

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters or in all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters or in all capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms. The use of the term "Paragraph" with initial capital letters is used to connote a sub-article of one of the 21 articles herein, and includes all of the paragraphs falling under that sub-article (including sub-articles that are subsidiary to that sub-article).

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agency*— The Project is financed in part by USDA Rural Utilities Service pursuant to the Consolidated Farm and Rural Development Act (7 USC Section 19212 et seq.). The Rural Utilities Service programs are administered through the USDA Rural Development offices, therefore, the Agency for these documents is USDA Rural Development. The Agency is USDA Rural Development.

2.3. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3.4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

The Application for Payment form to be used on this Project is found in Section 00820. The Agency must approve all Applications for Payment before payment is made.

4.5. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5.6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6.7. *Bidder*—The individual or entity who submits a Bid directly to Owner.

7.8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8.9. Bidding Requirements—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

10. Bilateral Change Order—A document recommended by Engineer which is signed by Contractor and Owner 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.

The Change Order form to be used on this Project for a Bilateral Change Order is found in Section 00830. Agency approval is required before Change Orders are effective.

9.11. Change Order—~~A document in the form of either a Bilateral Change Order or Unilateral Change Order that 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. A document recommended by Engineer which is signed by Contractor and Owner 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.~~

The Change Order form to be used for this Project is found in Section 00830. Agency approval is required before Change Orders are effective.

12. *Claim*—A demand or assertion by ~~Owner 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 party is not a Claim. A condition precedent to Contractor's right to make a Claim is Contractor's strict compliance with the requirements set forth in Paragraph 10.05.

11.13. Contract—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12.14. Contract Documents—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13.15. Contract Price—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.02 in the case of Allowances and Paragraph 11.03 in the case of Unit Price Work).

14.16. Contract Times—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

- 15:17. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
- 16:18. *Cost of the Work*—See Paragraph 11.01 for definition.
19. *Designer*— The individual or entity named as such in the Agreement.
- 17:20. *Drawings*—That part of the Contract Documents prepared or approved by Engineer-Designer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
- 18:21. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 19:22. *Engineer*—The individual or entity named as such in the Agreement.
- 20:23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
- 21:24. *General Requirements*—Sections of Division 1 of the Specifications.
- 22:25. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, military munitions (including unexploded ordnance), or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
- 23:26. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- 24:27. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction, or purporting to have jurisdiction, including but not limited to the Law and Regulations listed in Appendix G.
- 25:28. *Liens*—Charges, security interests, stop notices, or encumbrances upon Project funds, real property, or personal property.
- 26:29. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 27:30. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement to the

successful Bidder, if Owner decides to proceed with the Work. The Notice of Award alone shall not create remedies for any Work performed under the Agreement or Contract Documents. Until Contractor receives a Notice to Proceed from Owner, Contractor shall not proceed with the Work and has no remedy against Owner for performing any Work related to the Project before receiving that notice.

28.31. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29.32. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

The Owner is the County of San Luis Obispo.

30.33. *PCBs*—Polychlorinated biphenyls.

31.34. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32.35. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33.36. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34.37. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35.38. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36.39. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37.40. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38.41. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39.42. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.

40.43. *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.

41.44. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

42.45. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43.46. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44.47. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer: (1) the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended; (2) a temporary certificate of occupancy or equivalent inspector sign-off has been issued by the governing authority (3) all systems included in the Work are operational, as designed, installed and tested; and (4) Contractor has submitted a written certification that all remaining Work shall be completed within a specified number of days approved by the Engineer following the Date of Substantial Completion. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

45.48. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

~~45. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.~~

47.49. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48.50. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable

television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

51. Unilateral Change Order—A document signed by the Owner that authorizes an adjustment to the Contract Price and/or Contract Times. Whenever an adjustment in Contract Price and/or Contract Times is warranted under the Contract Documents, but the Owner and Contractor cannot agree to the amount of adjustment, if any, that should be allowed to the Contract Price and/or Contract Times the Owner may issue a Unilateral Change Order stating the adjustment, if any, that is being made to the Contract Price and/or Contract Times. If any unilateral adjustment to the Contract Price and/or Contract Times is not acceptable to Contractor for any reason, including any argument that an adjustment to the Contract Price and/or Contract Times was not warranted by the Contract Documents, the Contractor's exclusive remedy is to follow the Claim process set forth in Paragraph 10.05. A Unilateral Change Order may be jointly signed by the Engineer, but the Engineer's signature is not required.

The Change Order form to be used for a Unilateral Change Order is found in Section 00830. Notwithstanding anything to the contrary set forth in Section 00830, neither the approval nor signature of the Contractor is required in order for a Unilateral Change Order to be effective. Agency approval is required before Change Orders are effective.

49.52. Unit Price Work—Work to be paid for on the basis of unit prices.

50.53. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

51.54. Work Change Directive—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

G. *Employ:*

1. The word “employ” when used in the context of Contractor’s hiring or use of a Subcontractor is not intended to suggest that the relationship between Contractor and Subcontractor is an employer-employee relationship.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds and certificates of insurance as Contractor may be required to furnish.
- B. ~~*Blank Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.~~

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to 4 printed or hard copies of the Drawings and Project Manual. ~~Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual.~~ Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence as set forth in the Notice to Proceed. In no event will Contractor have any remedies for Work performed on the Project until the Notice to Proceed is given to Contractor. ~~The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.~~

2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within ~~1440~~ days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents. The Progress Schedule, using Primavera P6 software, shall (1) provide a graphic representation of all activities and events that will occur during the performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth milestone dates that are significant to ensure the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

4. a preliminary Staking Request Schedule for the initial thirty (30) days of Work.

- B. Recycling Plan: Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit Recycling Plan to Owner for timely review, as specified in the Contact Documents.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, Designer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

1. Generally, Contractor shall communicate with Engineer, or Engineer's designated representative under Paragraph 9.03, as Engineer shall specify, concerning matters affecting Engineer or Owner. In the event that Contractor believes he/she cannot physically locate or deliver necessary communications to Engineer, or Engineer's designated representative, as specific circumstances require those communications to be received by Engineer, Contractor may transmit those communications to Owner with a copy to Engineer, or Engineer's designated representative, and shall include in the communication an explanation why Contractor is sending the communication to Owner as well as Engineer, or Engineer's representatives.

2.07 *Initial Acceptance of Schedules*

~~A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall be responsible for arranging a meeting to be held at least 5 days before submission of the first Application for Payment, where Contractor, Engineer, Owner, and others as appropriate, shall review for acceptability to Engineer and Owner the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until Contractor submits schedules that are accepted by Engineer and Owner in writing. Such acceptance shall only mean that the schedule satisfies the acceptability standard set forth below, and shall not constitute any type of approval or ratification by Engineer or Owner as to any means or methods of Work chosen by Contractor (which Contractor shall be solely responsible for)-acceptable schedules are submitted to Engineer.~~

1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times, in compliance with the requirements of Paragraph 2.05.A.1. If not accepted, the Progress Schedule shall be promptly revised by Contractor in accordance with the recommendations of Owner and Engineer and resubmitted for acceptance. Upon review and acceptance by Owner and Engineer, the Progress Schedule shall be deemed to be part of the Contract Documents and attached to the Agreement. Such acceptance must be in a writing signed by Owner and Engineer that expressly states that the Progress Schedule is deemed part of the Contract Documents and an attachment to the Agreement. Such acceptance will not impose on Engineer or Owner any responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

4. Contractor's Staking Request Schedule will be acceptable to Engineer and Owner if it correlates with the Progress Schedule.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

Contractor shall be responsible for verifying at the Site the accuracy of all grades, elevations, dimensions, locations and field measurements in any Drawings, Specifications, or any other Contract Documents. In all cases of the interconnection of its Work with existing or other Work, Contractor shall verify at the site all dimensions relating to such existing or other Work. Any additional work caused by Contractor's failure to verify all such grades, elevations, dimensions, locations, or field measurements shall be promptly rectified by Contractor without any increase in Contract Price or Contract Times. Nothing in this paragraph is intended to require the Contractor to assume responsibility for the completeness and accuracy of any Drawings, Specifications, or other Contract Documents. This paragraph simply sets forth Contractor's obligation to verify data before incurring costs or delays that could have been mitigated by such verification.

- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer ~~as provided in Article 9.~~

D. Contractor shall keep at the Work site a copy of the Plans and Specifications to which Engineer shall have access at all times.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations

- 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids ~~(or on the Effective Date of the Agreement if there were no Bids)~~, except as may be otherwise specifically stated in the Contract Documents.
- 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, Designer, or Engineer, or any of their subcontractors,

consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Designer, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, either before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for Contractor's failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof, or should have had such knowledge if it had acted in accordance with the provisions of the Contract Documents.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

C. Order of Precedence of Contract Documents:

1. In the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement on the Contractor shall prevail. The Contractor shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by Owner in writing. In the event none of the Contract Documents place a more stringent requirement or greater burden on the Contractor, the controlling provision shall be that which is found in the document with higher precedence. Nothing herein shall relieve the Contractor of its obligation to notify the Owner of any inconsistencies in the documents.
2. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following order of precedence:
 - a. Change Orders and Work Change Directives issued after execution of the Agreement in reverse chronological order (i.e. most recent first);
 - b. The Owner-Contractor Agreement, including all attachments and Addenda with later Addenda having priority over earlier Addenda;
 - c. General Conditions
 - d. Specifications
 - e. Drawings (Figures govern over scaled dimensions, Detail drawings govern over general drawings, Addenda/Change Order drawings govern over Contract Documents, Contract Drawings govern over Standard Plans);
 - f. Bidding Requirements;
 - g. Reference Specifications; and

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive. Any amendment to adjust either the Contract Times or the Contract Price shall be effective only if and when it is in writing and executed as a written Change Order.

