

**DOCUMENT 00700  
GENERAL CONDITIONS**

**SECTION 1 - GENERAL**

**1.01 GENERAL**

- A. Unless the context otherwise requires, whenever in the specifications and other contract documents the following terms are used, the intent and meaning shall be interpreted as provided herein.
- B. Working titles having a masculine gender, and the pronoun "he" are utilized in the specifications for sake of brevity, and are intended to refer to persons of either sex.

**1.02 DEFINITIONS**

- A. Acceptance - The formal written acceptance by the District of an entire contract, which has been completed in all respects in accordance with the plans and specifications and any modifications thereof, see Notice of Completion.
- B. Bidder - An individual, firm, partnership, corporation or combination thereof submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.
- C. Bond - A Bidder's bond, performance bond, payment bond, or other instrument of security.
- D. Contract - The written agreement covering the performance of the work and the furnishing of labor, materials, tools, and equipment in the construction of the work. The contract shall include the notice to contractors, proposal, plans, specifications, special provisions, addenda, and contract bonds; also any and all supplemental agreements amending or extending the work contemplated and which may be required to complete the work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations, amendments, or extensions to the contract and include contract change orders.
- E. Contract Documents - The contract documents shall include the Notice Inviting Bids, Instructions to Bidders, Addenda, Proposal (including documentation accompanying the Proposal and any post-bid documents submitted prior to award), the Bonds, the General Conditions, the Special Provisions, permits from other agencies, the Plans, Specifications, reference specifications, and all modifications issued after execution of the Contract.
- F. Contractor - The person or persons, firm, partnership, corporation, or combination thereof, private or municipal who have entered into a contract with the District as party or parties of the second part, or his or their legal representatives.
- G. District - Whenever the word "District" is used it shall be understood to mean and refer to the County government agency under which jurisdiction of the project falls, acting by or through its duly elected or appointed officers or officials or their authorized assistants.
- H. Days - Unless otherwise designated, days as used in the contract documents shall mean consecutive calendar days.
- I. Engineer - Kjeldsen, Sinnock & Neudeck, Inc., Consulting Civil Engineers & Land Surveyors, acting either directly or through properly authorized agents.
- J. Notice of Completion - A written Notice of Completion signed and verified by the District or representative shall be recorded with the County Recorder of the County in which the work was performed. The date of completion and acceptance of the work by the District or

representative recited in the Notice of Completion shall be deemed to be the date of Completion.

- K. Notice to Proceed - A written notice given by the Engineer to the Contractor fixing the date on which the Contract time will start.
- L. District - The agency, or special district, acting through its properly authorized agents or legal representatives who have entered into a contract with the Contractor as party or parties of the first part.
- M. Plans - The official project plans, profiles, typical cross-sections, general cross-sections, working plans, or reproductions thereof, approved by the Engineer, which show the locations, character, dimensions, and details of the work to be performed. All such documents are to be considered as part of the plans.
- N. Proposal (Bid) - The offer of the bidder setting forth the prices for the work, when filled out and submitted on the prescribed proposal form, properly signed and guaranteed.
- O. Proposal Form - The form up on which the District requires formal bids to be prepared and submitted for the work.
- P. Proposal Guarantee - The cash, cashier's check, certified check, or bidder's bond accompanying the proposal submitted by the bidder, as a guaranty that the bidder will enter into a contract with the District for the performance of the work awarded to him.
- Q. Special Provisions - The special provisions are specific clauses setting forth conditions or requirements peculiar to the work and supplementary to the Specifications.
- R. Specifications - The directions, provisions and requirements contained in these specifications, special provisions, technical specifications, and addenda.
- S. State - Whenever the word "State" is used it shall be understood to mean and refer to the State of California.
- T. State Specifications - The Standard Specifications of the State of California, Department of Transportation (Caltrans), dated 2010. If a later edition is published, the reference shall be to the class of material or item bearing the referenced section number in the later edition.
- U. Work - All the work specified, indicated, shown or contemplated in the contract to construct the improvements, including all alterations, amendments or extensions thereto made by contract change order or written orders of the Engineer.
- V. Change Order – A document recommended by Engineer, which is signed by Contractor and District and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
- W. Claim – A demand or assertion by District or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third (3<sup>rd</sup>) party is not a Claim.
- X. Contract Price – The moneys payable by District to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).
- Y. Contract Times – The number of days or the dates stated in the Agreement to: (i) achieve Final Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

- Z. Project – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.
- AA. Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data or information, which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

## **SECTION 2 - AWARD AND EXECUTION OF CONTRACT**

### **2.01 AWARD OF CONTRACT**

- A. The right is reserved to reject any and all proposals.
- B. The award of the contract, if it were awarded, will be to the lowest responsive and responsible Bidder whose proposal complies with all the requirements prescribed. Such award, if made, will be made within sixty (60) days after the opening of the proposals. If the lowest responsive Bidder refuses or fails to execute the contract, the District may award the contract to the second lowest responsive and responsible Bidder. Such award, if made, will be made within seventy-five (75) days after the opening of the proposals. If the second lowest responsive and responsible refuses to execute the contract, the District may award the contract to the third lowest responsive and responsible Bidder. Bidder's proposal shall remain valid for at least ninety (90) days. The periods of time specified above within which the award of contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the District, the Bidder and the Bidder's surety concerned.
- C. All bids will be compared on the basis of the Engineer's estimate of quantities of work to be done.
- D. The procedure for selection of low Bidder, if identical bids are received: Upon opening and reviewing the bids received, if the District determines that two or more bidders have submitted identical monetary bids, and that said bidders are deemed to be responsive, responsible bidders, and that there is no other factor that can be used to determine which bidder is the lowest responsive, responsible bidder to whom the contract should be awarded, then and in that event the lowest responsive, responsible bidder shall be determined by a "flip-of-the coin." The District shall notify each such bidder submitting identical bids of the date, time and place at which the coin flip shall take place. One bidder shall flip the coin and the second bidder shall call "heads or tails" while the coin is in the air. The bidder calling the correct side shall be deemed to be the lowest, responsive, responsible bidder. In the event that there are more than two bids of the same amount, then there shall be a succession of coin flips to place the bids in consecutive order for purposes of determining the order of the lowest monetary bidders. If a bidder fails to attend the coin flip, then District representatives shall represent the bidder not in attendance.
- E. Additive and Deductive Items (§20103.8):

A local agency may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of a specification, only the method provided by subdivision a) will be used:

  - a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

- b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.
- c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that when taken in order from a specifically identified list of those items in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened,
- d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the local agency from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

- e) Nothing in this section shall preclude the prequalification of subcontractors.
  - a. **Award of Contract** — If award is made, Contract will be awarded to the lowest responsive, responsible bidder whose bid complies with the specified requirements. Notice of award will be sent to the successful bidder at the mailing address indicated in Document 00420, "Bidder's General Information."
- f) Determination of the lowest monetary bid will be determined by the Total Base Bid as defined in the Bidding Sheet, including additive bid items.
- g) In the event of a tie, award of the Contract will be determined by a publicly held coin toss.

