY will look to the CONTRACTOR's surety for all costs incurred. The AGENCY's election to complete a portion of the CONTRACTOR's work which is covering a project delay or damage to another CONTRACTOR shall not relieve the CONTRACTOR of the balance of the CONTRACTOR's contractual obligations, and shall not be construed as termination of the contract unless specifically stated per the requirements of 14.2.2.

12.2.5 COST OF CORRECTING THE WORK

The CONTRACTOR shall bear the cost of correcting destroyed or damaged construction of the AGENCY or separate CONTRACTORS, whether completed or partially completed, caused by the CONTRACTOR's correction or removal of the nonconforming work.

12.2.6 NO TIME LIMITATION

Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations, which the CONTRACTOR might have under the contract documents. Establishment of the time period of one (1) year as described in paragraph 12.2.2 relates only to the specific obligation of the CONTRACTOR to correct the work and has, for example, no relationship to the time within which the obligation to comply with the contract documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the CONTRACTOR's liability with respect to the CONTRACTOR's obligations other than specifically to correct the work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

If it is found at any time before or after completion of the work that the CONTRACTOR has varied from the contract documents in materials, quality, form, finish or in the amount or value of the materials or labor used, the AGENCY ARCHITECT/ENGINEER shall make a recommendation: that all such improper work should be removed, remade and replaced; that all work disturbed by these changes be made good at the CONTRACTOR's expense; and that the AGENCY deduct from any amount due CONTRACTOR that sum of money equivalent to the difference in value between the work performed and that called for by the drawings and specifications. The AGENCY ARCHITECT/ENGINEER shall determine such difference in value. The AGENCY, at its option, may pursue either course unless correction is required by law.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

The contract shall be governed by the laws of the State of California without regard to choice of laws with venue for any disputes in San Bernardino County, California.

13.2 NO ASSIGNMENT

The CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this contract or of its rights, title or interest in or to the same or any part thereof. If the CONTRACTOR shall assign, transfer, convey, sublet or otherwise dispose of the contract or its right, title or interest

therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever; and the contract may, at the option of the AGENCY, be terminated, revoked and annulled, and the AGENCY shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to the CONTRACTOR and to its purported assignee or transferee.

13.3 **WRITTEN NOTICE**

In the absence of specific notice requirements in the contract documents, written notice shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 **RIGHTS AND REMEDIES**

13.4.1 **DUTIES AND OBLIGATIONS CUMULATIVE**

Duties and obligations imposed by the contract documents and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 **NO WAIVER**

The lack of action or failure to act by the inspector, the AGENCY, the AGENCY ARCHITECT/ENGINEER or the CONTRACTOR to insist upon strict performance of any option herein conferred shall not constitute a waiver of a right or duty afforded them under the contract documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

13.5 **TESTS AND INSPECTIONS**

13.5.1 **COMPLIANCE**

Tests, inspections and approvals of portions of the work required by the contract documents will comply with Title 24, Section 4335, and with all other laws, ordinances, rules, regulations or orders of public authorities having jurisdiction.

13.5.2 **INDEPENDENT TESTING LABORATORY**

The AGENCY will select and pay an independent testing laboratory to conduct all tests and inspections. Selection of the materials required to be tested shall be made by the laboratory or the AGENCY's representative and not by the CONTRACTOR. Any costs or expenses of inspection or testing occurring outside of a one hundred (100) mile radius from the Project site or not located in a contiguous county to the site, whichever distance is greater, shall be paid for by the AGENCY, and deducted from the next progress payment.

13.5.3 **ADVANCE NOTICE TO INSPECTOR**

The CONTRACTOR shall notify the inspector of its readiness for observation or inspection at least two (2) working days in advance so that the inspector may arrange for same. The CONTRACTOR shall notify the inspector at least two (2) working days in advance of the manufacture of material to be supplied under the contract documents, which must, by terms of the contract documents, be tested in order that the inspector may arrange for the testing of the material at the source of supply.

13.5.4 TESTING OFF-SITE

Any material shipped by the CONTRACTOR from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said inspector that such testing and inspection will not be required, shall not be incorporated in the work.

13.5.5 ADDITIONAL TESTING OR INSPECTION

If the inspector, the AGENCY ARCHITECT/ENGINEER, the AGENCY, or public authority having jurisdiction determines that portions of the work require additional testing, inspection, or approval not included under paragraph 13.5.1, the inspector will, upon written authorization from the AGENCY, make arrangements for such additional testing, inspection, or approval. The AGENCY shall bear such costs except as provided in paragraph 13.5.6.

13.5.6 COSTS OF RETESTING

If such procedures for testing, inspection or approval under paragraphs 13.5.1 and 13.5.2 reveal failure of the portions of the work to comply with requirements established by the contract documents, the CONTRACTOR shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the AGENCY ARCHITECT/ENGINEER's services and expenses. Any such costs shall be paid by the AGENCY, invoiced to the CONTRACTOR and deducted from the next progress payment.

13.5.7 COSTS FOR PREMATURE TEST

In the event the CONTRACTOR requests any test or inspection for the project and is not completely ready for the inspection, the CONTRACTOR shall be invoiced by the AGENCY for all costs and expenses resulting from that testing or inspection, including, but not limited to, the AGENCY ARCHITECT/ENGINEER's fees and expenses and the amount of the invoice of shall be deducted from the next progress payment.

13.5.8 TESTS OR INSPECTIONS NOT TO DELAY WORK

Tests or inspections conducted pursuant to the contract documents shall be made promptly to avoid unreasonable delay in the work.

13.6 INTEREST

Payments due and unpaid under the Contract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the project is located.

13.7 TRENCH EXCAVATION

13.7.1 TRENCHES GREATER THAN FIVE (5) FEET DEEP

Pursuant to Labor Code § 6705, if this contract involves the excavation of any trench or trenches five feet or more in depth, the CONTRACTOR shall, in advance of excavation, submit to the AGENCY or to whomever AGENCY designates a detailed plan showing the design or shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the CONTRACTOR, and all costs therefore shall be included in the price named in the contract for completion of the work as set forth in the Project documents. In no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by CAL-OSHA and a CAL-OSHA

permit for such plan delivered to the AGENCY. (Labor Code § 6500; Health and Safety Code Section 17922.5).

13.7.2 TRENCHES GREATER THAN FOUR (4) FEET DEEP

If this contract involves the digging of trenches or excavations that extend deeper than four (4) feet below the surface, the following shall apply:

- (1) The CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the AGENCY, in writing, of any:
 - (i) Material that the CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.
 - (ii) Subsurface or latent physical conditions at the site different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
 - (iii) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

13.7.3 CONTRACTOR'S RESPONSIBILITY FOR SHORING, BRACING AND SLOPING

Nothing in this Article shall relieve the CONTRACTOR of the full responsibility of providing shoring, bracing, sloping or other provisions adequate for worker protection.

- (1) The AGENCY shall promptly investigate the conditions, and if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Project documents.
- (2) In the event a dispute arises between the Agency and the CONTRACTOR, whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the CONTRACTOR's cost of or time required for, performance of any part of the work, the CONTRACTOR shall not be excused from any scheduled completion date provided for by the Project documents, but shall proceed with all the work to be performed under the Project documents. The CONTRACTOR shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties. (Public Contract Code section 7104.)