Any amendment to adjust either the Contract Times or the Contract Price shall be effective only if and when it is in writing and executed as a written Change Order.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 1. A Field Order;
 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

No supplementation, variations, or deviations in the Work arising from any of the methods set forth in Paragraph 3.04.B shall, per se, adjust the Contract Price or Contract Times.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer-Designer or its consultants, ~~including electronic media editions;~~ or
2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer-Designer and specific written verification or adaptation by ~~Engineer-Designer~~.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Unless otherwise stated in the ~~Supplementary Conditions~~Specifications, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. ~~Blank~~~~Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60 day acceptance period will be corrected by the transferring party.~~

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor believes it is entitled to an adjustment in Contract Price and/or Contract Time, or any other relief, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor's exclusive remedy is set forth in Paragraph 10.05.~~If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.~~
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* ~~The Supplementary Conditions identify:~~

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and In the preparation of Drawings and Specifications, Designer relied upon the following reports of exploration and tests of subsurface conditions at the Site:

- a. Geotechnical Report, Los Osos Wastewater Project; Los Osos Community Services District; San Luis Obispo County, California; March 9, 2004
- b. Addendum and Update to Geotechnical Report, Los Osos Wastewater Project; San Luis Obispo County, California; October 24, 2011
- c. Shallow Groundwater Water Quality Sampling and Analysis, Los Osos, California; February 2, 2012

The reports itemized in this Paragraph 4.02.A are not part of the Contract Documents, but may be examined at the Department of Public Works and Transportation at 1050 Monterey Street, Room 207, County Government Center, San Luis Obispo, CA 93408, during regular business hours. Other than the limited reliance on "technical data" as provided in Paragraphs 4.02.B and 4.02.C below,

Contractor is not entitled to rely upon any information in said reports, or any other information or data utilized by Designer in the preparation of the Drawings and Specifications. The use of the term “technical data” refers only to the limited factual data included in the “Appendices” and “Attachments” that are attached to the end of the reports listed above in Paragraph 4.02.A.

Such reports shall not excuse Contractor from the duty to independently evaluate and satisfy themselves as to the Site conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, condition, layout, and nature of the Site and surrounding areas; (2) generally prevailing climatic conditions; (3) anticipated labor, supply, and costs; (4) availability and cost of materials, tools, equipment; and (5) other similar issues. Further, Owner assumes no responsibility or liability for the physical condition or safety of the Site or any improvement located on the Site. Except as set forth in Article 4, Contractor shall be solely responsible for providing a safe place for the performance of the Work. Owner shall not be required to make adjustments in either the Contract Price or Contract Times arising from a failure by Contractor or any Subcontractor to make a proper independent evaluation as to any Site conditions or limitations required in this Contract.

Any additional subsurface exploration shall be done by Contractor at its own expense.

2. ~~those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).~~ No drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the Site are known to Owner.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely ~~upon the accuracy of the~~ “technical data” contained in such reports ~~and drawings~~, but such reliance shall be limited to the accuracy of such data as of the date each respective soil boring identified in the report was made ~~reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions.~~ Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner, Designer, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports ~~and drawings~~ for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports ~~or shown or indicated in such drawings~~; or
 3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

C. Variability of Groundwater Levels: No data relating to groundwater levels is intended to provide an indication as to what the groundwater levels will be at the Site when any Work is being performed. Any such data relating to any groundwater level is simply that which existed on the date when soil boring data was determined. No groundwater level data can be relied upon as an indication of what the level will be at any Site at any time the Work would be performed under the Contract. It is commonly understood that groundwater levels are affected by a wide array of factors, including but not limited to, rainfall amounts, storm water runoff, the weather, irrigation schedules, the amount of groundwater being pumped by groundwater users, tidal influence, and many other factors. Since these factors vary over time, it is Contractor's responsibility to determine and allow for the groundwater level that exists on the date(s) the Contractor is performing any Work related thereto. Contractor shall be responsible for furnishing all labor, materials, equipment and incidentals required to remove and dispose of all surface water and groundwater entering any excavations. For purposes of this paragraph, the word "data" is intended to include "technical data", and any other type of data.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice*:- If Contractor discovers, or could reasonably have discovered, ~~believes~~ that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall immediately, and in any event not more than 24 hours thereafter, ~~promptly after becoming aware thereof~~ and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review*: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments*:

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes

an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
- a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. ~~If Contractor believes it is entitled to an adjustment in Contract Price and/or Contract Time, or any other relief, Contractor's exclusive remedy is set forth in Paragraph 10.05. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05.~~ However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or ~~Engineer-Designer~~ by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the ~~Supplementary Conditions~~ Specifications:
1. ~~Owner and Engineer shall not~~ Neither Owner nor Engineer nor Designer shall be responsible for the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

- a. reviewing and checking all such information and data;
- b. locating all Underground Facilities shown or indicated in the Contract Documents;
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, immediately, or as soon as feasible, promptly—after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall may be made to in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have discovered, or have been expected to be aware of or to have anticipated. If Contractor believes it is entitled to an adjustment in Contract Price and/or Contract Time, or any other relief, Contractor's exclusive remedy is set forth in Paragraph 10.05. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.
3. Notwithstanding the foregoing, nothing in this Contract requires Owner to show or indicate in the Contract Documents any Underground Facility that constitutes a service lateral or related appurtenance whenever the presence of such Underground Facility at the Site can be reasonably inferred from the presence of other visible facilities, such as buildings, meter and/or junction boxes, on or adjacent to the Site. Contractor is deemed to be aware of, and to have anticipated, any such Underground Facility.
4. The location of existing service lateral or related appurtenance are not shown on the Drawings. Where underground main distribution conduits such as water, gas, sewer,

electric power, telephone, or cable television are shown on the Drawings, Contractor shall assume that every property parcel will be served by a service lateral or related appurtenance for each type of utility.

4.05 Lines and Grades*Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel. Stakes or marks will be set by Engineer in accordance with the "Construction Staking Guidelines," set forth in Appendix H of these Contract Documents. The Contractor is responsible for assuring that all Work complies with the Contract Documents, and nothing in this Paragraph 4.05 or Appendix H diminishes or effects the Contractor's responsibility for providing Work that is in full compliance with the Contract Documents.
- B. When Contractor requires stakes or marks to be set, Contractor shall notify Engineer of the requirements in writing no less than 5 days in advance of starting operations that require their use. In the event that a staking operation is estimated to take more than 1 day to complete, add 1 day to the minimum 5 days advance notice.
- C. If any vegetation needs to be cleared or grubbed, as determined by Engineer, before stakes or marks can be set, then Contractor shall clear the obstructing vegetation for the proper placement of stakes or marks prior to submittal of a staking request. Engineer and Contractor shall agree on the extent of vegetation removal necessary to prepare the Site for the setting of stakes or marks. Vegetation removal for the preparation of the Site for the setting of stakes or marks shall be considered as included in the various items of work involved and no additional compensation will be allowed therefor. Contractor will not be entitled to any compensation for any perceived delay, nor entitled to an extension of time for any perceived delay without due cause for the period between when the Site is deemed cleared by Engineer and when the stakes or marks are set for use by Contractor.
- D. Stakes and marks set by Engineer shall be carefully preserved by Contractor. If the stakes or marks are destroyed or damaged, the stakes and marks will be replaced or restored at Engineer's earliest convenience. Contractor will be charged for each stake or mark replaced or restored which in the judgment of Engineer had been carelessly or willfully destroyed or damaged by Contractor's operations. As indicated in the "Construction Staking Guidelines," restaking charges will be based on the current costs of survey personnel plus overhead. This charge will be deducted from any moneys due or to become due Contractor.
- E. Pursuant to Section 8771(b) of the California Business and Professions Code, existing survey monuments that control the location of subdivisions, tracts, boundaries, roads,

streets, or highways, or provide survey control that are within or adjacent to Contractor's operations, shall be located and referenced by or under the direction of a California Professional Land Surveyor or California Registered Civil Engineer authorized to practice land surveying prior to the time when any streets, highways, other rights-of-way, or easements are improved, constructed, reconstructed, maintained, resurfaced, or relocated. It is the Contractor's responsibility to arrange and pay for a diligent and thorough search for survey monuments within the Site. Such work shall be performed by or under the direction of a California Professional Land Surveyor or a California Registered Civil Engineer authorized to practice land surveying prior to the beginning of any Work that could disturb or destroy a survey monument. Contractor shall provide Engineer a list of all such monuments and reference documents. In the event that any existing survey monuments are disturbed in any way by Contractor's operations, the Contractor shall be responsible for resetting monuments in accordance with Section 8771(b) of the California Business and Professions Code, and a corner record or record of survey shall be prepared and filed with the County Surveyor prior to filing of the Notice of Completion for the Project. Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in locating existing survey monuments by or under the direction of a California Professional Land Surveyor or California Registered Civil Engineer authorized to practice land surveying, resetting any disturbed survey monument and preparing and filing a corner record or record of survey, shall be considered as included in the Contract Price and no additional compensation will be allowed therefor.

4.06 *Hazardous Environmental Condition at Site*

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.~~*Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.~~

Absence of such reports and drawings shall not excuse Contractor from the duty to independently evaluate and satisfy themselves as to the Site conditions and limitations under which the Work is to be performed, including the existence of Hazardous Environmental Conditions that a reasonable contractor would have discovered either from a reasonable evaluation of external Site conditions, or upon the further investigation a reasonable contractor would have performed based upon information obtained from such external Site evaluation or other sources.