## 2.02 CONTRACT BONDS

- A. Prior to execution of the Contract, the Bidder shall furnish the District with surety bonds in the amounts and for the purposes listed herein. The successful bidder shall furnish two (2) good and sufficient surety bonds.
  - 1. "Payment" bond shall secure the payment of claims of laborers, mechanics, or material suppliers employed on the work under the contract.
  - 2. "Performance" bond shall guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the District, and that all materials and workmanship will be free from original or developed defects. The performance bond shall remain in effect until the end of all warranty periods set forth in the Contract documents.
- B. The form of bonds shall be surety forms conforming to California standards or as otherwise stipulated in the Special Provisions. Each contract bond shall be in the amount of one

hundred percent (100%) of the Contract amount unless otherwise stipulated in the Special Provisions.

- C. All alternates, extensions of time, extra and additional work, and other changes authorized by these specifications or any part of the contract may be made without securing the consent of the surety or sureties on the contract bonds. Changes, alterations, or extensions in the terms of the Contract shall not release the Contractor or their surety from its obligations.
- D. Special forms of bond required may be examined at the office of the Engineer, or copies will be furnished, if desired, to prospective bidders.
- E. Whenever any surety or sureties on any such bonds, or on any bonds required by law for the protection of the claims of laborers and material suppliers, become insufficient, or the District has cause to believe that such surety or sureties have become insufficient, a demand in writing may be made of the Contractor for such further bond or bonds or additional surety, not exceeding that originally required, as is considered necessary, considering the extent of the work remaining to be done. Thereafter no payment shall be made upon such contract to the Contractor or any assignee of the Contractor until such further bond or bonds or additional surety has been furnished.
- F. Companies supplying sureties or bonds shall be admitted to supply such instruments within the State of California, shall be listed by the Office of the Insurance Commissioner, and shall have a minimum A.M. Best rating of A and have a demonstrated ability to meet their ongoing obligations to policyholders.
- G. Each bond shall incorporate, by reference, the Contract and shall be signed by both the Bidder and the Surety, and the signature of the authorized agent of the Surety shall be notarized. The Bidder shall pay all bond premiums, costs, and incidentals.

### **2.03 EXECUTION OF CONTRACT**

- A. The contract shall be signed by the successful Bidder and returned, together with the contract bonds within fifteen (15) days after the bidder has received notice that the contract has been awarded unless stipulated otherwise in the Special Provisions. No proposal shall be considered binding upon the District until the execution of the contract.

### **2.04 FAILURE TO EXECUTE CONTRACT**

- A. Failure of the lowest responsive and responsible Bidder, or the second lowest responsive and responsible Bidder or the third lowest Bidder to execute the contract and file acceptable bonds as provided herein within fifteen (15) days after such Bidder has received the contract for execution shall be just cause for the annulment of the award and a claim against the proposal guaranty.

### **2.05 RETURN OF PROPOSAL GUARANTEE**

- A. The proposal guarantee accompanying the proposals of the first, second, and third lowest responsive and responsible Bidders will be retained until the contract has been executed by both parties to the contract, after which all such proposal guarantees, except Bidders' bonds and any guarantees which are subject to claims, will be returned to the respective bidders whose proposals they accompany. The proposal guarantees submitted by all other unsuccessful Bidders will be returned upon determination, by the Engineer, of the first, second, and third lowest responsible Bidders.

## **SECTION 3 - SCOPE OF WORK**

### **3.01 INTENT OF PLANS AND SPECIFICATIONS**

- A. The intent of the plans and specifications is to prescribe the details for the construction and completion of the work, which the Contractor undertakes to perform in accordance with the terms of the contract. Where the plans or specifications describe portions of the work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used.

### **3.02 WORK TO BE DONE**

- A. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, implements, equipment, machinery, methods, processes, and incidentals, and do all the work involved in executing the work in a satisfactory and workmanlike manner.

### **3.03 CHANGES**

- A. The District reserves the right to make such alterations, deviations, additions to or deletions from the plans and specifications including the right to increase or decrease the quantity of any item or portion of the work, or to delete any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as deemed by the Engineer to be required for the proper completion or construction of the whole work contemplated.
- B. Any such changes will be set forth in a contract change order which will specify, in addition to the work to be done in connection with the change made, adjustment of contract time, if any, and the basis for compensation for such work. A contract change order will not become effective until approved by the District.

### **3.04 INCREASED OR DECREASED QUANTITIES**

- A. Increases or decreases in the quantity of a contract item of work will be determined by comparing the total pay quantity of such item of work with the Engineer's Estimate thereof. If the total pay quantity of any item of work required under the contract varies from the quantities indicated in the proposal by twenty-five percent (25%) or less, payment will be at contract unit prices.
- B. If the total pay quantity of any item of work required under the contract varies from the quantities indicated in the proposal by more than twenty-five percent (25%), in the absence of an executed contract change order specifying the compensation to be paid, payment will be at contract prices. Written requests by the Contractor shall be accompanied by adequate data to support the costs of the item.

### **3.05 FINAL CLEANING UP**

- A. Before final inspection of the work, and as a condition of the acceptance and final payment, the Contractor shall clean the project site, and all ground occupied or used by Contractor in connection with the work, of all rubbish, excess materials, temporary structures, and equipment. All parts of the work shall be left in a neat and presentable condition.

## **SECTION 4 - CONTROL OF WORK**

### **4.01 AUTHORITY OF ENGINEER**

- A. The Engineer shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the work; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract on the part of the Contractor; and all questions as to claims and compensation. The Engineer's decision shall be final and he shall have executive authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly.

#### **4.02 PLANS**

- A. The contract plans furnished consist of general plans and show such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the approved plans shall be in writing.
- B. The contract plans shall be supplemented by such working drawings/shop drawings prepared by the Contractor as are necessary to adequately control the work. The Contractor shall make no change to any working drawings/shop drawings after the Engineer has approved it, except by direction of the Engineer.
- C. The Contractor's working drawings/shop drawings for any part of the permanent work shall include, but not be limited to, stress sheets, anchor bolt layouts, shop details, erection plans, equipment lists and any other information specifically required elsewhere in the specifications.
- D. Working drawings/shop drawings for any structures and for other temporary work and methods of construction the Contractor proposes to use shall be submitted when required by the specification or ordered by the Engineer. Such drawings shall be subject to approval insofar as the details affecting the character of the finished work and for compliance with design requirements applicable to the construction when specified or called for, but details of design will be left to the Contractor who shall be responsible for the successful construction of the work.
- E. The Engineer shall approve working drawings/shop drawings before any work involving such drawings is performed. It is expressly understood that approval of the Contractor's working drawings/shop drawings shall not relieve the Contractor from his responsibility under the contract for the successful completion of the work in conformity with the requirements of the plans and specifications. Such approval shall not waive any of the requirements of the plans and specifications or relieve the Contractor of any obligation there under, and defective work, materials, and equipment may be rejected notwithstanding such approval.