13.7.4 NO TORT LIABILITY OF

Pursuant to Labor Code § 6705, nothing in this Article shall impose tort liability upon the AGENCY or any of its employees.

13.7.5 NO EXCAVATION WITHOUT PERMITS

The CONTRACTOR shall not commence any excavation work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the site prior to the commencement of any excavation.

13.8 WAGE RATES, TRAVEL AND SUBSISTENCE

13.8.1 WAGE RATES

Pursuant to the provisions of Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the AGENCY has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file with the Clerk of the AGENCY's governing board, and copies will be made available to any interested party on request. The CONTRACTOR shall post a copy of such wage rates at the site.

Any worker employed to perform work on the Project and such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

13.8.2 HOLIDAY AND OVERTIME PAY

Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1-1/2) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the Contract Documents or authorized by law.

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

13.8.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS

The CONTRACTOR shall pay and shall cause to be paid each worker engaged in work on the Project not less than the general prevailing rate of *per diem* wages, pursuant to Labor Code § 1773.2, determined by the Director, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR or any subcontractor and such workers.

13.8.4 TRAVEL AND SUBSISTENCE

The CONTRACTOR shall pay and shall cause to be paid to each worker needed to execute the work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable Collective Bargaining Agreements filed with the Department of Industrial Relations in accordance with Labor Code § 1773.8.

13.8.5 CHANGE IN PREVAILING WAGE DURING BID OR CONSTRUCTION

If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of *per diem* wages in the locality in which this public work is to be performed, such change shall not alter the wage rates in the Notice Calling for Bids or the contract subsequently awarded. However, should a scheduled change occur during the period the bid to remain open in accordance with what is known as a double asterisk determination, the new wage rates shall supersede those rates contained in the Notice Calling for Bids and shall be incorporated in the contract subsequently awarded.

13.8.6 FORFEITURE AND PAYMENTS

Pursuant to Labor Code § 1775, the CONTRACTOR shall forfeit to the Agency, not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by

the CONTRACTOR or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the CONTRACTOR or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the CONTRACTOR or Subcontractor; and (2) whether the Trade CONTRACTOR or Subcontractor has a prior record of failing to meet its prevailing wage obligations.

13.8.7 MINIMUM WAGE RATES

Any worker employed to perform work on the Project, which work is not covered by any craft or classification listed in the general prevailing rate of *per diem* wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the Work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

13.8.8 PER DIEM WAGES

Pursuant to Labor Code § 1773.1, *per diem* wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.8.

13.8.9 POSTING OF WAGE RATES

The CONTRACTOR shall post at appropriate conspicuous points on the site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

13.9 RECORDS OF WAGES PAID: INSPECTION

13.9.1 PAYROLL RECORDS.

(a) Pursuant to § 1776 of the Labor Code, each CONTRACTOR and Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.

(b) All payroll records shall be certified and submitted to the AGENCY upon request or if so instructed by AGENCY with each application for payment. All payroll records shall be available for inspection at all reasonable hours at the principal office of the CONTRACTOR on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- (2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (3) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the AGENCY, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs of the preparation by the CONTRACTOR, Subcontractors, and the entity through which the request was

made. The public shall not be given access to such records at the principal office of the CONTRACTOR.

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4 the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.

(d) The CONTRACTOR or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within ten (10) days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the AGENCY or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund ([29 U.S.C. Sec. 186\(c\)\(5\)](#)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 ([29 U.S.C. Sec. 175a](#)) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f)(1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to [Section 329 of the Unemployment Insurance Code](#) and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The CONTRACTOR shall inform the AGENCY of the location of all payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

(h) The CONTRACTOR or Subcontractor(s) shall have ten (10) days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the CONTRACTOR or Subcontractor(s) fails to comply within the ten (10) day period, the CONTRACTOR or Subcontractor(s) shall, as a penalty to the AGENCY, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. The CONTRACTOR is not subject to a penalty due to the failure of a Subcontractor to comply with this section.

The responsibility for compliance with this Article shall rest upon the Trade CONTRACTOR.

13.9.2 WITHHOLDING OF CONTRACT PAYMENTS & PENALTIES.

The Agency may withhold or delay contract payments to the CONTRACTOR and/or any Subcontractor if:

- (a) The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- (b) The CONTRACTOR or Subcontractor(s) fail to submit all required certified payroll records with each application for payment; or
- (c) The CONTRACTOR or Subcontractor(s) submit incomplete or inadequate payroll records; or
- (d) The CONTRACTOR or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- (e) The CONTRACTOR or Subcontractor(s) fail to comply with any applicable state laws governing labor on public works projects.

13.10 APPRENTICES

13.10.1 GOVERNED BY LABOR CODE § 1777.5

The CONTRACTOR acknowledges and agrees that, if this Agreement involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Agreement is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the CONTRACTOR to ensure compliance with this Article 13.10 and with Labor Code Section 1777.5 for all apprenticing occupations.

13.10.2 EMPLOYMENT OF APPRENTICES

Apprentices of any crafts or trades may be employed and, when required by Labor Code Section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

13.10.3 APPRENTICE WAGES AND DEFINITIONS

All apprentices employed by the CONTRACTOR to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work or the craft or trade to which he or she is registered. Only apprentices, as defined in § 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with § 3070) of division 3, are eligible to be employed under this contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

13.10.4 APPRENTICE LABOR POOL

When the CONTRACTOR to whom the contract is awarded by the AGENCY or any subcontractor under him or her, in performing any of the work under the contract or subcontract, employs workers in any apprentice able craft or trade, the CONTRACTOR and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the Project, for a certificate approving the CONTRACTOR or as subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject CONTRACTOR or subcontractor, shall arrange for the dispatch of apprentices to the CONTRACTOR or subcontractor

in order to comply with this section. Every CONTRACTOR and subcontractor shall submit the contract award information to the applicable joint apprenticeship committee, which shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed.

There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. CONTRACTORS or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

13.10.5 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS

Any ratio shall apply during any day or portion of a day when any journeyman or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The CONTRACTOR shall employ apprentices for the number of hours computed as above before the end of the contract. However, the CONTRACTOR shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

13.10.6 JOURNEYMAN/APPRENTICE RATIO

The CONTRACTOR or subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the CONTRACTOR that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the division of Apprenticeship Standards may grant a certificate exempting the CONTRACTOR from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general CONTRACTORS or to contracts of specialty CONTRACTORS not bidding for work through a general or prime CONTRACTOR, when the contracts of general CONTRACTORS or those specialty CONTRACTORS involve less than Thirty Thousand Dollars (\$30,000.00) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week shall not be used to calculate the hourly ratio required by this section.

13.10.6.1 APPRENTICEABLE CRAFT OR TRADE

“Apprentice able craft or trade” as used in this Article means a craft or trade determined as an apprentice able occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a CONTRACTOR from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

- A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
- B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
- C. There is a showing that the apprentice able craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
- D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

13.10.7 RATIO EXEMPTION

When exemptions are granted to an organization which represents CONTRACTORS in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member CONTRACTORS will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

13.10.8 APPRENTICE FUND

A CONTRACTOR to whom the contract is awarded or any subcontractor who, in performing any of the work under the contract, employs journeymen or apprentices in any apprentice able craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Project, to which fund or funds other CONTRACTORS in the area of the site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other CONTRACTORS do, but where the trust fund administrators are unable to accept the funds, CONTRACTORS not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The CONTRACTOR or subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code § 227.