- B. ~~*Blank Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:~~

~~1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and~~

~~procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or~~

~~2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or~~

~~3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.~~

C. ~~Contractor must act reasonably and shall not be excused for carelessly failing to discover and locate any Hazardous Environmental Condition(s) at the Site that may present a substantial danger to persons or property exposed thereto in connection with the Work at the Site. Contractor is liable for any damages caused by any Hazardous Environmental Condition(s) that Contractor knew of, or by the exercise of reasonable efforts should have known of. Within 24 hours of the time when Contractor discovers any such Hazardous Environmental Condition(s), Contractor shall follow the procedures set forth in Paragraph 4.06.D. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.~~

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor written notice regarding any special instructions or conditions on how to proceed with the Work in the affected area~~the written notice required by Paragraph 4.06.E.~~

E. ~~Blank~~Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: ~~(i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.~~

- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Contractor believes it is entitled to an adjustment in Contract Price and/or Contract Time, or any other relief, Contractor's exclusive remedy is set forth in Paragraph 10.05. ~~If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05.~~ Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. ~~Blank~~ To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.07 Public Contract Code Section 7104

The provisions of Article 4 shall be interpreted and implemented in a manner consistent with Public Contract Code section 7104. Pursuant to Public Contract Code section 7104:

- A. Contractor shall promptly, and in any event not more than 24 hours thereafter, and before the following conditions are disturbed, notify Owner and Engineer in writing of any:

1. Material that 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.
 2. 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.
 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. Upon receiving Contractor's notification, Engineer, as Owner's authorized representative, shall promptly investigate the conditions on behalf of Owner and report the results of its investigation to Owner. If Owner finds that the conditions do materially differ, or do involve hazardous waste, and that the conditions cause an adjustment in Contract Price and/or Contract Time for performance of any part of the Work under the terms of the Contract, a Change Order shall be processed under the procedures described in the Contract.
- C. In the event that a dispute arises between Owner and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work under the terms of the Contract, 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. In such event, Contractor retains the right to submit a Claim therefor pursuant to the provisions of Article 10.
- D. The provisions of this Paragraph 4.07 are not intended to override or replace any other language of this Contract, including other language in Article 4, but simply supplements such other language. All of the other provisions of this Contract (including Article 4) remain in full force and effect, including those provisions relating to the same topics covered in this Paragraph 4.6.J., so long as each such provision does not violate Public Contract Code section 7104. If any court finds any provision(s) of this Contract to be in violation of section 7104, such provision(s) are hereby deemed severed and removed from this Contract without affecting the validity of any of the remaining provisions of this Contract.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. All performance bonds shall remain in effect until Contractor performs all obligations under the Contract Documents including, but not limited to, insurance, indemnity and warranty obligations, which survive completion of the Work. ~~These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period~~

~~specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents.~~ Contractor shall also furnish such other bonds as are required by the Contract Documents.

- B. ~~All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations. All bonds shall be executed by a California "admitted surety insurer," as defined in California Code of Civil Procedure Section 995.120 and listed by the California Insurance Commissioner pursuant to Insurance Code Section 12070. Bonds issued by a California admitted surety listed in the latest versions of the U.S. Department of Treasury Circular 570 shall be deemed to be accepted unless specifically rejected by Owner. Bonds from a California admitted surety insurer not listed in Treasury Circular 570 must be accompanied by all of the documents enumerated in California Code of Civil Procedure Section 995.660(a). The attorney-in-fact who executes the required bonds on behalf of the surety shall affix thereto a certified and current copy of the power of attorney. The signatures shall be acknowledged by a Notary Public.~~All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney in fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney in fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02. No further payments shall be deemed due or will be made under the Contract until a new surety(ies) qualifies and is accepted by Owner.
- D. If the Contractor or a Subcontractor disputes the correctness or validity or enforceability of any stop notice either may file with Owner a bond, on a form provided or approved by Owner executed by one or more California admitted surety insurers, in an amount equal to one hundred and twenty-five percent (125%) of the claim stated in the stop notice conditioned for the payment of any sum which the stop notice claimant may recover on the claim together with its costs of suit in the action. Upon Engineer's acceptance of such bond, Owner shall not withhold money from the Contractor on account of the stop notice. The surety(ies) upon the stop notice release bond shall be different than, and jointly and severally liable to the stop notice claimant with, the payment bond surety(ies).

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance

companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in ~~the Supplementary Conditions~~Contract Documents.

B. Insurance shall be placed with insurers with an A.M. Best Guide, or similar rating service guide, rating of no less than A-: XV.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee ~~identified in the Supplementary Conditions~~, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain. Upon Owner's request, Contractor shall provide complete copies of Contractor's and Subcontractors' insurance policies (including, but not limited to, the declarations page, form list and riders), endorsements or certificates required under the Contractor Documents and invoices for premiums.

~~B. Blank Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.~~

C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

F. Each certificate and endorsement is to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate(s) and endorsement(s) must be in a form approved by Owner. All deductibles and self-insured retentions must be identified in the certificates. Any deductible or self-insured retention in excess of \$25,000 must be declared to and approved in writing by Owner prior to execution of the Agreement. The deductibles and retentions shall be considered a form of self-insurance.

5.04 *Contractor's Insurance*

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of

them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
7. Claims for bodily injury or property damage arising out of completed operations under the Contract, whether such operations are by the Contractor, its Subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; and
8. Claims for third party liability and remediation costs stemming from pollution incidents that result from the operations of Contractor, its Subcontractors, Sub-subcontractors and suppliers.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner, Designer, and Engineer, ~~and any other individuals or entities identified in the Supplementary Conditions~~, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in these General-Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured ~~identified in the Supplementary Conditions to whom a certificate of insurance has been issued~~ (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for ~~two~~ ten (10) years after final payment.
 - b. ~~Contractor shall furnish Owner and each other additional insured evidence satisfactory to Owner and any such additional insured of continuation of such insurance as a condition to final payment and thereafter upon the annual renewal of such coverage until the time within which such coverage must be maintained expires. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.~~

C. Contractor shall provide insurance in the types, and limits set forth below, with companies lawfully licensed and authorized to do business in the State of California, or otherwise under such forms and limits and with such companies approved by Owner, following Owner's examination of the company's financial, reinsurance, claims procedures and other data requested by the Owner. The Contractor's liability insurance required by Paragraph 5.04 of the General Conditions shall provide coverage with scope and limits not less than the following or greater when required by Laws and Regulations:

1. Minimum Scope of Coverages

- a. Workers' Compensation and related coverages under Paragraphs 5.04.A.1 and A.2 of the General Conditions: Contractor shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the job. Compliance is accomplished in one of the following manners:
 - i) Provide copy of permissive self-insurance certificate approved by the State of California; or
 - ii) Secure and maintain in force a policy of workers' compensation insurance with State and applicable Federal statutory limits (e.g. Longshoremen's, if

applicable) and Employer's Liability Insurance with a minimal limit of \$1,000,000 per accident; or

iii) Provide a "waiver" form certifying that no employees subject to the California Labor Code's Workers' Compensation provision will be used in performance of this Contract.

In addition, all Worker's Compensation policies shall contain a waiver of subrogation in favor of the County of San Luis Obispo, its officials, board members, departments, agencies, directors, agents, employees, volunteers and representatives.

b. Commercial General Liability under Paragraphs 5.04.A.3 through A.5 of the General Conditions: Coverage shall be written on an Insurance Services Office (ISO) Commercial General Liability "occurrence" form CG 00 01 (10/01 or later edition) or equivalent form approved by Owner for coverage on an occurrence basis. The insurance shall cover liability, including, but not limited to, that arising from premises operations, stop gap liability, independent contractors, product liability and completed operations, personal injury, advertising injury, and liability assumed under an insured contract, and shall eliminate the exclusion with respect to property under the care, custody and control of Contractor. The policy shall be endorsed to provide the Aggregate per Project Endorsement ISO form CG 25 03 (11/85). Coverage shall contain no contractors' limitation or other endorsement limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground (x, c, u) property damage. Contractor shall maintain and provide Products/Completed Operations coverage to be maintained continuously for a minimum of ten (10) years after final payment. The policy shall be scheduled as underlying insurance to the Umbrella or Excess Policy required herein.

c. Business Automobile Liability under Paragraph 5.04.A.6 of the General Conditions. Coverage shall include owned, hired, leased and non-owned vehicles, whether scheduled or not, written on Insurance Services Office (ISO) form CA 00 01 (12/93 or later edition) or a substitute form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. The policy shall be scheduled as underlying insurance to the Umbrella or Excess Policy required herein.

d. Excess or Umbrella Liability Insurance: Coverage shall be at least as broad as any underlying coverage and shall be "following form" to the underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor's limitation endorsement. The policy shall have starting and ending dates concurrent with the underlying coverages. The Named Insured may determine the layering of primary and excess liability insurance provided that if such layering differs from that described here, the actual coverage program meets the minimum total required limits and complies with all other requirements listed in Paragraph 5.04. Contractor's excess or umbrella

liability coverage shall be maintained continuously for a minimum of ten (10) years after final payment.

e. Contractor's Pollution Liability Insurance: Coverage shall be provided on a form acceptable to Owner for liability caused by pollution conditions arising out of the operations of Contractor. Coverage shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), cleanup costs, and defense (including costs and expenses incurred in the investigation, defense, or settlement of claims). All activities contemplated in this Contract shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project Site to the final disposal location, including non-owned disposal sites. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors, the policy must include work performed "by or on behalf" of the insured. The policy shall specifically provide for a duty to defend on the part of the insurer. Such insurance shall include coverage for all operations, including completed operations and professional services. Such insurance shall not contain any exclusion for asbestos or lead. Contractor's pollution liability coverage shall be maintained continuously for a minimum of three (3) years after final payment.