#### **4.03 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATION**

- A. Work and materials shall conform to the lines, grades, typical cross sections, dimensions and material requirements, including tolerances, shown on the plans or indicated in the specifications. Although measurement, sampling and testing may be considered evidence as to such conformity, the Engineer shall be the sole judge as to whether the materials or work deviate from the plans and specifications, and his decision as to any allowable deviations there from shall be final.
- B. Deviations from the approved plans, as may be required by the exigencies of construction, will be determined in all cases by the Engineer and authorized in writing.

#### **4.04 COORDINATION AND INTERPRETATION OF PLANS, SPECIFICATIONS AND SPECIAL PROVISIONS**

- A. The specifications, special provisions, addenda, contract change orders, the plans, and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary, to describe, and to provide for a complete work.
- B. In the event of conflicts between the contract documents the order or precedence shall be as follows:
  - 1. Modifications or changes last in time are first in precedence.

2. Addenda.
3. General Conditions except for specific modifications thereto stated in the Special Provisions or Division 01 Specifications.
4. Special Provisions.
5. Specifications.
6. Should there be a conflict among the General Conditions, Special Provisions, and Division 01 Specifications the more restrictive will apply.
7. Plans; as between figures given on plans and the scaled measurements, the figures shall govern; as between large-scale plans and small-scale plans, the larger scale shall govern.
8. As between detailed plans and standard plates bound within the specifications, the detailed plans govern.
9. In the event where provisions of codes, safety orders, contract documents, manufacturer's specifications, or industry standards are in conflict, the more restrictive shall govern.

#### **4.05 REQUESTS FOR INFORMATION**

- A. Should it appear that the work to be done, or any matter relative thereto, is not sufficiently detailed or explained in the plans, specifications, or the special provisions, the Contractor shall submit a request for information to the Engineer for such further explanations as may be necessary, on forms provided by the Engineer. The Contractor shall comply with the Engineer's response as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the plans, specifications, or the special provisions, reference shall be made to the Engineer, whose decision thereon shall be final.

#### **4.06 DIFFERING SITE CONDITIONS**

- A. The Contractor shall promptly, no more than one (1) day, and before conditions are disturbed, give written notice to the Engineer as to subsurface or latent physical conditions at the site which differ materially from those indicated in the contract, or unknown physical conditions at the site of an unusual nature which differ materially from those normally encountered and generally recognized as inherent in the work of the character provided for in the contract.
- B. No request by the Contractor for additional compensation shall be allowed unless the Contractor has given the written notice as required herein.

#### **4.07 SUPERINTENDENCE**

- A. The Contractor shall designate in writing before starting work an authorized representative who shall have the authority to represent and act for the Contractor. Said authorized representative shall be present at the site of the work at all times while work is actually in progress on the Contract. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work that may be required.
- B. Whenever the Contractor, or his authorized representative, is not present on any particular part of the work where it may be desired to give direction, Contractor shall assign one (1) and have on the work site a competent superintendent who is satisfactory to the Engineer and has authority to act for the Contractor.

#### **4.08 LINES AND GRADES**

- A. Lines and grades are established as those areas existing or adjacent to the work.

- B. The Contractor shall furnish the Engineer such facilities and labor necessary for marking and maintaining points and lines as he may require.

#### **4.09 INSPECTION**

- A. The District and Engineer shall at all times have safe access to the work during construction, and shall be furnished with every reasonable facility for ascertaining that the materials and workmanship are in accordance with the requirements and intentions of the specifications, special provisions, and the plans. All work done and all materials furnished shall be subject to inspection.
- B. Whenever the Contractor varies the period which work is carried out on each day, notice shall be given the Engineer, so that inspection may be provided. Any work done in the absence of the Engineer, may be subject to rejection.
- C. The inspection of the work or material shall not relieve the Contractor of any of his obligation to fulfill the contract as prescribed. Work or materials not meeting such requirements shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such work or materials have been previously inspected by the District or Engineer or the payment therefore has been included in a progress estimate.
- D. Projects financed in whole or in part with City, County, State and/or Federal funds shall be subject to inspection at all times by the agencies involved.

#### **4.10 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK**

- A. All work, which has been rejected, shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation, will be allowed for such removal, replacement, or remedial work.
- B. Any work done beyond the lines and grades shown on the plans or established by the Engineer, or any extra work done without written authority, will be considered as unauthorized and will not be paid for. Upon order of the Engineer unauthorized work shall be remedied, removed, or replaced at the Contractor's expense.
- C. Upon failure on the part of the Contractor to comply forthwith with any order of the Engineer made under provisions of this section, the Engineer shall have authority to cause defective work to be remedied, or removed and replaced, and unauthorized work to be removed, and to deduct the costs thereof from any moneys due or to become due the Contractor.

#### **4.11 CHARACTER OF WORKERS**

- A. If any Subcontractor or person employed by the Contractor shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, such Subcontractor or person shall be discharged immediately on request of the Engineer, and such person shall not again be employed on the work.

#### **4.12 FINAL INSPECTION**

- A. Whenever the work covered by the contract has been satisfactorily completed in accordance with the Contract Documents, and the final cleanup performed, the Engineer will make the final inspection.

#### **4.13 CONTRACTOR'S GUARANTY**

- A. The complete project, including all work, materials, devices and equipment, shall be guaranteed by the Contractor against faulty workmanship and materials for a period of one (1) year from the date of recording of the Notice of Completion. The Contractor shall be

responsible for all repair and/or replacements including all labor, materials, equipment, devices, plant and other items of work necessary.

- B. To secure the Contractor's Guarantee, the Performance bond specified in Section 2.02 of the General Conditions shall continue in full force and effect for a period of one (1) year from the date of recording of the Notice of Completion.
- C. The Contractor may be required to furnish a written guaranty covering certain items of work for periods of time longer than one (1) year as stipulated above. Such item shall be stipulated in the Special Provisions or as designated by the Engineer. The performance bond shall be extended or other suitable guaranty shall be provided prior to acceptance of the work. Where covered by the Special Provisions, the extended guaranty shall be included in the contract price, where designated by the Engineer, the Contractor will be reimbursed for bond premium in conjunction with the extended guaranty.