13.10.9 PRIME CONTRACTOR COMPLIANCE

The responsibility of compliance with Article 13.10 and § 1777.5 of the Labor Code for all apprentice able occupations is with the Prime CONTRACTOR.

13.10.10 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE

All decisions of the joint apprenticeship committee under this paragraph 13.10 and Labor Code § 1777.5 are subject to Labor Code § 3081.

13.10.11 NO BIAS

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex or age, except as provided in the Labor Code § 3077.

13.10.12 VIOLATION OF LABOR CODE

Pursuant to portions of Labor Code § 1777.7, in the event a CONTRACTOR or subcontractor willfully fails to comply with the provisions of this Article 13.10 and Labor Code § 1777.5:

(a) The Chief of the Division of Apprenticeship Standards shall deny to the CONTRACTOR or subcontractor and its responsible officers the right to bid on, or to receive, any public works contract for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violations. Each period of debarment shall run from the date the determination of non-compliance by the Chief of the Division of Apprenticeship Standards becomes an order of the Administrator of Apprenticeship.

(b) A CONTRACTOR or subcontractor who violates Section 1777.5 shall forfeit as a civil penalty the sum of One Hundred Dollars (\$100.00) for each calendar day of noncompliance. A CONTRACTOR or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body shall withhold the amount of the civil penalty from the contract progress payments then due or to become due.

(c) In lieu of the penalty provided for in subdivision (a) or (b), the director may for a first time violation and with the concurrence of the joint apprenticeship committee, order the CONTRACTOR or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(e) The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the regulations and procedures of the California Apprenticeship Council.

13.11 ASSIGNMENT OF ANTITRUST CLAIMS

13.11.1 APPLICATION

Public Contract Code Section 7103.5 provides that pursuant to Government Code § 4551, in entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the CONTRACTOR or subcontractor offers and agrees to assign to 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. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase 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 payment to the CONTRACTOR, without further acknowledgment by the parties. If the AGENCY receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code), the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the AGENCY any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the AGENCY as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

13.11.2 ASSIGNMENT OF CLAIM

Upon demand in writing by the assignor, the AGENCY shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the AGENCY has not been injured thereby or the AGENCY declines to file a court action for the cause of action.

13.12 STATE AUDIT

Pursuant to and in accordance with the provisions of Government Code § 8546.7 or any amendments thereto, all books, records, and files of the AGENCY, the CONTRACTOR, or any subcontractor connected with the performance of this Contract involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the State Auditor, at the request of AGENCY, for a period of three (3) years after final payment is made under this Contract. CONTRACTOR shall preserve and cause to be preserved such books, records, and files for the audit period.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE

14.1.1 GROUNDS FOR TERMINATION

The CONTRACTOR may terminate the contract if the work is stopped for a period of thirty (30) calendar days through no act or fault of the CONTRACTOR, a subcontractor, a sub-subcontractor, their agents or employees, or any other persons performing portions of the work for whom the CONTRACTOR is contractually responsible, for only the following reasons:

- A. Issuance of an order of a court or other public authority having jurisdiction;
- B. An act of government, such as a declaration of national emergency, making material unavailable;
- C. If repeated suspensions, delays, or interruptions by the AGENCY as described in paragraph 14.3 constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less; or
- D. The AGENCY has failed to furnish to the CONTRACTOR promptly, upon the CONTRACTOR's request, reasonable evidence of financing or funding as required by paragraph 2.2.1.

14.1.2 NOTICE OF TERMINATION

If one of the above reasons exists, the CONTRACTOR may, upon written notice of seven (7) additional calendar days to the AGENCY, terminate the contract and recover from the AGENCY payment for Work executed and for reasonable costs verified by the AGENCY ARCHITECT/ENGINEER with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit and damages.

14.1.3 NOTICE OF TERMINATION - AGENCY FAULT

If the work is stopped for a period of sixty (60) calendar days through no act or fault of the CONTRACTOR, subcontractor, sub-subcontractor, their agents or employees, or any other persons performing portions of the work for whom the CONTRACTOR is contractually responsible because the AGENCY has persistently failed to fulfill the AGENCY's obligations under the contract documents with respect to matters important to the progress of the Work, the CONTRACTOR may, upon written notice of seven (7) additional calendar days to the AGENCY, terminate the contract and recover from the AGENCY as provided in paragraph 14.1.2.

14.2 NOTIFICATION OF TERMINATION – CONTRACTOR FAULT

14.2.1 TERMINATION FOR DEFAULT.

CONTRACTOR shall be deemed in default hereunder if CONTRACTOR fails to perform any obligation under this contract after written notice from AGENCY to CONTRACTOR and the CONTRACTOR'S surety specifying the nature of the default. The length of such notice shall be as specified under this Contract for the nature of such default or if no particular length of notice is specified then seven (7) days' notice. Upon the occurrence of any default by CONTRACTOR the AGENCY may, without prejudice to any other rights or remedies available under this Contract or under applicable law terminate the contract and may, subject to any prior rights of the Surety:

- A. Take possession of the site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the CONTRACTOR;
- B. Accept assignment of subcontracts pursuant to paragraph 5.4; and
- C. Complete with work by whatever reasonable method the AGENCY may deem expedient.

14.2.1 PAYMENTS WITHHELD

If the AGENCY terminates the contract by reason of a CONTRACTOR default the CONTRACTOR shall not be entitled to receive further payment until the work is complete.

14.2.2 PAYMENTS UPON COMPLETION

If the unpaid balance of the contract sum exceeds costs of completing the work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the CONTRACTOR. If such costs exceed the unpaid balance, the CONTRACTOR shall pay the difference to the AGENCY. The amount to be paid to the CONTRACTOR or AGENCY, as the case may be, shall be certified by the AGENCY ARCHITECT/ENGINEER upon application. This payment obligation shall survive completion of the contract.

14.3 TERMINATION OR SUSPENSION BY THE AGENCY FOR CONVENIENCE

14.3.1 SUSPENSION BY AGENCY

The AGENCY may, without cause, order the CONTRACTOR in writing to suspend, delay or interrupt the work in whole or in part for such period of time as the AGENCY may determine.

14.3.1.1 **Adjustments.** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

- A. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the CONTRACTOR is responsible; or
- B. That an equitable adjustment is made or denied under another provision of this Contract.

14.3.1.2 **Adjustments for Fixed Cost.** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.3.2 TERMINATION DUE TO DISCOVERY OF UNKNOWN OR CHANGED CONDITIONS

The AGENCY reserves the right to terminate this contract should the AGENCY determine not to proceed because of the discovery of any condition described in Article 4.5.5 or Article 10.4. The

CONTRACTOR shall receive payment for all work performed to the date of termination in accordance with the provisions of Article 9, but not receive any anticipated lost profits that would have been obtained if the project had been completed.

14.3.3 MUTUAL TERMINATION FOR CONVENIENCE

The CONTRACTOR and the AGENCY may mutually agree to terminate this contract for convenience. The CONTRACTOR shall receive payment for all work performed to the date of termination in accordance with the provisions of Article 9, but not receive any anticipated lost profits that would have been obtained if the project had been completed.