2. Minimum Limits of Insurance. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

a. Workers' Compensation, and related coverages under Paragraphs 5.04.A.1 and A.2 of the General Conditions:

- | | |
|---|---|
| <u>i. State:</u> | <u>Statutory</u> |
| <u>ii. Applicable Federal (e.g., Longshoreman's):</u> | <u>Statutory</u> |
| <u>iii. Employer's Liability:</u> | <u>\$1,000,000 per accident for bodily injury or disease and \$1,000,000 per employee for bodily injury or disease.</u> |

b. Contractor's General Liability under Paragraphs 5.04.A.3 through 5.04.A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

- | | |
|---|--------------------|
| <u>i. General Aggregate:</u> | <u>\$2,000,000</u> |
| <u>ii. Products – Completed Operations Aggregate:</u> | <u>\$2,000,000</u> |
| <u>iii. Personal and Advertising Injury:</u> | <u>\$2,000,000</u> |

- iv. Each Occurrence \$2,000,000
(Bodily Injury and Property Damage):
- v. Property Damage liability \$2,000,000
insurance will provide
Explosion, Collapse, and
Under-ground coverages where
applicable:
- vi. Excess or Umbrella Liability:
 - General Aggregate: \$4,000,000
 - Each Occurrence: \$4,000,000

c. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:

- i. Bodily Injury:
 - Each Person: \$1,000,000
 - Each Accident: \$1,000,000
- ii. Property Damage:
 - Each Accident \$1,000,000

[or]
- i. Combined Single Limit \$1,000,000

d. The Contractual Liability coverage required by Paragraph 5.04.B.3 of the General Conditions shall provide coverage for not less than the following amounts:

- i. Bodily Injury:
 - Each Person: \$2,000,000
 - Each Accident: \$2,000,000
- ii. Property Damage:
 - Each Accident: \$2,000,000
 - Annual Aggregate: \$4,000,000

e. Contractor's Pollution Liability Insurance:

- i. Each Occurrence: \$2,000,000
- ii. General Aggregate: \$4,000,000

3. *Additional Insured Endorsements.* The Contractor shall cause the insurance required by the Contract Documents (except professional liability and worker's compensation) to include the **County of San Luis Obispo**, its officials, board members, departments, agencies, directors, agents, employees, volunteers and representatives as additional insureds. The Engineer and Designer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each shall also be included as additional insureds.

None of the insurance coverage required by Article 5 shall contain any special limitations on the scope of protection afforded to any additional insureds. All policies shall contain a waiver of subrogation in favor of the additional insureds. Coverage for such additional insureds does not extend to liability to the extent prohibited by Insurance Code Section 11580.4. All additional insured endorsements shall be on the form of endorsement found in Section 00600 **and** shall state:

"The Insurance afforded by this policy shall be primary insurance as respects any claim, loss or liability arising out of the Named Insured's operations. Any other insurance maintained by the Additional Insured(s) shall be excess and non-contributory with the insurance provided hereunder. The insurer hereby waives any rights of subrogation against any Additional Insured. Any deductible or self-insured retention due under this policy may be paid or satisfied by any Additional Insured should the Named Insured fail to do so."

D. *Deductibles and Self-Insured Retention.* Contractor and its Subcontractors shall pay all deductibles or self-insured retentions under each policy of insurance they are required to maintain under the Contract Documents. Their policies shall not contain a provision that requires that only the named insured may pay the deductible or self-insured retention. The additional insureds under each policy shall have the right, but not the obligation, to pay any deductible or self-insured retention should the Contractor or any Subcontractor fail to do so. In the event the Owner pays any deductible or self-insured retention, Owner shall be entitled to reimbursement by Contractor.

E. *Acceptance of Coverage.* All insurance policies, certificates, endorsements and binders shall be subject to the approval of Owner as to form and content. The insurance requirements are subject to amendment or waiver only if approved in writing by Owner.

F. *Contractor's Failure to Provide Required Insurance.* Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, Contractor shall immediately notify Owner and cease all performance under this Contract until further directed by the Owner. In the absence of satisfactory insurance coverage, Owner may, at its discretion and sole option: (a) procure insurance with collection rights for premiums and costs against Contractor by way of set-off or recoupment from sums due Contractor; (b) immediately terminate or suspend Contractor's performance of the Contract; (c) pay Contractor's premiums for renewal of Contractor's coverage; or (d) self-insure the risk, with all damages and costs incurred, by judgment, settlement or otherwise, including attorney's fees and costs, being collectible from Contractor, by way of set-off or recoupment from any sums due Contractor. Upon demand, Contractor shall repay Owner for all sums that Owner paid

to obtain, renew, reinstate or replace the insurance, or Owner may offset the cost against any monies that the Owner may owe Contractor.

G. *Reassessment of Contractor's Insurance Requirements.* At any time during the duration of this Contract, the Owner may require that Contractor obtain, pay for, and maintain more or less insurance depending on the Owner's assessment of any one or more of the following factors: (1) the Owner's risk of liability or exposure arising out of, or in any way connected with, Contractor's services under this Contract; (2) the nature or number of accidents, claims, or lawsuits arising out of, or in any way connected with, Contractor's services under this Contract; or (3) the availability, or affordability, or both, of increased liability insurance coverage. The Owner reserves the right to utilize a wrap insurance program for the Work of the Project. In the event the Owner implements a wrap program, Owner shall be entitled to reduce/credit the Contract Price in an amount equal to the premium for Contractor's insurance and its Subcontractors' insurance. Contractor agrees and will require its Subcontractors to cooperate with Owner in determining the amount of the credit due Owner and will provide Owner with true and correct copies of all existing and recent insurance policies and invoices for premiums.

5.05 *Blank Owner's Liability Insurance*

~~A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.~~

5.06 *Blank Property Insurance*

~~A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:~~

~~1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;~~

~~2. be written on a Builder's Risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.~~

~~2. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and~~

~~Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.~~

~~B. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.~~

5.07 *Blank Waiver of Rights*

~~A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.~~

~~B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:~~

- ~~1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and~~
- ~~2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during~~

~~partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.~~

~~C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.~~

5.08 *Blank Receipt and Application of Insurance Proceeds*

~~A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.~~

~~B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.~~

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If ~~either Owner or Contractor~~ has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by ~~Contractor~~the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01. ~~A.B. Owner and Contractor~~ shall each provide to the ~~Owner~~other such additional information in respect of insurance provided as the ~~Owner~~other may reasonably request. If ~~Contractor~~either party does not purchase or maintain all of the bonds and insurance required of ~~Contractors~~such party by the Contract Documents, ~~Contractors~~such party shall notify the ~~Owner~~other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the ~~Owner~~other party may elect to obtain equivalent bonds or insurance to protect ~~the Owner's~~such other party's interests at the expense of the ~~Contractor~~party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Blank Partial Utilization, Acknowledgment of Property Insurer

~~A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.~~

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner, Designer, or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. Contractor shall be responsible for making sure that the completed Work complies accurately with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent, who shall be the individual designated by Contractor under Paragraph 2.06.B, and who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

The resident superintendent 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 Engineer shall be made for any work which may be required under the Contract Documents.

- C. Whenever the resident superintendent is not present on any particular part of the work where it may be desired to give direction, orders will be given by Engineer which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given.

Any order given by Engineer, not otherwise required by the Contract Documents to be in writing, will on request of Contractor, be given or confirmed by the Engineer in writing.

- D. Contractor shall be skilled in the type of work required by the Contract Documents and shall be licensed in accordance with applicable law. Contractor shall perform at least 50 percent of the dollar value of the Work using personnel on its own payroll.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

Contractor shall remove any person performing Work upon written request by Engineer if the Engineer has reason to believe that such worker has behaved in a manner that demonstrates incompetence or other unsuitable behavior. Notwithstanding the forgoing, nothing in the Contract Documents imposes any obligation, responsibilities, or liabilities on Engineer and/or Owner for any incompetence or unsuitable behavior of any persons employed by Contractor (or any Subcontractor or Supplier), or any other persons allowed on the Site by a Contractor, Subcontractor or Supplier.

- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without ~~Owner's-Engineer's~~ written consent (which will not be unreasonably withheld) given after prior written notice to Engineer. Eight hours labor constitutes a legal day's work in the state of California under California Labor Code section 1810.

- C. This is a federally financed public works project subject to all applicable Federal and State Laws and Regulations governing public works projects, including but not limiting to any and all labor Laws and Regulations requiring the payment of prevailing wages. Contractor shall comply with all applicable Federal and State labor and prevailing wage Laws and Regulations, and shall comply with all labor and wage requirements referenced in sections 00200 and 00300 of the Contract Documents. Contractor shall also comply with the labor standard provisions set forth in Article 21.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. ~~All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner.~~ If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

D. All warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. Contractor is responsible for making sure that all such warranties and guaranties are transferable to, and enforceable by, Owner. Contractor agrees to assign to Owner at the time of final completion of the Work any and all manufacturer's warranties and guarantees relating to materials and labor used in the Work and Contractor further agrees to perform the Work in such a manner as to preserve any and all manufacturer's warranties and guarantees.