## **SECTION 5 - CONTROL OF MATERIALS**

### **5.01 GENERAL**

- A. The Contractor shall furnish all materials or equipment required to complete the work, except materials that are designated in the specifications to be furnished by the District. Only materials and equipment conforming to the requirements of the specifications shall be incorporated into the work.
- B. All materials and equipment furnished by the Contractor shall be new and, free from defects. Where the quality of materials or equipment is not specifically called out they shall be of the highest quality normally used.

### **5.02 CONTRACTOR'S SUBMITTALS**

- A. The Contractor shall submit to the Engineer for his approval, catalog and descriptive literature on materials or equipment that will be used in the work. Said submittal shall be made prior to commencement of work in accordance with Specification Section 01300.

### **5.03 SAMPLES AND TESTS**

- A. At the option of the Engineer, the Engineer shall approve the source of supply of each of the materials or equipment before delivery is started and before such materials or equipment is used in the work. Samples of such materials or equipment shall be furnished to the Engineer as requested and without charge. No material or equipment shall be used until the Engineer has approved it. Samples will be secured and tested whenever necessary to determine the quality of material or equipment.
- B. All tests of materials or equipment furnished by the Contractor shall be made in accordance with commonly recognized standards of national testing organizations, and such special methods and tests as are prescribed in these specifications.

### **5.04 STORAGE OF MATERIALS**

- A. Articles or materials to be incorporated in the work shall be stored in such a manner as to insure the preservation of their quality and fitness for the work, and to facilitate their inspection.

### **5.05 DEFECTIVE MATERIALS**

- A. All material or equipment which does not conform to the requirements of the plans and specifications shall be considered as defective and all such materials or equipment, whether in place or not, shall be rejected. They shall be removed immediately from the site of the

work, unless otherwise permitted by the Engineer. No rejected material or equipment, the defects of which have been subsequently corrected, shall be used unless approved in writing by the Engineer.

- B. Upon failure on the part of the Contractor to comply promptly with any order of the Engineer made under the provisions of this section, the Engineer shall have authority to cause the removal and replacement of defective material or equipment and to deduct the cost thereof from any moneys due, or to become due to the Contractor.

#### **5.06 MANUFACTURED EQUIPMENT**

- A. Manufactured equipment shall be all new, first line, current production models of manufacturers regularly engaged in production of such equipment for at least five (5) years.

#### **5.07 TRADE NAMES AND ALTERNATIVES**

- A. For convenience in designation on the plans or in the specifications, certain articles, materials or equipment to be incorporated in the work may be designated under a trade name or the name of a manufacturer and his catalog information. The use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:
  - 1. The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor and he shall furnish all information necessary as required by the Engineer. The Engineer shall be the sole judge as to the quality and suitability of alternative articles or materials and his decision shall be final.
  - 2. Whenever the specifications permit the substitution of a similar or equivalent material or article, no tests or action relating to the approval of such substitute material will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the material or article proposed. Such request shall be made in ample time to permit approval without delaying the work.
- B. Any additional costs incurred to allow the use of alternate material or equipment shall be borne by the Contractor, and shall not be the basis for any claim or claims for extra compensation. Any savings resulting from the use of alternate material or equipment shall be deducted from any moneys due, or that may become due the Contractor under the Contract.

#### **5.08 PLANT INSPECTION**

- A. The Engineer shall have the right to inspect the production of material, or manufacture of products at the source of supply.

### **SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC**

#### **6.01 LAWS TO BE OBSERVED**

- A. The Contractor shall keep himself fully informed of all existing and future State and Federal laws and all County, Municipal, Local and Special District laws, ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with, and shall cause all his agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work; and shall protect and indemnify the District, and all officers and employees thereof connected with the work, including the Engineer, against any claim or liability arising from or

based on the violation of any such law, ordinance, regulation, order, or decree, whether by himself or his employees. If any discrepancy or inconsistency is discovered in the plans, specifications, or contract for the work in relation to any such law, ordinance, regulation, order, or decree the Contractor shall forthwith report the same to the Engineer in writing.

## **6.02 CONTRACTORS LICENSING LAWS**

- A. All Bidders, Contractors, and Subcontractors performing work under this contract must be licensed by the California Contractors State License Board in accordance with the provisions of Chapter 9 of Division 3 of the Business and Professions Code and any Bidder, Contractor, or Subcontractor not so licensed shall be subject to the penalties imposed by such laws.

## **6.03 ASSIGNMENT OF ANTITRUST ACTIONS**

- A. Sections 4551 through 4554 of the Government Code pertaining to the assignment of antitrust claims are incorporated herein in full by this reference.

## **6.04 PAYMENT OF TAXES**

- A. The contract prices paid for the work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State, County, or local government, including, without being limited to, Federal excise tax. The District will furnish no tax exemption certificate or any document designed to exempt the Contractor from payment of any tax to the Contractor.

## **6.05 PERMITS AND LICENSES**

- A. The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

## **6.06 PATENTS**

- A. The Contractor shall assume all responsibilities arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work and agrees to indemnify and save harmless the District, Engineer, and their duly authorized representatives, from all suits at law, or actions of every nature for or on account of the use of any patented materials, equipment, or processes.

## **6.07 LABOR CODE REQUIREMENTS**

### **A. HOURS OF LABOR**

- 1. Eight (8) hours labor constitutes a legal day's work. The Contractor shall forfeit, as penalty to the District, twenty-five dollars (\$25) for each worker employed in the execution of the Contract by the Contractor or by any Subcontractor under him for each calendar day during which such worker is required or permitted to labor more than eight (8) hours in any one (1) calendar day and forty (40) hours in one (1) calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815 thereof, inclusive, except that work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours in excess of eight (8) hours per day at not less than one and one half (1½) times the basic rate of pay, as provided in said Section 1815.

### **B. PREVAILING WAGE**

- 1. The Contractor shall comply with Labor Code Sections 1774 to 1775. Pursuant to said Section 1775 the Contractor shall forfeit to the District a penalty of not more than two

hundred dollars (\$200) for each calendar day or portion thereof, for each worker paid less than the general prevailing rate of wages as determined by the Department of Industrial Relations of the State of California for any work done under the Contract, by him or her, or by any Subcontractor under him or her, in violation of the provisions of the Labor Code, and in particular, Sections 1770 to 1780 thereof, inclusive.

2. The scale of prevailing wages is available at the principal office of the State's Department of Industrial Relations, Division of Labor Standards Enforcement, Bureau of Field Enforcement Office or the State's nearest local office for the County where the work is being performed. The Contractor is required to post a copy of said wage scale at the job site prior to commencement of work.