ARTICLE 15

NON-UTILIZATION OF ASBESTOS MATERIAL

- A. The CONTRACTOR will be required to execute and submit the Certificate Regarding Non Asbestos Containing Materials.
- B. Should asbestos containing materials be installed by the CONTRACTOR in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will meet the following criteria:
 - 1. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 - 2. The asbestos removal CONTRACTOR shall be an EPA accredited CONTRACTOR qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
 - 3. The asbestos consultant shall be chosen and approved by the AGENCY who shall have sole discretion and final determination in this matter.
 - 4. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- C. Cost of all asbestos removal, including, but no/necessarily limited to the cost of the asbestos removal CONTRACTOR, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs as may be incurred by the AGENCY shall be borne entirely by the CONTRACTOR.
- D. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the CONTRACTOR at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Agreement, the CONTRACTOR acknowledges the above and agrees to hold harmless the AGENCY, its Governing Board, employees, agents, AGENCY ARCHITECT/ENGINEER, and assigns for all asbestos liability which may be associated with this work. The CONTRACTOR further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risks and liabilities.

END OF GENERAL CONDITIONS

INLAND VALLEY DEVELOPMENT AGENCY

DIVISION 01

GENERAL PROJECT REQUIREMENTS

01010	Summary of Work
01015	CONTRACTORs Use of the Premises
01105	Phasing of the Work
01210	Allowances
01230	Alternates
01250	Substitution Procedures
01314	Labor Compliance Coordination
01322	Construction Project Schedule
01357	CONTRACTOR Safety Requirements
01500	Temporary Facilities and Controls
01585	Project Signs
01786	Warranties
01789	Project Record Documents

SECTION 01010
SUMMARY OF WORK

PART 1 – GENERAL

1.01 SUMMARY

The work under this Contract includes all labor and materials necessary for and incidental to the execution and completion of all work indicated in the Contract Documents for the construction of:

WATER TOWER REHABILITATION PROJECT

This includes all work shown and inferred in the plans, specifications, regulatory permits (including environmental, soils report, and all supplementary information provided before project bid. This project is considered a “Public Work” as defined by the California Labor Code and all applicable laws and regulations associated must be followed. The work associated with project must be in compliance with the codes and regulations indicated in the contract documents.

SECTION 01015
CONTRACTOR’S USE OF PREMISES

PART 1 – GENERAL

1.01 SUMMARY

- A. This Section applies to all situations in which the CONTRACTOR or its representatives including, but not limited to, employees, subcontractors of any tier, suppliers, and field engineers, who enter the project (job-site) CONTRACTOR shall coordinate its use of the premises under the direction of the AGENCY’s representative.

1.02 ACCESS TO THE JOB SITE

- A. CONTRACTOR shall restrict its representative’s access to the site until they have been properly trained as to the biological and environmental restrictions placed on the project and access to an environmentally sensitive area.
- B. CONTRACTOR is responsible for providing compliant and safe access to the work area for all project representatives. Temporary construction area and security for stored materials and facilities onsite are also the responsibility of the CONTRACTOR.

1.03 STORAGE

- A. Project materials shall only be stored in areas designated by the Construction Manager and/or agency representatives.
- B. CONTRACTOR shall assume full responsibility for the protection and safekeeping of products, tools and equipment stored on Site.
- C. CONTRACTOR shall move any stored products under CONTRACTOR's control which interfere with the operation of the AGENCY representatives.
- D. If additional storage area is needed outside of the defined project area, the CONTRACTOR is responsible for obtaining and paying for the use of any additional storage or work areas needed in the performance of the Work.

1.04 SANITARY FACILITIES AND UTILITIES

- A. CONTRACTOR shall provide sanitary facilities and utilities for CONTRACTOR's employees, sub contactors, and other project representatives during the duration of the project. Any utilities required for temporary facility are the responsible of the CONTRACTOR.

1.05 NOISE CONTROL

- A. CONTRACTOR shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities.

SECTION 01105 PHASING OF THE WORK

THIS SECTION NOT USED

SECTION 01210

ALLOWANCES

PART 1 – GENERAL

- 1.01 SUMMARY- the Allowance is used only as directed by the AGENCY. The CONTRACTOR will prepare detailed breakdown of all costs associated with the work defined for the allowance. These amounts will be charged against the Allowance by Change Order, based on final detailed payment receipts and back-up as required by Architect/Engineer, and will include all direct costs of work performed under the defined work scope. CONTRACTOR shall obtain quotes for equipment from three separate vendors and present to AGENCY for consideration and selection. CONTRACTOR shall include in the base bid contract amount all cost of coordination, supervision, bond costs, overhead and profit, supervision, installation and all indirect project costs associated with the work defined. Where allowance amount is not exceeded, no general CONTRACTOR costs will be permitted to be charged against the allowance amounts specified. At project closeout, unused Cash Allowance amounts shall be credited to the Agency by Change Order. Changes that exceed the scope of work or amount of each allowance covered by each allowance will be processed as a Change Order per Contract Documents.

1.02 PART 2 PRODUCTS-NOT USED

1.03 SCHEDULE OF ALLOWANCES

Included in the Total Base Bid are the Allowances identified bellow.

Unknown Items

END OF SECTION

SECTION 01230

ALTERNATES

THIS SECTION NOT USED

SECTION 01250

SUBSTITUTION PROCEDURES

PART 1 – GENERAL

1.01 SUMMARY- Formal requests must be made for substitutions of products or work processes in place of those specified in the contract document. It is the intent of the AGENCY and ARCHITECT/ENGINEER to have this Project constructed with materials, products and systems originally designed and specified in the Contract Documents. The opportunity to request substitutions is not for the convenience of bidders or CONTRACTORS to submit bids for materials, products and systems which may be more familiar to them or have a lesser cost. AGENCY shall receive full benefit of any cost reductions as a result of any request for substitution.

1.02 SUBSTITUTION REQUEST PROCESS- Requests for substitutions must be expeditiously forwarded for consideration in accordance with the General Conditions. Any requests prior to bid, must be received 10 Calendar days prior to the bid due date. Notification of decisions concerning acceptance or rejection will be in writing, and are final without need for clarification. Submit a separate request for each substitution, using the Substitution Request Form included in this Section (five (5) copies). It shall be the responsibility of the entity requesting the substitution to obtain all regulatory approvals required for proposed substitutions, including any additional agency review fees. Support each request with explanation for the request, and include:

1. Complete data substantiating compliance of proposed substitutions with requirements stated in Contract Documents:
 - a. Manufacturer's literature, including product description, reference standards, performance and test data.
 - b. Name and address of similar projects on which product has been used and date of each installation, as well as servicing agency and installer.
2. Itemized comparison of the proposed substitution vs. specified, listing significant variations.

3. Data relating to changes in the construction schedule, if any.
 4. Any effect of substitution on in-place construction or other materials and systems to be installed.
 6. Accurate cost data comparing proposed substitution with product specified.
 7. Designation of availability of maintenance services and sources of replacement materials.
- F. Substitutions will not be considered for acceptance when:
1. Lesser material cost is the sole reason for request.
 2. They are indicated or implied on shop drawings or product data submittals without formal request.
 3. Acceptance may require revision of Contract Documents.
- G. Substitute products shall not be ordered or installed without written acceptance and authorization of AGENCY, ARCHITECT/ENGINEER and approval of regulatory agencies.