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

3. If Contractor desires to make a major change in the method of operations after commencing construction, or if the schedule fails to reflect the actual progress, Contractor shall submit to Engineer a revised Progress Schedule as soon as possible and prior to beginning revised operations.

4. Contractor shall submit to Engineer an updated Progress Schedule within 5 days of the Engineer's written request.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. "*Or-Equal*" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;

2) will state:

- a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
- b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

- a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:*

1. During Bidding. The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or "or-equal" materials and equipment as defined in paragraph 6.05 of the General Conditions, or those substitute or materials and equipment approved by the Owner and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function, and quality to be met by any proposed substitute or "or-equal" item. Request for Owner's clarification of materials and equipment considered "or-equal" prior to the Effective Date of the Agreement must be received by the Owner at least 10 days prior to the date for receipt of Bids. No item of material or equipment will be considered by Owner as a substitute unless written request for approval has been submitted by Bidder and has been received by Owner at least 15 days prior to the date for receipt of Bids. Each request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon the

Bidder. Owner's decision of approval or disapproval of a proposed item will be final. If Owner approves any proposed substitute item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

2. After Effective Date of Agreement. Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. No later than 14 days after the Effective Date of the Agreement by Contractor and Owner, Contractor shall furnish Owner and Engineer, in writing, with the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity ~~(including those acceptable to Owner as indicated in Paragraph 6.06.B)~~, whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

Contractor is solely responsible for which Subcontractor, Supplier, or any other individual or entity it uses to furnish or perform any of the Work, and Owner's failure to object to any such Subcontractor, Supplier, or other individual or entity does not in any way relieve Contractor of this responsibility. No act or omission by Owner or Engineer shall be construed as an acceptance or approval of any such Subcontractor, Supplier, or individual or entity. No act or omission by Owner or Engineer shall be

construed as a waiver of any right of Owner or Engineer to reject defective Work. Every Subcontractor shall be skilled in the type of work required by the Contract Documents and shall be licensed in accordance with applicable law.

- B. ~~If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work. Contractor shall comply with the Subcontractor Listing Laws set forth in California Public Contract Code sections 4100-4114. If Owner consents to Contractors request for substitution of a Subcontractor pursuant to Public Contract Code section 4107, such consent shall not be deemed an approval or acceptance of a Subcontractor, but merely Owner's determination that such consent is authorized under the statute.~~

Pursuant to Public Contract Code section 4114, Owner's functions under Public Contract Code sections 4107 and 4110 are delegated to the County's Director of Public Works (or his designee). Contractor shall provide all data in support of any Subcontractor substitution request. Owner will be allowed a reasonable time within which to evaluate such request, and may require Contractor to furnish additional data regarding the requested substitution. All data provided by Contractor regarding the requested substitution shall be at Contractor's sole expense. Whether or not Owner approves the requested substitution proposed by Contractor, Contractor shall reimburse Owner for the reasonable charges of Owner for Owner's time and expense in evaluating the requested substitution. Regardless of whether or not Owner approves a requested substitution, Contractor shall not be entitled to any additional Contract Time or any increase in Contract Price for any time delays relating to a resolution of a Subcontractor substitution request so long as Owner did not unreasonably delay the processing of the request.

If Owner's decision on a Subcontractor substitution request is challenged in court, under no circumstances shall Contractor be entitled to any additional Contract Time or any increase in Contract Price if Owner's decision was to consent to a Subcontractor substitution requested by Contractor. Furthermore, Contractor shall indemnify Owner from all claims and/or court actions challenging the Owner's approval of any Subcontractor substitution requested by Contractor, regardless of whether the claim or action seeks legal or equitable relief, so that any and all costs or damages incurred by Owner relating to said claims and/or actions shall be paid by Contractor. If an Owner's decision to deny a Subcontractor substitution requested by Contractor is overruled by a

court, Contractor shall not be entitled to any additional Contract Time or any increase in Contract Price for any associated time delays unless the court expressly finds that (1) Owner acted in an arbitrary and capricious manner and (2) Owner's conduct caused an unnecessary delay.

- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. ~~BlankAll Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.~~
- H. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier.

- I. Contractor shall not award work valued at more than fifty (50%) of the Contract Price to Subcontractor(s).
- J. All subcontracts shall be in writing and shall specifically provide that Owner is an intended third-party beneficiary of said subcontract.
- K. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to a signed written agreement between Contractor and Subcontractor or Supplier which specifically binds Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Each and every agreement between Contractor and any Subcontractor or Supplier shall provide for Contractor's assignment of the agreement to Owner, at Owner's option, in the event of a termination by Owner under Paragraphs 15.02 or 15.03. By executing the Agreement that is part of these Contract Documents, Contractor hereby assigns to Owner each agreement entered into by Contractor and any Subcontractor or Supplier, subject to the following two conditions subsequent: (1) Owner exercises its right to terminate Contractor's services pursuant to Paragraphs 15.02 or 15.03; and (2) Owner notifies in writing the Contractor and the Subcontractor/Supplier of the particular agreement that (a) Owner is exercising its right under this paragraph to accept an assignment of that particular agreement, and (b) the date upon which the assignment is being accepted by Owner. Under this paragraph, Owner has the right to only accept those assignments which Owner believes is in its best interest. Only those particular agreements expressly and specifically accepted by Owner pursuant to this paragraph shall be deemed assigned to Owner.
- L. Upon the request of Owner or Engineer, Contractor shall provide Engineer a copy of any requested subcontract within five (5) days of the request.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner, Designer, or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. ~~*Blank*To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.~~

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Designer, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

D. Neither the approval of any material or equipment proposed by Contractor under Paragraph 6.05.A, nor the approval of any substitute means, method, technique, sequence, or procedure of construction approved under Paragraph 6.05.B. shall constitute an "invention, design, process, product, or device specified in the Contract Documents" under this Paragraph 6.07. Contractor shall pay all license fees and royalties and assume all costs incident to the use of any such material, equipment, means, method, technique, sequence, or procedure of construction approved under Paragraph 6.05.A. or 6.05.B. which is the subject of any patent rights or copyrights held by others.

6.08 *Permits*

A. Unless otherwise provided in the ~~Supplementary Conditions~~Specifications, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. ~~Owner shall pay all charges of utility owners for connections for providing permanent service to the Work. Contractor shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for costs related to providing post construction service to the Work. All such payment of fee, charges, permits, and licenses by Contractor under this Paragraph 6.08 shall be considered as included in the prices paid for the various Contract items of Work and no additional payment will be made therefor.~~

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, ~~attorneys~~, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. ~~However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and~~

~~Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03. Contractor shall indemnify and hold harmless Owner, Engineer, Designer, the State Water Resources Control Board, and the California Infrastructure and Economic Development Bank and each of their respective trustees, officers, directors, members, partners, employees, agents, and consultants from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any agency or body against Owner relating to such Work performed by Contractor contrary to Laws and Regulations (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code Section 13304). The duty to defend shall apply notwithstanding any alleged or actual concurrent negligence (active or passive) or partial fault on the part of any person or entity indemnified hereunder.~~

- C. ~~Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05. Any new Laws or Regulations adopted after the time of opening of Bids that cause an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of any such adjustment, Contractor may submit a Claim as provided in Paragraph 10.05. Similarly, if Contractor disagrees with a unilateral adjustment in Contract Price or Contract Times made by Owner, Contractor may submit a Claim as provided in Paragraph 10.05.~~
- D. ~~The date upon which a new Law or Regulation is adopted shall be determined by the date it was formally adopted by the governing body or officer authorized to adopt the Law or Regulation, and not by its effective date. (For example, California Senate Bill 189 (SB189, Stats 2010, c. 697), which was approved by the Governor of September 30, 2010, but contains provisions which are not effective until July 1, 2012, would not be considered a new Law or Regulation, even if the opening of Bids is before July 1, 2012.) Contractor shall not be entitled to any adjustment in Contract Price or Contract Time when the new Law or Regulation is an Order specifically directed towards Contractor that relates to Contractor's past or present conduct, or other circumstances within Contractor's control or responsibility.~~

6.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, ~~and~~ Engineer, Designer, the State Water Resources Control Board, the California Infrastructure and Economic Development Bank, and each of their respective trustees, the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, ~~Engineer,~~ or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work. The duty to defend shall apply notwithstanding any alleged or actual concurrent negligence (active or passive) or partial fault on the part of any person or entity indemnified hereunder.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and

written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings ~~will be delivered~~shall be delivered by Contractor to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. This requirement shall apply continuously, including days when Work is suspended, and shall not be limited to normal working hours. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work, including but not limited to members of the public using any adjoining road or right of way;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, fences, wall, signs, buildings, all highway facilities and Underground Facilities, and any other improvements or facilities within or adjacent to the Work not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
1. Contractor shall maintain at its office or other well-known place at the Project Site, the appropriate items for giving first aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the Project Site.
 2. No review or inspections by Owner or Engineer shall relieve Contractor of its responsibilities under this Paragraph 6.13.
 3. If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to Engineer and Owner. In addition, Contractor must promptly report in writing to Engineer all accidents whatsoever arising out of, or in connection with, the performance of the Work whether on, or adjacent to the Site, giving full details and statements of witnesses.

Nothing in this paragraph shall excuse Contractor from reporting any accident, damage, injuries, or fatalities to any other person, entity, or agency as may be required by Laws or Regulations.