#### C. PAYROLL RECORDS

1. The Contractor's attention is directed to the provisions of Labor Code Section 1776. The Contractor shall be responsible compliance by his Subcontractors with said provisions.
2. The Contractor and Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each worker, or other employee employed by him in connection with the execution of the work.
3. The payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the Contractor or Subcontractor or shall be furnished to any employee, or his/her authorized representative on request, according to Labor Code Section 1776. The District, State Department of Industrial Relations, and any State or Federal agency involved in the financing of the work, or any of their authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying. The Contractor will provide facilities for such access and inspection.
4. Each Contractor and Subcontractor and its Subcontractor shall submit its certified payroll record to the District (or its designated agent) on a weekly basis. If there was no work performed during the week, the certified payroll may be annotated "no work" for that week.
5. The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance on work under this contract in accordance with generally accepted accounting principles and the financial information and data used by the Contractor in preparation or support of the cost submission for any negotiated contract or change order and a copy of the cost summary submitted to the District.
6. Records shall be maintained and made available during the performance of work under this contract and until ten (10) years from the date of final payment for the project. In addition, those records which relate to any dispute appeal under this contract, to litigation, to the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken shall be maintained and made available until three (3) years after the date of resolution of such appeal, litigation, claim, or exception.

#### D. LABOR DISCRIMINATION

1. Attention is directed to Section 1735 of the California Labor Code.
2. No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section

12940 of the Government Code, and every Contractor for public works violating this section is subject to all the penalties imposed for a violation of Chapter 1 of Part VII, in accordance with the provisions of Section 1735 of the Labor Code.

**E. APPRENTICES**

1. Attention is directed to the provisions in Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. concerning the employment of apprentices by the Contractor or any Subcontractor under him.
2. The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprentice able trade on such contracts and if other contractors on the public works site are making such contributions.

**F. WORKERS COMPENSATION**

1. Pursuant to the requirements of Section 1860 of the Labor Code, the Contractor will be required to secure the payment of worker's compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code.
2. Prior to the commencement of work, the Contractor shall sign and file with the Engineer the Certificate of Worker's Compensation contained in the proposal.

**6.08 TRAFFIC CONTROL**

- A. Contractor is responsible and shall comply with all applicable Federal, State, County and Local requirements as required for traffic control and public safety during project construction. Coordination with the proper agencies and the placement and maintenance of warning signs, lights and other traffic control devices, as may be required, shall be the responsibility of the Contractor.

**6.09 TRENCH EXCAVATION AND DISCOVERY OF HAZARDOUS WASTE**

- A. Public Contract Code §7104 Contracts for digging trenches or excavations; notice of discovery of hazard waste or other unusual conditions; investigations; change orders; effect on contract.
- B. Any public works contract of a local public entity, which involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, shall contain a clause, which provides the following:
  1. Contractor shall promptly, and before the following conditions are disturbed, notify the Engineer, in writing, of any:
    - a. 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.
    - b. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
    - c. 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.

2. The District 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.

3. In the event that a dispute arises between the District and 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.

- C. Attention is also directed to the provisions of Section 6705 of the Labor Code concerning trench excavation safety plans.
- D. Prior to excavation for trenches four (4) feet or more in depth, the Contractor shall prepare detailed plans, showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground. If the plans vary from shoring system standards established by the California Division of Industrial Safety, a civil or structural engineer currently registered in California shall prepare the plans. Nothing herein shall be deemed to allow use of shoring, sloping, or protective systems less than those required by the State standards.

#### **6.10 AIR POLLUTION CONTROL**

- A. The Contractor shall comply with all pollution control rules, regulations, ordinances, and statutes which apply to the work performed under the contract including any air pollution rules, regulation and ordinances and statutes, specified in Section 11017 of the Government Code.
- B. Unless otherwise provided in the special provisions, material to be disposed of shall not be burned.

#### **6.11 WATER POLLUTION CONTROL**

- A. The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, waterways, coastal waters, and other bodies of water from pollution with fuels, oils, bitumen's, calcium chloride, and other harmful materials and shall conduct and schedule his operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, bays, waterways, and coastal waters. Care shall be exercised to preserve vegetation beyond the limits of construction.
- B. Water pollution control work is intended to provide prevention, control and abatement of water pollution to streams, waterways, and other bodies of water.
- C. Nothing in the terms of the Contract shall relieve the Contractor of the responsibility for compliance with Sections 5650 and 12015 of the Fish and Game Code, or other applicable statutes relating to prevention or abatement of water pollution.

#### **6.12 ASBESTOS RELATED WORK**

- A. All work involving asbestos containing material shall be performed in accordance with Sections 6501.5 through 6511, inclusive, of the California Labor Code and Section 5208 of Title 8 of the California Administrative Code and all other pertinent regulations.

### **6.13 SAFETY AND HEALTH PROVISIONS**

- A. The Contractor shall conform to all applicable occupational safety and health standards, rules, regulations, and orders established by the California Division of Industrial Safety.

### **6.14 PUBLIC CONVENIENCE AND SAFETY**

- A. The Contractor shall so conduct his operations as to offer the least possible obstruction and inconvenience to the public and he shall have under construction no greater amount of work than he can prosecute properly with due regard to the rights of the public.
- B. Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.
- C. Whenever the Contractor's operations create a condition hazardous to traffic or the public, he shall furnish, erect, and maintain at his expense and without cost to the District, such fences, barricades, lights, signs and other devices as are necessary to prevent accidents or damage or injury to the public.
- D. Should the Contractor appear to be neglectful or negligent in furnishing warning and protective measures as above provided, the Engineer may direct attention to the existence of a hazard and the necessary warning and protective measures shall be furnished and installed by the Contractor at his expense. Should the Engineer point out the inadequacy of warning and protective measures, such action on the part of the Engineer shall not relieve the Contractor from responsibility for public safety or abrogate his obligation to furnish and pay for these devices.

### **6.15 PRESERVATION OF PROPERTY**

- A. Trees, shrubs, and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipe lines under or above ground, sewer and water lines, all street and highway facilities, and any other improvements or facilities within or adjacent to the site of work shall be protected from injury or damage, and if ordered by the Engineer, the Contractor shall provide and install suitable safeguards, approved by the Engineer, to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The facilities shall be replaced and restored to a condition as good as when the Contractor entered upon the work.
- B. The fact that any underground facility is not shown upon the plans shall not relieve the Contractor of his responsibility under this Section. It shall be the Contractor's responsibility to ascertain the existence of any underground improvements or facilities, which may be subject to damage by reason of his operations.
- C. Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property as specified in the Section shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefore.