END OF SECTION (Form Attached)

The undersigned states that the following paragraphs, unless modified on the attachments, are correct:

1. The proposed substitution does not affect dimensions shown on the Drawings.
2. The undersigned will pay all costs for changes to the building design, including architectural or engineering design, detailing, and construction costs caused by the requested substitution.
3. The proposed substitution will have no adverse effect on other trades or specified warranty requirements.
4. Maintenance and service parts will be locally available for the proposed substitution.

The undersigned further states that the function, appearance and quality of the proposed substitution is equivalent or superior to the specified item.

Submitted By:

Signature: _____ Firm: _____

Address: _____

Telephone: _____ Date: _____

SECTION 01314

LABOR COMPLIANCE COORDINATION

PART 1 – GENERAL

1.01 SUMMARY- The CONTRACTOR awarded this project is required to comply with all laws and regulations of the state of California regarding a “Public Work” project as defined by the state Labor Code. In addition to providing the required certified payroll, the CONTRACTOR may be asked by the AGENCY to provide proof compliance with the applicable laws.

1.02 LABOR COMPLIANCE PROGRAM MEETING- After the AGENCY awards the Contract, and prior to the commencement of the work, a mandatory pre-job Labor Compliance Meeting will be conducted by the AGENCY representative with the CONTRACTOR(s) and those subcontractors listed in the Bid Documents this may be done as part of the Pre-Construction Meeting or as a separate meeting. At that meeting, the AGENCY representative will discuss the federal and state labor law requirements applicable to the contract including prevailing wage, respective record keeping responsibilities, the requirement for the submittal of certified payroll records to the AGENCY, and the prohibition against discrimination in employment. The AGENCY representative will provide the CONTRACTOR and each subcontractor with general information on labor law requirements. It is the sole responsibility of each CONTRACTOR or sub-CONTRACTOR to understand the applicable laws surrounding this project prior to bid. The following is a list of requirements that are applicable to this project:

1. Payment of Prevailing Wage Rates

- i. the CONTRACTOR to whom the contract is awarded and its subcontractors hired for the public works project are required to pay no less than the specified general prevailing wage rates to all workers employed in the execution of the contract, including each subcontract.
- ii. The CONTRACTOR is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view.

2. Apprentice

- i. It is the duty of the CONTRACTOR and subcontractors to employ registered apprentices on the public works project under Labor Code Section 1777.5;

3. Penalties

- i. There are penalties required for CONTRACTOR'S/ subcontractor's failure to pay prevailing wages and for failure to employ apprentices, including forfeitures and debarment under Labor Code Sections 1775; 1776; 1771.1; 1777.7 and 1813;

4. Certified Payroll Reports

- i. Under Labor Code Section 1776, CONTRACTORS and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification for each employee and Agency performing work; also the straight time and overtime hours worked each day and each week, the fringe benefits and the actual per diem wage paid to each Agency, journey person, apprentice worker or other employee hired in connection with the public works project.
- ii. Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the CONTRACTOR/subcontractor, or shall be furnished to any employee, or his/her authorized representative on request, pursuant to Labor Code Section 1776;

- iii. Each CONTRACTOR and every lower-tier subcontractor and supplier is required to submit certified payrolls and labor compliance documentation electronically as specified by the AGENCY. Under Labor Code Section 1776(g) there are penalties required for CONTRACTOR's/ subcontractor's failure to maintain and submit copies of certified payroll records on request.
- iv. CONTRACTOR may be required to provide the monthly payroll records required under Labor Code Section 1776 directly to the Labor Commissioner in accordance with the provisions of Labor Code Section 1771.4(a)(3).

5. Nondiscrimination in Employment

- i. There exists prohibition against employment discrimination under Labor Code Sections 1735 and 1776.6, the Government Code, the Public Contracts Code and Title VII of the Civil Rights Act of 1964;

6. Kickbacks Prohibited

- i. CONTRACTORS and subcontractors are prohibited from recapturing wages illegally or extracting "kickbacks" from employee wages under Labor Code Section 1778;

7. Itemized Wage Deduction Statement

- i. Under Labor Code Section 226, every employer shall at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the gross wages, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, name of the employee and his/her social security number, the name and address of the employer and all applicable hourly rates in effect during the pay period.

8. Acceptance of fees prohibited

- i. There exists a prohibition against CONTRACTOR/subcontractor acceptance of fees for registering any person for public work under Labor Code Section 1779; or for filling work orders on public works contracts pursuant to Labor Code Section 1780;

b. Listing of Subcontractors

- i. All prime CONTRACTORS are required to list properly all subcontractors hired to perform work on the public works projects covering more than one half of one percent, pursuant to Government Code Section 4100 et seq;

9. Proper Licensing

- i. CONTRACTORS are required to be licensed properly and to require that all subcontractors be properly licensed. Penalties are required for employing workers while unlicensed under Labor Code Section 1021 and under the California CONTRACTORS License Law found at Business and Professions Code Section 7000 et seq.

10. Unfair Competition Prohibited

- i. CONTRACTORS/ subcontractors are prohibited from engaging in unfair competition as specified under Business and Professions Code Sections 17200 to 17208;

11. Workers Compensation Insurance

- i. Labor Code Section 1861 requires that CONTRACTORS and subcontractors be insured properly for Workers Compensation.
- ii.

This list does not represent all of all laws and regulations applicable to this project and it remains the SOLE responsibility of each CONTRACTOR and sub-CONTRACTOR to understand all laws and regulations prior to submission of a bid.

END OF SECTION

SECTION 01322

CONSTRUCTION PROJECT SCHEDULE

PART 1 – GENERAL

- 1.01 SUMMARY- The CONTRACTOR shall provide within ten (10) calendar day of award, a computerized, time scaled, cost loaded (if requested) Critical Path Method (CPM) Construction Schedule, showing in detail how the CONTRACTOR plans to execute and coordinate the Work within the allotted project duration. The schedule shall be in Microsoft Project format and provided electronically to the AGENCY upon request.
- 1.02 CONSTRUCTION SCHEDULE UPDATING- The Construction Schedule shall be updated on a monthly basis throughout the entire Contract duration. The CONTRACTOR shall review actual progress made through the data date of the Schedule, including the dates that activities started or finished, the percentage of Work completed, and remaining duration for each activity in progress prior to the update. In addition to the monthly update, the CONTRACTOR is required to provide a three week look ahead at each weekly construction progress meeting. Updating the Construction Schedule to reflect actual progress made up to the date of a schedule update shall not be considered revisions to the Construction Schedule. If, as a result of the monthly schedule update, it appears the Construction Schedule no longer represents the actual prosecution and progress of the Work, the AGENCY will request, and the CONTRACTOR shall submit, a revision to the Construction Schedule. The AGENCY may also request revisions to the Construction Schedule in the event the CONTRACTOR's planning for the Work is revised. If the CONTRACTOR desires to make changes in the Construction Schedule to reflect revisions in its method of operating and scheduling of the Work, the CONTRACTOR shall describe the revision(s) in its narrative report, stating the reason for the proposed revision.
- 1.03 RESPONSIBILITY FOR COMPLETION- CONTRACTOR shall furnish sufficient forces, offices, facilities, and equipment, and shall work such hours including night shift and overtime operations, as necessary to ensure the prosecution of the Work in accordance with the project schedule and current monthly schedule updates. If, in the opinion of the AGENCY, the CONTRACTOR falls behind in meeting the schedule as presented in the current monthly schedule update, the CONTRACTOR shall take such steps as may be necessary to improve its progress without additional cost to the AGENCY. The provisions of this paragraph shall not be construed as prohibiting work on Saturdays, Sundays, and holidays, if the CONTRACTOR so elects and gives advanced notice as required by the Contract documents and obtains all necessary approvals to do so.