4. For all excavations in excess of five (5) feet, Contractor shall, pursuant to Labor Code Section 6705, submit in advance of any excavation hereunder a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from caving ground. No such excavation shall be made until said detailed plan is submitted by Contractor and accepted by Engineer. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. Nothing in this paragraph shall be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders of the California Division of Occupational Safety and Health. Nothing in this paragraph shall be construed as imposing any liability upon Owner or Engineer.
 5. Contractor shall comply with applicable occupational safety and health standards, rules, regulations, and orders. The Occupational Safety and Health Standards Board is the only agency authorized in the State to adopt and enforce occupational safety and health standards (Labor Code § 142 et seq.). Contractor is the controlling employer and must ensure hazardous conditions are corrected (Labor Code § 6400).
 6. Contractor shall submit to Engineer copies of its Injury and Illness Prevention Program and permits required by Cal/OSHA.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The ~~Supplementary Conditions~~Specifications identify any Owner's safety programs that are applicable to the Work.
- D. ~~Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.~~Contractor shall notify Owner and Engineer in writing of the specific requirements of Contractor's safety program and Owner's and Engineer's employees and representatives shall comply therewith while at the Site, so long as said requirements do not unreasonably interfere with Owner's and Engineer's functions at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be the responsibility of Contractor and shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or Designer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

G. Full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all the Work involved in protecting person or property or repairing property, as specified in the Contract Documents shall be considered as included in the prices paid for the various contract items of Work and no additional compensation will be allowed therefor.

6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with all applicable Laws or Regulations.

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall immediately notify Engineer of emergency. Contractor shall also provide Engineer written notice as soon as feasible, and in no instance later than the end of the next business day after the day on which the alleged emergency occurred, give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

a. Submit 5 number of copies ~~specified in the General Requirements.~~

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar

data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*
 - a. Submit number of Samples specified in the Specifications.
 - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

4. The practice of submitting incomplete or unchecked Shop Drawings for Engineer to correct or finish will not be acceptable; and Shop Drawings which, in the opinion of Engineer, clearly indicate that they have not been checked by Contractor will be considered as not complying with the intent of the Contract Documents and will be returned to Contractor for resubmission in the proper form.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

4. After the Shop Drawings have been reviewed by Engineer, two sets of submittals will be returned to Contractor appropriately stamped. If major changes or corrections are necessary, the Shop Drawings may be rejected and one set will be returned to Contractor with such changes or corrections indicated.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

If Contractor makes any changes to resubmitted Shop Drawings other than those changes indicated by Engineer, Contractor shall provide Engineer written notice of such changes. This notice shall be both a written communication separate from the Shop Drawings; and, in addition, by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

F. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing subsequent submittals of Shop Drawings, samples, or other items requiring approval and Contractor shall reimburse Owner for Engineer's charges for such time.

G. In the event that Contractor requests a change of a previously approved item, Contractor shall reimburse Owner for Engineer's charges for its review time unless the need for such change is beyond the control of Contractor.

6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Engineer and/or Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, ~~except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.~~

6.19 *Contractor's General Warranty and Correction Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be performed and installed in accordance and conformance with the Contract Documents, will be of good quality and new, in accordance with the Contract Documents and will not be defective. ~~Engineer-Owner~~ and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on ~~representation of the~~ Contractor's warranty and guarantee made hereunder or in any separate warranties by Contractor, its Subcontractors and Suppliers.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, ~~or~~ improper maintenance, or improper operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
2. normal wear and tear under normal usage.

This warranty is not limited by the provisions of Paragraph 13.07 herein, relating to Contractor's correction period. The provisions of this Paragraph 6.19 shall survive Contractor's completion of the Work or termination of the Contractor's performance of the Work. Contractor's surety shall be liable for breaches of this warranty and the correction obligations described in this Paragraph 6.19 and in Paragraph 13.07.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, lack of inspection, test, or approval by Engineer or others; or
7. any correction of defective Work by Owner.

D. In addition to the Contractor's general warranty provided in Paragraphs 6.19.A and 6.19.B, Contractor hereby agrees to make, at its own expense, all repairs or replacements necessitated by defective Work, including defects in material or workmanship, supplied under terms of this Contract, which become evident within one year after the date of final acceptance of the Work, or such longer period of time as may be prescribed by the terms of any applicable special guarantee or warranty periods specified in the Contract Documents. After being deemed substantially complete by Engineer and Owner, Contractor shall also warranty its work against trench settlement for a period of three years after the date of final acceptance by Owner, or such longer period of time as may be prescribed by the terms of any applicable special guarantee or warranty periods specified in the Contract Documents.

E. Contractor shall make all repairs and replacements promptly upon receipt of written notice for same from Owner. If Contractor fails to make the repairs and replacements in a timely manner, Owner may do the work, and Contractor and its surety shall be liable for the cost thereof.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Contractor shall defend, indemnify and hold harmless Owner, Designer, ~~and~~ Engineer, the State Water Resources Control Board, and the California Infrastructure and Economic Development Bank, and each of their respective trustees, ~~the~~ officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable. The duty to defend shall apply notwithstanding any

alleged or actual concurrent negligence (active or passive) or partial fault on the part of any person or entity indemnified hereunder.

- B. In any and all claims against Owner, Designer, or Engineer, the State Water Resources Control Board, or the California Infrastructure and Economic Development Bank, or any of their trustees, officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of any of the following acts or omissions of Engineer or Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

D. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Designer and Designer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of any of the following acts or omissions of Designer or Designer's officers, directors, members, partners, employees, agents, consultants and subcontractors:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that

such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

6.22 Daily Reports

- A. Contractor shall complete a daily report on forms provided by Engineer (and approved by Owner) that sets forth the daily progress and status of the Work. The daily report is due at the conclusion of each work day, and shall be signed and submitted by Contractor to Engineer no later than the close of the next working day. Failure to submit the completed daily report by the close of the next working day shall constitute a breach of this Contract. Reports by Subcontractors or others shall be submitted through Contractor.
- B. Acceptance of the daily report by the Engineer does not constitute any agreement or acquiescence by Engineer or Owner that the information contained therein is accurate or complete. If the Engineer requests the Contractor to resubmit the daily report with more complete or accurate information, the Contractor shall respond to such requests within 24 hours by resubmitting a revised daily report. The daily report shall set forth the daily progress and status for each component of the Work requested by the Engineer, and shall inform the Engineer of any events, issues or circumstances which Contractor believes may lead Contractor to seek an adjustment in Contract Price or Contract Time. The daily report shall also include applicable delivery tickets, listing all labor, materials, and equipment involved for that day, and other services and expenditures when authorized. In addition to any other information requested by the Engineer on the form, the report shall also:
 - 1. Show names of workers, classifications, and hours worked.
 - 2. Describe and list quantities of materials used.

3. Show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable (and noting periods of time when said equipment is out of service, if applicable).
4. Describe other services and expenditures in such detail as the Engineer or Owner may require.

6.23 Payroll Record of Wages Paid

A. Contractor shall submit, weekly, a copy of certified payroll records, including those of Subcontractors. Payroll records shall include:

1. each employees showing the full name; address; social security number; work classification; straight time and overtime hours worked each day and week; actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work; pay rate; itemized deductions made; check number issued; and
2. apprentices and the apprentice-to-journeyman ratio.

B. Each certified payroll shall be accompanied by a statement of compliance, on a form acceptable to the Engineer, signed by the employer or the employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Contract.

C. The payroll records shall be available for inspection at all reasonable hours at Contractor's principal office upon the basis set forth in Section 1776 of the Labor Code, and Contractor shall comply fully with all of the provisions thereof and of any rules adopted pursuant thereto.

D. In the event of noncompliance with the requirements of such section after 10 days written notice specifying in what respects compliance is required Contractor shall forfeit as a penalty to Owner, \$25.00 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, such penalties shall be withheld from progress payments then due.

E. Contractor and each Subcontractor shall preserve their payroll records for a period of 3 years from the date of final payment.

6.24 Disadvantaged Business Enterprises Utilization Report

A. Contractor shall submit, with each progress payment request, a DBE Utilization Report on a form furnished by the Engineer (and approved by Owner).

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

~~A.If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:~~

~~1.the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;~~

~~2.the specific matters to be covered by such authority and responsibility will be itemized; and~~

~~3.the extent of such authority and responsibilities will be provided.~~

~~B.A. Unless otherwise provided in the Supplementary Conditions Contract Documents, Contractor shall be responsible for coordinating the performance of its Work with the performance of other work on the Project at the Site. Owner shall have sole authority and responsibility for such coordination.~~

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

Only those contracts between Owner and an independent contractor hired by Owner to perform specific work pursuant to Owner's specifications shall constitute a "direct contract" of Owner under Paragraph 7.01.A. Any contract relating to any facilities owned by a utility, regardless of whether Owner is contracting with the utility company or some other individual or entity authorized to perform work relating to said facilities, does not constitute a "direct contract" of Owner under Paragraph 7.01.A.

- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

7.04 *Claims Between Contractors*

- A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, or Engineer, then Contractor shall (at no cost to Owner or Engineer) either (1) remedy the damage, (2) agree to compensate the other contractor for remedy of the damage, or (3) remedy the damage and attempt to settle with such other contractor by agreement, or otherwise resolve the dispute by arbitration or at law.
- B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner or Engineer to the extent said claim is based on or arises out of Contractor's performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any Claim, Contractor shall not institute any action, legal or equitable, against Owner or Engineer or permit any action against any of them to be maintained and continued in its name or

for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner or Engineer on account of any such damage or Claim.

C. If Contractor is delayed at any time in performing or furnishing the Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Paragraph 10.05. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner and Engineer for any delay, disruption, interference, or hindrance caused by any other contractor.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 Replacement of Engineer

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer ~~to whom Contractor makes no reasonable objection,~~ whose status under the Contract Documents shall be that of the former Engineer.