### **6.16 RESPONSIBILITY FOR DAMAGE**

- A. To the extent allowable by law the District or the Engineer shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof; or for any material or equipment used in performing the work; or for injury or death of any person or persons, either workers or the public; or for damage to property from any cause whatsoever.

- B. To the extent allowable by law the Contractor shall be responsible for any liability imposed by law and injuries to or death of any person including but not limited to workers and the public, or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before final acceptance.
- C. The Contractor shall indemnify and save harmless the District and other indemnified parties and the Engineer from any suits, claims, or actions of every name, kind, and description, brought forth, or on account of any injuries to or death or any person including but not limited to workers and the public, or damage to property resulting from the performance of the contract except to the extent caused by the sole negligence or willful misconduct of the indemnified party.
- D. The District may retain so much of the money due the Contractor as shall be considered necessary, until disposition has been made of such suits or claims for damages as aforesaid.

#### **6.17 CONTRACTOR'S RESPONSIBILITY FOR WORK**

- A. Until the formal acceptance by the District, the Contractor shall have the charge and care of the work and materials to be used therein, including work and materials for which he has received partial payment and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any cause before its completion and acceptance and shall bear the expense thereof.

#### **6.18 PERSONAL LIABILITY**

- A. The District, the Engineer, nor any other officer or authorized assistant or agent shall be personally responsible for any liability arising under or by virtue of the Contract.

#### **6.20 ENGINEER'S RESPONSIBILITIES FOR SAFETY**

- A. It is understood and agreed that the Engineer has no constructive use of the work; has no control or authority over the means, methods and sequences of construction; and therefore has no ongoing responsibility whatsoever for construction site safety, a responsibility that has been wholly vested in the Contractor. Notwithstanding the above, the Engineer has a duty to preserve and protect public health, safety, and welfare. It is the Engineer's professional responsibility to take what the Engineer believes is prudent measures should the Engineer encounter situations that the Engineer believes create danger to the public health, safety or welfare. The Contractor understands this situation and agrees to defend and hold the Engineer harmless from claims arising from the Engineer's exercise of professional responsibility in this regard.

#### **6.21 RESPONSIBILITY OF DISTRICT**

- A. The District shall not be held responsible for the care or protection of any materials or parts of the work prior to final acceptance, except as expressly provided in these specifications.

### **SECTION 7 - PROSECUTION AND PROGRESS**

#### **7.01 SUBLETTING AND ASSIGNMENT**

- A. The Contractor shall give his personal attention to the fulfillment of the Contract and shall keep the work under his control.
- B. No Subcontractors will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the Contractor, and he will be responsible for their work, which shall be subject to the provisions of the Contract and Specifications.

- C. The Contractor shall perform with his own organization contract work amounting to not less than twenty percent (20%) of the original total contract price.
- D. Subcontracts shall include provisions that the contract between the District and the Contractor is part of the subcontract, and that the terms and provisions of said contract are incorporated into the subcontract. Subcontracts shall also contain certification by the subcontractor that said subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontract work. Copies of subcontracts shall be available for review by the Engineer
- E. When any portion of the work, which has been subcontracted by the Contractor, is not being prosecuted in a manner satisfactory to the Engineer, the subcontractor shall be removed immediately on the request of the Engineer and shall not again be employed on the work.

#### **7.02 ASSIGNMENT**

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

#### **7.03 PROGRESS OF THE WORK**

- A. The Contractor shall commence work within ten (10) days after the date of the written notice to proceed from the Engineer, unless otherwise set forth in the Special Provisions. The Contractor shall diligently prosecute the work to completion within the time limit set forth in the Special Provisions.
- B. The Contractor shall provide the Engineer with a work plan and schedule in accordance with the Specifications. The Contractor shall promptly notify the Engineer of any changes or delays in the prosecution and progress of the work.

#### **7.04 TEMPORARY SUSPENSION OF WORK**

- A. The Engineer shall have the authority to suspend the work wholly or in part, for such period as he may deem necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as he may deem necessary, due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the contract. The Contractor shall immediately comply with the written order of the Engineer to suspend the work wholly or in part. The suspended work shall be resumed when conditions are favorable and methods are corrected, as ordered in writing by the Engineer.

#### **7.05 TIME OF COMPLETION**

- A. The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within the time set forth in the Special Provisions.
- B. Should the Contractor prepare to begin work at the regular starting time of any day on which "abnormally severe" inclement weather, or conditions resulting there from, or the conditions of the work, prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least seventy-five percent (75%) of the normal labor and equipment force in the current controlling operation(s) for at least sixty percent (60%) of the total daily time being spent on the controlling operation(s), the Contractor will not be charged for a working day whether or not the conditions should change thereafter during said day.

- C. The current controlling operation(s) is to be construed to include any feature of the work, operation, or activity considered at the time by the Engineer and the Contractor, which, if delayed or prolonged, will delay the time of completion of the contract.
- D. Determination that a day is a non-working day by reason of inclement weather or conditions resulting there from, shall be made by the Engineer, provided that the Contractor shall notify the Engineer in writing of the causes of delay within seven (7) days from the beginning of any such delay.

**7.06 LIQUIDATED DAMAGES**

- A. It is agreed by the parties to the Contract that in the event that all the work called for under the Contract in all parts and requirements is not finished or completed within the number of days set forth in the Special Provisions, or as may be adjusted by the Engineer, damage will be sustained by the District, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the District will sustain in the event of and by reason of such delay. It is therefore agreed that the Contractor will pay to the District the sum set forth in the Special Provisions per day for each and every calendar day's delay in finishing the work in excess of the number of days prescribed; and the Contractor agrees to pay said liquidated damages as herein provided for, and further agrees that the District may deduct the amount thereof from any moneys due or that may become due the Contractor under the Contract.
- B. It is further agreed that in case the work called for under the Contract is not finished and completed in all parts and requirements within the number of days specified, the Engineer shall have the right to increase the number of days, or not, as he may deem best to serve the interest of the District, and if he decides to increase the number of days, he shall further have the right to charge the Contractor, his heirs, assigns, or sureties, and to deduct from the final payment for the work all or part, as it may deem proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract, and which accrue during the period of such extension, except that the cost of final surveys and preparation of final estimate shall not be included in such charges.
- C. The Contractor will be granted an extension of the time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of delay in the completion of the work beyond the time named in the special provisions for the completion of the work caused by acts of God, or of the public enemy, acts of the District, fire, floods, tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials, freight embargoes, provided that the Contractor shall notify the Engineer in writing of the causes of delay within ten (10) days from the beginning of any such delay. The Engineer shall ascertain the facts and the extent of delay, and his findings thereon shall be final and conclusive.