END OF SECTION

SECTION 01357

CONTRACTOR SAFETY REQUIREMENTS

PART 1 – GENERAL

- 1.01 SUMMARY- This information is offered as assistance to the CONTRACTOR in complying with all project safety requirements, and to provide assurance to the AGENCY that appropriate and required safety measures are being taken. However, the information contained within this Section is not intended to reflect all requirements for safe practices and conduct for which a CONTRACTOR may be responsible, including safety of persons and property, and compliance with all statutes, rules, regulations and orders applicable to the conduct of the work. The AGENCY assumes no liability for the CONTRACTOR's safety program, or the CONTRACTOR's compliance with any safety practices or policies. It is the sole responsibility of each CONTRACTOR to monitor and maintain a safe working environment for their employees, and in so doing, assure a safe working environment for all other CONTRACTORS who may come in contact with their work. The policy of the AGENCY is to promote safety at a level to assure personal safety and minimize potential property damage. Employees of CONTRACTORS working on this project are required to meet or exceed all established and recognized codes and standards for safety and protection of personnel and property. The AGENCY reserves the right to take corrective action, as deemed in the best interest of the project and the AGENCY, for violation of any health or safety standard. This corrective action may include, but is not limited to removal (from the job site) of any unsafe tools or equipment; temporary work stoppage for any unhealthy or unsafe condition; and immediate removal (from the job site) of any person that is unwilling or incapable of conducting themselves in a manner that promotes a healthy and safe working atmosphere. Any person found to be repeatedly in violation of health and/or safety standards will be permanently restricted from the site.
- 1.02 RESPONSIBILITIES-The AGENCY demands that all project CONTRACTORS perform in a reasonable and safe manner at all times. The CONTRACTOR shall implement a safety program that includes a site specific safety plan prior to commencement of the project and enforce this plan for all employees, sub-CONTRACTORS, and vendors throughout the entire duration of the project. The CONTRACTOR must have a well devised safety program, which includes training employees in safety matters relating to their individual job assignments. The CONTRACTOR should effectively enforce the safety program and provide sanctions against employees who violate the safety program.
- 1.03 SAFETY ACTIVITIES-CONTRACTOR will conduct or initiate:
- a. Safety program as required by current State of California requirements.
 - b. Weekly "tool box" safety meetings between CONTRACTOR and CONTRACTOR's supervisors, foremen, employees and subcontractors working on the project.
 - c. Weekly safety inspections of your work area and those areas of work under your responsibility or shared responsibility as well as taking any other necessary safety precautions.
- 1.04 REPORTS-The following reports must be submitted to the AGENCY for inclusion to the project files. The CONTRACTOR is in no way relieved of the requirements for submission of reports to any agency or authority.
- a. All reports listing deficiencies, accidents or injuries shall show corrective action taken.
 - b. A weekly status and summary report of each "tool box" meeting held and items discussed.
 - c. A weekly status report of inspection results. The attached status forms are

for your convenience only.

- d. A continuing list of deficiencies found, date identified, responsible party, corrective action and date corrected.
 - e. Accident reports and injury forms. Submit a copy of one of the following to the Construction Manager for each case:
 - 1) California Division of Labor Statistics and Research Form 5020 (latest rev.), or;
 - 2) Federal OSHA Form 101, or;
 - 3) Insurance Company form similar to 1 or 2 above.
 - f. A copy of CAL/OSHA Form 200 "Log and Summary of Occupational Injuries and Illness."
2. Special Reports
- a. Notify the CONSTRUCTION MANAGER immediately of any accident involving injury to personnel or property; and complete written reports within 24 hours of a death or injury of five (5) or more employees as a result of one accident.
 - b. Copies of all toxic or harmful agent reports (See paragraph B.4.)
3. Governmental Reports
- a. Notification of governmental authorities is the responsibility of each affected CONTRACTOR.

END OF SECTION

SECTION 01500

TEMPORARY FACILITIES AND CONTROLS

PART 1 – GENERAL

- 1.01 SUMMARY- Furnishing and installing required temporary facilities as indicated or specified as required for proper performance and safety while the work of this contract is performed is the responsibility of the CONTRACTOR as it relates to their bid package scope of work.
- A. REGULATORY REQUIREMENTS
- 1. Comply with governing regulations and utility company regulations and recommendations.
 - 2. Comply with pollution and environmental protection regulations for use of water and energy, for discharge of wastes and storm drainage from Project Site, and for control of dust, air pollution and noise.
 - 3. Temporary construction shall conform to requirements of State, County, and Local authorities and underwriters which pertain to operation, health, safety, and fire hazard. CONTRACTOR shall furnish and install items necessary for conformance with such

requirements, whether or not called for under the separate divisions of these specifications.

4. Any Construction Facilities purchased for the AGENCY or the Construction Manager's use during the Project become the property of the AGENCY upon completion of the Contract and will be turned over to the AGENCY. CONTRACTOR will pay for any costs associated with moving and delivering items to a location identified by AGENCY.

B. TEMPORARY WATER & DUST CONTROL

1. CONTRACTOR shall provide and pay for construction water throughout the duration of the project in sufficient quantities to continually maintain dust control and construction operations. The CONTRACTOR shall also provide & maintain a water truck (minimum 2,000 gallons) on site with an operator every work day for purposes of dust control.

C. TEMPORARY SANITARY FACILITIES

1. The CONTRACTOR will provide and maintain temporary chemical type toilet and wash facilities throughout the duration of the project in sufficient quantities as required for the total workforce on the project site. CONTRACTOR will add additional facilities as required based on fluctuations in workforce. CONTRACTOR shall provide temporary facilities at the lay down area and at work site as needed. All temporary toilets shall be properly serviced twice weekly and shall meet all applicable governmental codes at all times.

D. FENCES AND BARRICADES

1. In addition to fencing required by the environmental permits, the CONTRACTOR shall furnish, install, and continually maintain throughout the duration of the project a 8 foot high temporary chain link fence with locked entrance and access gates to enclose each end of the bridge to limit public access.
2. Fence and gates shall be covered in new green privacy fabric. Fence & gates must be continually maintained to prohibit public from gaining access to the site and also deter persons of all ages from entering the site after hours. If fence, gates, mesh screen are damaged or vandalized in anyway, the CONTRACTOR must repair or replace applicable sections within 24 hours or less to provide a secure, graffiti and vandalism free perimeter.

E. CONSTRUCTION EQUIPMENT

1. CONTRACTOR shall erect, equip, and maintain construction equipment in strict accordance with applicable statues, laws, ordinances, and regulations of authority having jurisdiction.
2. CONTRACTOR shall provide, maintain, and move upon completion of the Work all temporary rigging, scaffolding, hoisting equipment, rubbish chutes, ramps, stairs, runways, platforms, ladders, railings, and other temporary construction as required for all work hereunder.