8.03 Furnish Data

A. Owner shall ~~promptly~~ furnish the data required of Owner under the Contract Documents in a timely manner.

8.04 Pay When Due

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 Lands and Easements; Reports and Tests

A. Owner's duties with respect to providing lands and easements ~~and providing engineering surveys to establish reference points~~ are set forth in ~~Paragraphs 4.01 and 4.05~~Paragraph 4.01. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of certain reports of explorations and tests of subsurface conditions at or contiguous to the Site, if any, and drawings of physical conditions relating to existing surface or subsurface structures (other than Underground Facilities) at the Site.

8.06 Insurance

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 ~~*Blank Evidence of Financial Arrangements*~~

- ~~A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.~~

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified ~~design~~ professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will

conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. ~~An employee of Engineer shall act as If Owner and Engineer agree, Engineer will furnish~~ a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants shall include the authority to transmit instructions, receive information, and perform other acts Engineer is authorized to perform under the Contract Documents.~~will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09.~~ If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions Specifications.

Other duties, responsibilities, and limitations of authority of the Resident Project Representative are located in the written agreement between Engineer and Owner for this specific Project (which agreement may be amended by Engineer and Owner from time to time).

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly.~~If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05. If Contractor believes that a Field Order should instead have been issued as a Change Order because that Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, Contractor's exclusive remedy is set forth in Paragraph 10.05. A notice stating the general nature of such a Claim for adjustment to the Contract Times or Contract Price, as a result of the issuance of a Field Order, shall~~

be submitted by Contractor, under Paragraph 10.05.B, before Contractor performs any portion of the Field Order work for which Contractor believes an adjustment to the Contract Time or Contract Price should be made, unless an emergency comparable to conditions under Paragraph 6.16 requires the performance of the Field Order before such a notice can be submitted by Contractor.

B. Contractor shall acknowledge in writing the receipt of all Field Orders. Contractor's acknowledgement of receipt does not preclude Contractor from submitting a Claim pursuant to Paragraphs 9.04 and 10.05. The lack of any such acknowledgement does not affect Contractor's obligation to comply with the Field Order.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon ~~Owner and~~ Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. ~~All matters in question and other matters between Owner and~~ Any questions by Contractor arising prior to the date final

payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 307 days of the event giving rise to the question.

- B. Engineer will, with reasonable promptness, render a written decision on ~~the issue referred~~any such questions referred by Contractor. If ~~Owner or~~ Contractor believes that any such decision entitles ~~them~~it to an adjustment in the Contract Price or Contract Times or both, ~~a Claim may be made under Paragraph 10.05~~Contractor's exclusive remedy is set forth in Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B. If no written decision is issued by Engineer within 30 days of Contractor's written question(s), a written decision shall be deemed to have been issued on said 30th day by Engineer that resolves every such question raised by Contractor in a manner that would be the most unfavorable to Contractor's position, such that the decision would not entitle Contractor to any adjustment in Contract Price and/or Contract Time.
- C. Engineer's written decision on any question~~the issue~~ referred by Contractor will be final and binding on ~~Owner and~~ Contractor, subject to the provisions of Paragraph 10.05.

~~D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.~~

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. ~~Blank~~Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their

content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

9.11 *Lines and Grades*

- A. Engineer's duties with respect to providing stakes and marks are set forth in Paragraph 4.05.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided in the Change Order or Work Change Directive).

- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor by Contractor as provided in Paragraph 10.05.

- C. If, after issuance of a Work Change Directive, the Owner and Contractor do not agree on the appropriate adjustment in Contract Price and/or Contract Times, if any, that should be allowed as a result of the Work Change Directive, the Owner may issue a Unilateral Change Order stating the adjustment, if any, that is being made to the Contract Price and/or Contract Times as a result of the Work Change Directive. If Contractor believes it is entitled to any further adjustment in Contract Price and/or Contract Time, or any other relief, as a result of the Work Change Directive, Contractor's exclusive remedy is set forth in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 Execution of Change Orders

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

~~3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.~~

B. A Change Order that adjusts the Contract Price, or the Contract Time, or both, shall be accomplished only by a written and executed Change Order. Accordingly, no course of conduct or dealings between the parties, no expressed or implied acceptance of alterations or additions to the Work, and no assertion that Owner has been unjustly enriched by any alterations or additions to the Work shall be the basis for an increase in any amount due under the Contract Documents or in any time period provided for in the Contract Documents, unless executed as a Change Order under this Paragraph 10.03. A Bilateral Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but no limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the Contract Times.

C. Whenever an adjustment in Contract Price and/or Contract Times is warranted under the Contract Documents, but the Owner and Contractor cannot agree to the amount of adjustment, if any, that should be allowed to the Contract Price and/or Contract Times, the Owner may issue a Unilateral Change Order stating the adjustment, if any, that is being made to the Contract Price and/or Contract Times. If any unilateral adjustment to the Contract Price and/or Contract Times is not acceptable to Contractor for any reason, including any argument that an adjustment to the Contract Price and/or Contract Times was not warranted by the Contract Documents, the Contractor's exclusive remedy is to follow the Claim process set forth in Paragraph 10.05. A Unilateral Change Order may be jointly signed by the Engineer, but the Engineer's signature is not required. Unless otherwise obligated under applicable law, the Owner is not obligated to issue a Unilateral Change Order.

D. In the event a Change Order increases the Contract Price, Contractor shall include the Work covered by such Change Order in applications for payments as if such Work were originally part of the Agreement.

10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), and such notice has not been consented to in advance by the surety, the giving of any such notice will be Contractor's responsibility. It shall be Contractor's responsibility to ensure that ~~t~~The amount of each applicable bond ~~will be~~ is adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. ~~*Mandatory Procedure and Condition Precedent. Engineer's Decision Required: All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.*~~
1. Any demand or assertion by Contractor seeking an adjustment of Contract Price and/or Contract Times, or other relief, for any reason whatsoever, must be in strict compliance with the requirements of this Paragraph 10.05. For purposes of this Paragraph 10.05, any and all work relating to any such demand or assertion shall be referred to as "Disputed Work", regardless of whether the basis of the demand or assertion arises from an interpretation of the Contract Documents, an action or inaction of Contractor, Engineer or Owner, or any other event, issue, or circumstance. In order for any such demand or assertion to qualify as a "Claim", it must strictly comply with the provisions of this Paragraph 10.05. Contractor shall bear all costs incurred in complying with the provisions of this Paragraph 10.05.
 2. The requirements set forth in this Paragraph 10.05 are mandatory, and Contractor shall strictly comply with these requirements. Strict compliance with these requirements is a condition precedent to Contractor's ability to exercise any rights or remedies that may otherwise be available to Contractor under the Contract Documents or any applicable Laws or Regulations relating to the Claim. No action or inaction by Contractor, Owner, and/or Engineer to try to resolve any Claim(s) through agreement (including Change Order), mediation, settlement, or any other means shall excuse Contractor from strictly complying with the requirements of this Paragraph 10.05. Notwithstanding any other language in the Contract Documents that permits Contractor to submit a Claim under Paragraph 10.05 in the event Contractor, Engineer, and/or Owner are unable to reach an agreement on any particular issue, Contractor shall strictly comply with requirements of this Paragraph 10.05, and shall not delay compliance with any requirements herein on the grounds that Contractor, Engineer, and/or Owner were trying to reach an agreement on any issue relating to the Claim.
 3. Contractor's strict compliance with the requirements of this Paragraph 10.05 serves the important purpose of facilitating the Owner's management of its budget for not only this Contract, but also for other contracts relating to the sewer collection

system. This Contract is but one of numerous prime contracts for the construction of the sewer collection system, and Contractor's strict compliance with this Paragraph 10.05 provides the Owner with the prompt notice of potential and actual Claims needed for budget management purposes. This Paragraph 10.05 also serves the important public purpose of providing the Owner a means of verifying the basis for the expenditure and/or reduction of the public funds or resources sought by a Claim. Another purpose of the requirements in this Paragraph 10.05 is to promptly provide Engineer and Owner with information that may enable Owner and Contractor to resolve Contractor's Claim through a Bilateral Change Order.

4. Contractor's compliance with the provisions of this Paragraph 10.05 shall not excuse Contractor's failure to comply with any other provisions of the Contract Documents, including but not limited to, any provisions relating to Contractor's obligation to provide any notice, documentation, inspections, Site access, or any other requirements relating to any event, issue, or circumstance (including, but not limited to, any documentation required by Paragraph 11.01.D). Contractor's compliance with the provisions of this Paragraph 10.05 shall not excuse Contractor's failure to provide notice of any event, issue, or circumstance, or to perform any other duties expressed or implied in Contract Documents, at the time Contractor reasonably should have been aware of the event, issue, or circumstance. Nothing in this Paragraph 10.05 shall extend any time deadlines provided in any other provisions in the Contract Documents.
5. Pursuant to the Claim requirements set forth in this Paragraph 10.05, the Contractor's submittal of an Initial Notice of Potential Claim, Supplemental Notice of Potential Claim, and updated Supplemental Notices of Potential Claim will provide the Contractor and Engineer multiple opportunities to meet and confer regarding a potential Claim before it becomes a final Claim. In addition to the important public purpose of providing a means of verifying the basis for the expenditure and/or reduction of public resources sought by a Claim, the notice and reporting requirements imposed upon Contractor under this Paragraph 10.05 promote regular, periodic communications of updated information regarding a potential claim before it becomes a final claim so that final claims can be processed more efficiently. Such communication may also help facilitate resolution of the potential Claim. If Contractor or Engineer request an informal conference to discuss a potential Claim, such a conference may be held at a mutually convenient time. Once a Notice of Final Claim is filed, Paragraph 10.05.E. shall govern the scheduling of any informal conference to meet and confer for settlement of the Claim. No action or inaction by Contractor, Engineer, and/or Owner relating to any conference to discuss a potential or final Claim shall excuse Contractor from strictly complying with the requirements of this Paragraph 10.05.
6. For Claims less than or equal to \$375,000, Paragraphs 10.05 and 10.06 shall be interpreted in a manner consistent with Public Contract Code sections 20104 and 20104.2. The substance of Public Contract Code sections 20104 and 20104.2 have been incorporated into Paragraphs 10.05 and 10.06 in a manner that is consistent with the notice requirements provided in the Contract Documents.