**7.07 SUSPENSION OF CONTRACT**

- A. If at any time in the opinion of the District, the Contractor has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in and by the terms of the contract, notice thereof in writing will be served upon him and should he neglect or refuse to provide means for a satisfactory compliance with the contract, as directed by the Engineer, within the time specified in such notice, the District in any such case shall have the right to suspend the operation of the contract. Upon receiving notice of such suspension, the Contractor shall discontinue said work, or such parts of it as the District may designate. Upon such suspension, the Contractor's control shall terminate, and thereupon the District or his duly authorized representative may take possession of all or any part of the Contractor's materials, tools, equipment, and appliances upon the premises, and use the same for the

purpose of completing said contract, and hire such force and buy or rent such additional machinery, tools, appliances and equipment, and buy such additional materials and supplies at the Contractor's expense as may be necessary for the proper conduct of the work and for the completion thereof; or may employ other parties to carry the contract to completion, employ the necessary workers, substitute other machinery or materials, and purchase the materials contracted for, in such manner as the District may deem proper; or the District may annul and cancel the contract and re-let the work or any part thereof. Any excess of cost arising there from over and above the contract price will be charged against the Contractor and his sureties, who will be liable therefore. In the event of such suspension, all monies due the Contractor or retained under the terms of this contract shall be withheld and available to the District but such withholding will not release the Contractor or his sureties from liability or failure to fulfill the contract. The Contractor and his sureties will be credited with the amount of money so withheld toward suspension of the operations of the Contract and the completion of the work by the District as above provided, and the Contractor will be so credited with any surplus remaining after all just claims for such completion have been paid.

- B. In the determination of the question whether there has been any such non-compliance with the contract as to warrant the suspension or annulment thereof, the decision of the District shall be binding on all parties to the contract.

## **SECTION 8 - MEASUREMENT AND PAYMENT**

### **8.01 MEASUREMENT OF QUANTITIES**

- A. Items for which quantities are indicated "Lump Sum" shall be paid for at the price indicated in the Bid. Such payment shall be full compensation for the items of work and all work appurtenant thereto. The quantities given in the plan sheets and or contract are being given as a basis for the comparison of bids.

### **8.02 EXTRA WORK**

- A. New and unforeseen work will be classed as extra work when determined by the Engineer that such work is not covered by any of the various items for which there is a bid price or by combinations of such items.
- B. The Contractor shall do such extra work and furnish labor, materials, and equipment therefore upon receipt of an approved Contract Change Order or other written order of the Engineer and in the absence of such approved Contract Change Order or other written order of the Engineer, the Contractor shall not be entitled to payment for such extra work.
- C. When extra work is to be paid for on a lump sum basis, the amount of said payment shall be agreed upon in writing prior to execution of the work. Lump sum payments shall be considered as full compensation for the items of work and all appurtenances thereto.
- D. When extra work is to be paid for on a cost and percentage basis, the labor, materials, and equipment used in the performance of such work shall be subject to the approval of the Engineer and compensation will be determined as follows:
  - 1. Labor - The Contractor shall receive the cost of all labor of any class, including foremen, engaged in the extra work, plus an amount equal to twenty-five percent (25%) of the sum thereof.
  - 2. The costs of labor shall be based on the State of California Department of Industrial Relations Prevailing Wage Determination in effect at the date the contract was executed. Said costs shall include the basic hourly rate, health and welfare, pension, vacation and holiday, and training funds. Employer payments of payroll taxes, social

security, Medicare, federal unemployment, state unemployment, state training taxes, workers compensation insurance, liability insurance, and other direct costs, resulting from Federal, State, or local laws are considered part of the percentage amount.

3. The use of a labor classification, which would increase the extra work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The labor cost for foremen shall be proportioned to all of their assigned work and only that applicable to extra work will be paid.
4. Materials - The Contractor will receive the cost of all materials which he purchase and uses in the extra work, plus an amount equal to fifteen percent (15%) of the sum thereof. The cost of all materials shall include freight charges and taxes as shown by original invoiced bills for said materials.
5. The District reserves the right to furnish such materials required as it deems expedient, and the Contractor shall have no claim for profit on the cost of such materials.
6. Equipment and Tools - No payment will be made for the use of tools which have a replacement value of five hundred dollars (\$500.00) or less.
7. The Contractor will receive the cost of all equipment and tools, which he uses in the execution of the extra work, plus an amount equal to fifteen percent (15%) of the sum thereof.
8. The Contractor will be paid for the use of equipment at the rental rates listed for such equipment in the State Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which was in effect on the date the contract for the work was executed.
9. The rental rates paid shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, and maintenance of any kind, depreciation, storage, insurance, loading and transportation to the site of work, and all incidentals.
10. All cost and percentage work shall be adjusted daily upon work sheets, prepared by the Engineer, furnished to the Contractor and signed by both parties, which daily reports shall thereafter be considered the true record of extra work done.
11. Vendors' invoices for materials, equipment rental, and other expenditures, and certified payrolls shall be submitted with the request for payment. If the request for payment is not substantiated by the documentation enumerated above, the request will not be honored.

### **8.03 CHANGE ORDERS**

- A. The plans, specifications, special provisions, and the contract documents contain the requirements for the construction of the project. No information obtained from any officer, agent, or employee of the District on any such matters shall in any way affect the risk or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the contract.
- B. The Engineer may order changes, including revisions, to plans and specifications, performance of extra work, increases or decreases in contracted items of work, and the elimination of work. Such orders will be in writing. Changes shall not affect the obligations of the sureties on the contract bonds nor require their consent. The Contractor shall promptly notify the Engineer whenever it appears that a change is necessary, and when so directed,

shall stop work in the areas that may be affected. Contract time and compensation will be adjusted for changes, which materially increase or decrease the time for performance or cost.

- C. When so directed, the Contractor shall proceed with changes before agreement is reached on contract adjustments to compensation or time of performance, and shall furnish to the Engineer at the end of each day, signed detailed hourly records for that day of labor, construction equipment and itemized records of materials, equipment and services used in performance of the changes. If the Contractor fails to provide such records, the Engineer's records will be used for the purpose of adjusting compensation or time of performance.
- D. When applicable, changes in contract price resulting from extra work may be determined by a mutually agreed upon lump sum price. The Contractor's proposal for such changes shall include a detailed breakdown of labor and materials to be performed by his forces or the forces of his subcontractor or material supplier. The breakdown shall include labor surcharge and sales tax cost. Whenever the District requests that the Contractor prepare a lump sum price in connection with the change order, the Contractor shall be entitled to the costs incurred in the preparation of that price. Such costs will be incorporated into the lump sum amount regardless of whether or not the lump sum amount is finally accepted by the District.
- E. The Engineer shall receive the Contractor's proposal for lump sum change orders within ten (10) days following the issuance of the change order price request.