F. TEMPORARY SITE CONVEYANCE

1. CONTRACTOR to provide a compact utility vehicle (E-Z Go, Club Car, Gator, etc.) for the AGENCY use capable of transporting four people through the jobsite for the duration of the project. Vehicle to have covered canopy to protect occupants from weather and sun. CONTRACTOR to provide any required maintenance. CONTRACTOR to provide a secure storage facility/container for cart.

G. TEMPORARY ELECTRICAL

1. The CONTRACTOR shall furnish, install, maintain, relocate as required, and eventually remove a temporary electrical as required for temporary facilities and as required for the CONTRACTORS use to complete the work.

END OF SECTION

SECTION 01585

PROJECT SIGNS

PART 1 – GENERAL

1.01 SUMMARY- The CONTRACTOR is responsible to design, supply, and erect 3 project signs prior to commencement of the project.

1.02 QUALITY ASSURANCE

- A. Design sign and structure to withstand 50 miles/hr (80 km/hr) wind velocity.
- B. Sign Painter: Experienced as a professional sign painter for minimum three years.
- C. Finishes, Painting: Adequate to withstand weathering, fading, and chipping for duration of construction.

1.03 SUBMITTALS

- A. Submit project sign design to AGENCY for approval.

PART 2 PRODUCTS

2.01 SIGN MATERIALS

- A. Structure and Framing: New, wood, structurally adequate, minimum 4" x 4" posts. Concrete footings designed by CONTRACTOR to support load.
- B. Sign Surfaces: Exterior grade plywood with medium density overlay, minimum 3/4 inch (19 mm) thick, standard large sizes to minimize joints.
- C. Rough Hardware: Galvanized.
- D. Paint and Primers: Exterior quality, two coats; sign background of color as selected.
- E. Lettering: Exterior quality paint, colors as selected.

2.02 PROJECT IDENTIFICATION SIGN

- A. Three painted signs, 32 sq. ft. (2.98 sq. m) area, bottom 6 feet (2 m) above ground.
- B. Content:
 - 1. Project title, logo and name of AGENCY as indicated.
 - 2. Funding verbiage as determined by the AGENCY.
 - 3. Names and titles of Board members.
 - 4. Name and logo of ENGINEER.
 - 5. Name and logo of Construction Manager.
- C. Lettering: Standard Alphabet Series C, as specified in FHWA Standard Highway Signs (SHS).

PART 3 EXECUTION

3.01 INSTALLATION

- A. Install project identification sign within 30 days after date fixed by Notice to Proceed.
- B. Erect at designated location.
- D. Install sign surface plumb and level, with butt joints. Anchor securely.
- E. Paint exposed surfaces of sign, supports, and framing.

3.02 MAINTENANCE

- A. Maintain signs and supports clean, repair deterioration and damage, and remove any graffiti.

3.03 REMOVAL

- A. Remove signs, framing, supports, and foundations at completion of Project and restore the area.

END OF SECTION

SECTION 01786

WARRANTIES (GUARANTEES) AND BONDS

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Preparation and submittal of warranties and bonds
- B. Time and schedule of submittals

1.03 WARRANTY REQUIREMENTS

- A. Warranties or bonds shall provide for replacement or reconstruction of failed or defective Work to an acceptable condition complying with the requirements of the Contract Documents. Work shall be restored at no cost to the AGENCY regardless of whether the AGENCY has benefited from use of the Work for a portion of its anticipated useful service life.
- B. Provide warranties and bonds, executed in duplicate by responsible Subcontractors, suppliers, and manufacturers, within ten days after completion of the applicable item or work.
- C. When a designated portion of the Work is partially used and/or occupied by the AGENCY, submit properly executed warranties within ten (10) days of the Partial Use or Occupancy of the designated portion of the Work.
- D. Verify that documents are in proper form, contain full information and are notarized.
- E. AGENCY Recourse: Expressed warranties made to AGENCY are in addition to implied warranties and shall not limit the duties, obligations, rights, and remedies otherwise available under the law. Expressed warranty periods shall not be interpreted as limitations on the time in which AGENCY can enforce such other duties, obligations, rights, or remedies.

1.04 FORM OF SUBMITTALS

- A. Prepare duplicate binders, commercial quality, 8-1/2 x 11 inch, three-ring side binders with hardback, cleanable, plastic covers.
- B. Label cover and spine of each binder with typed or printed title WARRANTIES AND BONDS, with title of Project. Number separate volumes in order
- C. Table of Contents: Typed, in the sequence of the Table of Contents of the Project Manual, with each item identified with the number and title of the specification Section in which specified and the name of the product or work item..
- D. Separate each warranty or bond with index tab sheets keyed to the Table of Contents listing. Provide full information, using separate typed sheets as necessary. Use paper of durable, long-lasting quality. List Subcontractor, supplier, and manufacturer, with name, address and telephone number of responsible principal.

1.05 TIME AND SCHEDULE OF SUBMITTALS

- A. Except for specifically authorized exceptions, the date for beginning the period of warranty shall be the Date of Substantial Completion.

- B. For equipment or component parts of equipment put into service during construction with AGENCY's permission, submit documents within ten (10) days after acceptance.
- C. Make other submittals within ten (10) days after Date of Substantial Completion prior to final Application for Payment.
- D. For items of Work when acceptance is delayed beyond Date of Substantial Completion, submit within ten (10) days after acceptance, listing the date of acceptance as the beginning of the warranty period.

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION (Not Applicable)

GUARANTEE

We hereby guarantee that the _____, which we have installed for **INLAND VALLEY DEVELOPMENT AGENCY** has been performed in accordance with the requirements of the Contract Documents and that the work as installed will fulfill the requirements of the Contract Documents as they pertain to Bid Package _____.

The undersigned agrees to repair or replace any or all of such work that may prove to be defective in workmanship or material together with any other adjacent work which may be displaced in connection with such replacement within a minimum period of **ONE (1) YEAR** (see individual trade specifications for more stringent requirements) from the date of acceptance of the above-mentioned project by **INLAND VALLEY DEVELOPMENT AGENCY**, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the undersigned's failure to comply with the above mentioned conditions within a reasonable period of time, as determined by the AGENCY, but not later than ten (10) working days after being notified in writing by the AGENCY, the undersigned authorizes the AGENCY to proceed to have said defects repaired and made good at the expense of the undersigned, who will pay the costs and charges therefore upon demand.

CONTRACTOR

SIGNED

NAME

Representatives to be contacted for service subject to terms of contract:

NAME: _____

ADDRESS: _____

PHONE #: _____

END OF SECTION

SECTION 01789

PROJECT RECORD DOCUMENTS

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. This Section includes administrative and procedural requirements for preparing, maintaining, and submitting Project Record Documents.