#### **8.04 OMITTED WORK**

- A. The District may, by written order to the Contractor, omit work, equipment, and material to be provided under the Contract, and the value of the omitted work, equipment, and material will be deducted from the contract price. The deducted value will be a lump sum or unit price agreed upon in writing by the Contractor and the District based on breakdown and cost information submitted by the Contractor.

#### **8.05 STOP PAYMENT NOTICES**

- A. The District, through the Engineer or other appropriate District's representatives, may at its option and at any time, retain out of any amounts due the Contractor, sums sufficient to cover claims, filed pursuant to Section 3179 et seq. of the Civil Code. Stop Notices shall comply with the provisions of Sections 3098, 3103, and 3183 of the Civil Code of the State of California.

#### **8.06 PROPOSAL ITEMS**

- A. Proposal items shall be for the complete work as indicated on the plans and described in the specifications, and shall include all labor, materials, tools, transportation, supplies, equipment, appurtenances, fuel, and power, taxes, profit, and anything else necessary or required, unless specifically excepted, for the construction and adjustments of appurtenant facilities in a workmanlike manner.
- B. Payments will be made on the basis of the items listed on the proposal and no additional claims for compensation will be allowed therefore.

#### **8.07 PARTIAL PAYMENTS**

- A. Once each month the Contractor may submit to Engineer a payment request showing the total amount of work done and the amount requested. The related delivery or weight tags

shall accompany such payment request, payroll certificates lien releases and any other documentation required to substantiate completion of the work.

- B. The Engineer for partial payment purposes shall determine the value of the work completed. The Engineer may require the Contractor to submit a monthly statement indicating the status of completion of each item of work and accompanied by such documentation as be required to substantiate the completion of work.
- C. The District will retain five percent (5%) from such estimated value of work done and materials furnished as retention earnings and the remainder, less the amount of all previous payments, will be paid to the Contractor. After final completion and acceptance of the work done under this Contract, if unencumbered, the District shall release and pay the amount retained under the provisions of the Section entitled "Final Payment". The District has the option and may release fifty percent (50%) of the retention withheld, if unencumbered, on the last Progress Payment Estimate of the work satisfactorily completed and accepted.
- D. No progress payment made to the Contractor or its sureties will constitute a waiver of the liquidated damages under Section 7.06.
- E. As provided for in Section 22300 of the California Public Contract Code, the Contractor may substitute securities for any monies withheld by the District to ensure performance under the contract.
- F. Public Contract Code Section §20104.50 is applicable to this contract and provides as follows:
  - 1. §20104.50 timely progress payments, legislative intent; interest; payment requests
    - a. It is the intent of the Legislature in enacting this section to require all local governments to pay their contractors on time so that these Contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is instead, a matter of statewide concern.
    - b. It is the intent of the legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local government, must set a standard of prompt payment that any business in the private sector, which may contract for services, should look towards for guidance.
  - 2. Any local agency which fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted payment request from a Contractor on a construction contract shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.
  - 3. Upon receipt of a payment request, each local agency shall act in accordance with both of the following:
    - a. Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
    - b. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph

shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

4. The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven (7) day return requirement set forth in paragraph (2) of subdivision (c).
5. For purposes of this article:
  - a. A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.
  - b. A "progress payment" includes all payments due Contractors, except that portion of the final payment designated by the contract as retention earnings.
  - c. A payment request shall be considered properly executed if funds are available for payment of the payment request, and the financial officer of the local agency does not delay payment due to an audit inquiry.

#### **8.08 FINAL PAYMENT**

- A. After the completion and acceptance of the work by the District, the Engineer will make a final estimate of the amount of work done there under, and the value of such work, and the District shall pay the entire sum so found to be due after deducting there from all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the Contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.
- B. Within sixty (60) days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entities may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount. For purposes of this subdivision, "completion" means any of the following:
  1. The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.
  2. The acceptance by the public agency, or its agent, of the work of improvement.
  3. After the commencement of work of improvement, a cessation of labor on the work of improvement of continuous period of one hundred (100) days or more, due to factors beyond the control of the Contractor.
  4. After the commencement of work of improvement, a cessation of labor on the work of improvement for a continuous period of thirty (30) days or more, if the public agency files for record a notice of cessation or a Notice of Completion.
- C. Work will not be considered complete in areas where a certificate of approval from the County, State or other regulatory agency is required until said certificate is received by the District.
- D. It is mutually agreed between the parties to the Contract that no certificates given or payments made under the Contract, except the final certificate or final payment, shall be conclusive evidence of the performance of the Contract, either wholly or in part, against any

claim of the party of the first part, and no payment shall be construed to be an acceptance of any defective work or improper materials.

- E. The Contractor further agrees that the payment of the final amount due under the contract, and the adjustment and payment for any work done in accordance with any alterations of the same, shall release the District and the Engineer from any and all claims or liability on account of work performed under the contract or any alteration thereof.

## **8.09 RESOLUTION OF CONTRACT CLAIMS**

- A. Provisions of Section 20104 (b) (2) State that a "claim" means a separate demand by the Contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.
- B. Public Contract Code Section 20104 and other sections in Article 1.5 apply to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a Contractor and a local agency.
- C. For any claim subject to this article, the following requirements apply:
  - 1. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
    - a. For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
      - 1. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
      - 2. The local agency's written response to the claim, as further documented, shall be submitted to the claimant within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
    - b. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
      - 1. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
      - 2. The local agency's written response to the claim, as further documented, shall be submitted to the claimant within thirty (30) days after receipt of the further

documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

#### **8.10 ADJUSTMENT OF DISPUTE**

- A. All questions or controversies which may arise between the Contractor and the District, under or in reference to this contract, shall be subject to the decision of some competent person to be agreed upon by the District and the Contractor, and his decisions shall be final and conclusive upon both parties.
- B. Should the District and Contractor be unable to agree upon such person, a board of three (3) arbitrators shall be chosen, one (1) by the District, one (1) by the Contractor, and the third (3<sup>rd</sup>) by the two (2) so chosen, and the decision of any two (2) of said arbitrators shall be final and binding upon the parties. If either party to the Contract neglects or fails for a period of ten (10) days after notice from the other party to designate an arbitrator hereunder, the arbitrator designated by the other party shall have full power to decide the dispute in the same manner as though a board of three (3) arbitrators had been selected. The referee or arbitrators shall decide which party shall pay the cost of arbitration, and final payment to the Contractor shall not be made until the full decision of the referee or arbitrators has been rendered.

**END OF SECTION 00700**