1.02 PROJECT RECORD DOCUMENTS

- A. General: Record documents shall be kept on site at the field office. CONTRACTOR shall prepare and maintain record documents throughout the course of construction, as specified herein.
- B. Access to record documents will be provided during normal working hours.
- C. Do not use project record documents for construction purposes. Protect record documents from deterioration and loss.
- D. Record in concise and neat manner, concurrent with construction progress, and at least on a weekly basis, all actual revisions to the work:
 - 1. Changes made on the Drawings, including Clarification Drawings.
 - 2. Changes made to the Specifications.
 - 3. Changes made by Addenda.
 - 4. Changes made by Instruction Bulletins.
 - 5. Change Orders or other authorized Modifications to the Contract.
 - 6. Revisions made to shop drawings, product data and samples.
- E. Record Drawings shall be a clean, undamaged set of black-line white prints of Drawings and Shop Drawings. Mark the set with red erasable pencil to show the actual installation where the installation varies substantially from the Work as originally shown. Indicate which Drawing is most capable of showing conditions fully and accurately. Where Shop Drawings are used, record a cross-reference at the corresponding location on the Drawings. Provide detailed and accurate field dimensions for concealed elements that would be difficult to measure and record at a later date.
 - 1. Mark new information, including details, that is important to AGENCY but was not shown on Drawings or Shop Drawings.
 - 2. Show measured depths of foundations in relation to finish first floor datum.
 - 3. Show measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements. Identify drains and sewers by invert elevation.
 - 4. Verify Surveyor's Record Drawings with CONTRACTOR'S utilities locations and depths markups.

5. Show measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work. Identify ducts, dampers, valves, access doors and control equipment wiring.
 6. Field changes of dimension and detail.
 7. Refer to Scope Summaries for electronic as-built requirements.
 8. Note related Change Order or Construction Directive numbers on each affected sheet.
 9. Organize Record Drawing sheets into manageable sets. Bind sets with durable-paper cover sheets; print suitable titles, dates, and other identification on the cover of each set.
- F. Record Specifications: Maintain a complete copy of the Specifications, including Addenda, Change Orders and Construction Directives issued during construction. Legibly mark at each Section description of actual products installed if different from that specified, including:
1. Manufacturer's name, trade name, product model and number and supplier.
 2. Authorized product substitutions or alternates utilized.
 3. Changes made by Addenda and Modifications.
- G. Record Product Data: Maintain a copy of each Product Data submittal. Note related Change Orders and Construction Directives and mark-up of record drawings and Specifications.
1. Mark these documents to illustrate significant variations in actual Work performed in comparison with information submitted. Include variations in products delivered to the Project site and from the manufacturer's installation instructions and recommendations.
 2. Provide detailed and accurate information regarding concealed products and portions of Work that cannot otherwise be readily discerned later by direct observation.

END OF SECTION

SECTION 01800

PROJECT INFORMATION

PART 1 GENERAL

1.01 SECTION INCLUDES:

- A. This Section defines the general Project details.

1.02 GENERAL PROJECT DETAILS:

- A. The existing elevated water tower was built in the early 1970's. As-Built drawings are not available in any form. The water tank holds 500,000 gallons of potable water. The tank is permanently out of service and empty. The Contractor is responsible for field measuring/estimating the total square feet of metal being prepared for primer and paint.
- B. The tank historically was coated with high concentrations of lead paint. The IVDA recently had the existing paint tested on the tank and the surrounding areas. The two reports are attached for reference. This project is intended to remove loose/peeling paint from the structure and 1 foot of soil under and around the tower footprint as shown on report. Areas of existing paint that is not loose or peeling will be encapsulated by new primer and finish paint systems. The Contractor is required provide for the handling, removal, and/or disposal of hazardous or contaminated material, for example lead, the requires special handling or transportation to a specific disposal site and is included in this scope of work.
- C. The ultimate use of the water tank and surrounding area is to construct a neighborhood park with the tank as the focal point.

1.03 PROJECT DETAILS:

- A. Bid Item 001; Mobilization

- 1. The Contractor shall complete the following items before a lump sum payment is made:
 - a. Obtain all bonds and submit costs
 - b. Obtain all insurance and submit cost
 - c. Obtain all Southern California Air Quality Management District and City of San Bernardino permits for the lead abatement and soil remediation, submit costs
 - d. Obtain and install temporary security fencing for project duration project.
 - e. Contractor's quote includes county sales taxes for materials. Current rate in this area is 7.5%.

- B. Bid Item 002: Soil Lead Abatement

- 1. This section relates to the lawful removal or treatment of soil contaminated by paint mixed with lead:
 - a. The Contractor shall follow all state, city and federal requirements for the abatement or treatment of lead contaminated soil and personnel protection.
 - b. The estimated amount of soil to be removed is 11,100 cubic feet.
 - c. The actual payment is determined by the total amount of soil removed or treated on the site. Contractor shall submit weight tickets from a hazardous dump site to determine cubic feet or weight of material removed.

- d. See Bid Item 4 for additional work related for soil abatement.
- e. Replace the disturbed soil with clean.

- C. Bid Item 003: Underground Structure
1. There is an unused underground structure that includes pumping equipment piping and valves. The structure is approximately 20' x 20' x 10' deep. Contractor will field verify dimensions before bidding.
 - a. The intent is to demolish the top 2 feet of the existing structure and fill the equipment area with one sack concrete slurry. Leave the existing equipment in place.
 - b. There will be placed 2 feet of clean soil to bring the area up to the existing elevation.
- D. Bid Item 004: Additional Soil Testing
1. After the soil abatement and removal of non-adhering paint chips from the structure, the contractor will have a certified lead testing agency sample 10 random locations to determine if there is any lead remaining in the soil.
 2. Any locations found to have lead contamination that exceeds limits for soil in a park area, will be removed by the Contractor as required by this and other sections.
- E. Bid Item 005: Structure Lead Abatement
1. Pressure wash 100% of the structure using an anti-fungal biodegradable solution and prepare the bare surface as necessary to meet surface preparation requirements for the coating system being used.
 2. Work includes all of the steel structure and foundation plates at ground level
 3. All abatement work will meet CalOSHA requirements for the containment of lead based materials and personal protection of workers.
 4. Contractor is required to provide shrouding or containment to meet regulatory requirements.
 5. Contractor is required to provide scaffolding, man lifts or alternate system to access the upper tank elevations and is a part of this item.
- F. Bid Item 006: Structure Painting
1. The intent is to remove all loose material and leave the paint that still is adhering to the structure. Prime paint all bare metal after preparation noted in E above.
 2. Paint: Primer: Amerlock Epoxy Primer, Finish: Amershield Polyurethane or, Primer: Sherwin Williams Macropoxy 646-100 Epoxy, Finish: Sherwin Williams Hi-Solids Polyurethane 100 Semi-Gloss, or equal paint system.
 3. Primer will have a minimum 2 mil Dry Film Thickness, Finish Coat will be minimum 3 mil thickness or as recommended by the provided painting system. Paint color is bright white.
 4. Contractor is required to contain overspray. If damage occurs to autos or structures, the Contractor will remedy the damage.
 5. No paint shall be applied during wet, damp, windy or inclement weather.
 6. Contractor is required to notify surrounding businesses as to the days that autos or equipment need to be relocated a safe distance from the painting area.
- G. Bid Item 007: Safety of life and property
1. This item is reserved for any other item related to life/safety not included in the work noted above due to the height of the structure.
- H. Bid Item 008: Allowance

1. This item is reserved for unknown or undisclosed items. The cost is included in the bid amount. This item is not guaranteed to the Contractor if not used. A final change order will be used to adjust the final contract price.