B. ~~Initial Notice of Potential Claim. Notice: Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).~~

Promptly upon becoming aware of any event, issue, or circumstance which Contractor believes provides a basis for an adjustment of Contract Price and/or Contract Times, or other relief, Contractor shall provide a signed written Initial Notice of Potential Claim to Engineer and Owner. The Initial Notice of Potential Claim shall be submitted before commencing any Disputed Work, or within 7 days of the event, issue, or circumstance from which the Claim arises, whichever is earlier.

The Initial Notice of Potential Claim shall clearly state the Contractor's grounds for seeking an adjustment in Contract Price and/or Contract Times or other relief, the nature and circumstances of the Disputed Work, the relief or adjustment sought by Contractor, and a cost proposal for the Disputed Work. The Initial Notice of Potential Claim shall be submitted on a form furnished by the Engineer (and approved by Owner) and shall be certified under penalty of perjury with reference to the California False Claims Act, Government Code Sections 12650-12655. Contractor shall assign an exclusive identification number for each potential Claim, determined by chronological sequencing, based on the date of the potential Claim. The nature and circumstances involved in the dispute shall remain consistent throughout the processing of the Claim.

The exclusive identification number for each Claim shall be used on the following corresponding documents:

1. Initial Notice of Potential Claim.
2. Supplemental Notice of Potential Claim.
3. Notice of Final Claim.
4. Contractor's written statement of Claims under Paragraph 14.07.A.2.

After reviewing Contractor's initial notice, Engineer may provide a written response thereto or may decide to delay providing a response until Contractor provides further information regarding the potential Claim pursuant to the provisions of this Paragraph 10.05. No response by Engineer that could be interpreted as suggesting that

Contractor is entitled to an increase Contract Price or Contract Time is binding upon Owner unless Owner has co-signed the response.

C. Supplemental Notice of Potential Claim: Within 15 days of submitting the Initial Notice of Potential Claim, Contractor shall provide a signed Supplemental Notice of Potential Claim to Engineer and Owner that provides the following information:~~Engineer's Action: Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:~~

1. The complete nature and circumstances of the dispute which caused the potential Claim.~~deny the Claim in whole or in part;~~
2. The contract provisions that provide the basis of the potential Claim.~~approve the Claim; or~~
3. The requested adjustment of Contract Price, if any, and the estimated cost of the potential Claim, including an itemized breakdown of individual costs and how each estimate was determined.~~notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.~~
4. The requested adjustment of Contract Time, if any, and a time impact analysis of the Progress Schedule that illustrates the effect on the scheduled completion date due to schedule changes or disruptions

The information provided by Contractor shall provide Contractor's complete reasoning for additional compensation or adjustments and shall be as complete as reasonably possible.

The Supplemental Notice of Potential Claim shall be submitted on a form furnished by Engineer (and approved by Owner) and shall be certified under penalty of perjury with reference to the California False Claims Act, Government Code Sections 12650-12655. If at any time the estimated cost of the potential Claim or effect on the Progress Schedule changes, Contractor shall update information in items 3 and 4 above as soon as the change is recognized and submit this information to Engineer.

If the Disputed Work is not completed within 30 days, then Contractor shall, every 30 days until the Disputed Work ceases, submit to Engineer and Owner an updated Supplemental Notice of Potential Claim that shall update and quantify all of the information required in the Supplemental Notice of Potential Claim. Contractor's failure to so quantify costs and schedule impacts every 30 days shall result in a waiver of the Claim for that 30-day period. Any supplemental notice or updated notice that states that the requested adjustment of Contract Price and/or Contract Time will be provided or determined at a later date, or that any damages, costs, schedule impacts, and/or any other analysis will be provided or determined at a later date, shall be deemed to be not in compliance with this Paragraph 10.05, and shall result in Contractor waiving its Claim.

After reviewing the Contractor's Supplemental Notice of Potential Claim or updated Supplemental Notice of Potential Claim, Engineer may provide a written response thereto or may decide to delay providing a response until Contractor provides further information regarding the potential Claim pursuant to the provisions of this Paragraph 10.05. No response by Engineer that could be interpreted as suggesting that Contractor is entitled to an increase Contract Price or Contract Time is binding upon the Owner unless Owner has co-signed the response.

- D. Notice of Final Claim.~~In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.~~

As soon as reasonably practical upon completion of the Disputed Work, and no later than 30 days after completion of the Disputed Work, Contractor shall provide to Engineer and Owner a Notice of Final Claim containing a full and final documentation of the Claim that provides the following information:

1. A detailed factual narration of events fully describing the nature and circumstances that caused the dispute, including, but not limited to, necessary dates, locations, and items of Work affected by the dispute.
2. The specific provisions of the Contract that support the Claim and a statement of the reasons these provisions support and provide a basis for entitlement of the Claim.
3. When additional monetary compensation is requested, the exact amount requested calculated in conformance with the Contract Documents and shall include an itemized breakdown of individual costs. These costs shall be segregated into the following cost categories:
 - a. Labor – A listing of individuals, classifications, regular hours and overtime hours worked, dates worked, hourly labor rates, and other pertinent information related to the requested reimbursement of labor costs.
 - b. Materials – Invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other pertinent information related to the requested reimbursement of material costs.
 - c. Equipment – Listing of detailed description (make, model, and serial number), hours of use, dates of use, and equipment rates. Equipment rates shall be at the applicable State rental rate as listed in the Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates," in effect when the Disputed Work was performed.
 - d. Other categories as specified by Contractor or Engineer.

4. When an adjustment of Contract Time is requested the following information shall be provided:
 - a. The chronology of the specific dates for which Contract Time is being requested.
 - b. The specific reasons for entitlement to a Contract Time adjustment.
 - c. The specific provisions of the Contract that provide the basis for the requested Contract Time adjustment.
 - d. A detailed time impact analysis of the Progress Schedule. The time impact analysis shall show the effect of changes or disruptions on the scheduled completion date to demonstrate entitlement to a Contract Time adjustment.
5. The listing, identification, and production of copies of all documents Contractor believes support its Claim and the date, time, circumstances, details and substance of any oral communications that Contractor believes support the Claim.

The Notice of Final Claim shall be submitted on a form furnished by Engineer (and approved by Owner) and shall be certified under penalty of perjury with reference to the California False Claims Act, Government Code Sections 12650-12655.

Contractor shall include all pertinent information, references, arguments, and data supporting its Claim in the Notice of Final Claim. Information submitted subsequent to the Notice of Final Claim will not be considered. No Notice of Final Claim will be considered that does not have the same nature and circumstances, and basis of Claim as those specified on the Initial and Supplemental Notices of Potential Claim.

- E. ~~Response to Notice of Final Claim. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.~~

1. Engineer's Authority to Respond to Claim. Engineer will evaluate the information and documentation presented in the Notice of Final Claim and provide a written response to Contractor. Engineer may issue a written response denying the Claim, but Owner's signature is required on any response granting any part of the Claim.

A Claim may be granted in whole or in part only by a written response that contains a signature of an authorized officer or employee of Owner acknowledging Owner's approval of the response. A response unsigned by Owner that grants in whole or in part any part of a Claim is invalid and not binding on the Owner. In the event a valid written decision is not provided to Contractor within the time prescribed in this Paragraph 10.05, the Claim shall be deemed denied on the last day a written response was due. The date upon which the Claim is approved or denied pursuant to the provisions of this Paragraph 10.05, shall constitute the date of the final decision on the Claim under the provisions of this Paragraph 10.05. The date of the final

decision on a Claim can only be changed by a subsequent writing signed by Engineer and Owner that expressly states that the date of the final decision on the Claim has been changed to a new specific date.

2. For Claims of less than \$50,000. For Claims of less than fifty thousand dollars (\$50,000), the Engineer shall respond in writing to the Notice of Final Claim within 45 days of receipt thereof, or may request, in writing, within 30 days of said receipt, any additional documentation relating to the Claim or any defenses to the Claim the Owner may have against the Contractor. Contractor shall comply with the request within the reasonable time deadlines provided by Engineer in the request. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the Owner and the Contractor. The written response to the Notice of Final Claim shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
3. For Claims Over \$50,000 and Less Than or Equal to \$375,000. For Claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the Engineer shall respond in writing to the Notice of Final Claim within 60 days of receipt thereof, or may request, in writing, within 30 days of said receipt, any additional documentation relating to the Claim or any defenses to the Claim the Owner may have against the Contractor. Contractor shall comply with the request within the reasonable time deadlines provided by Engineer in the request. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the Owner and the Contractor. The written response to the Notice of Final Claim shall be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
4. For Claims Less Than or Equal to \$375,000. For Claims less than or equal to \$375,000, if the Contractor disputes the written response to the Claim, or if a written response is not submitted within the time prescribed above, the Contractor may so notify the Engineer and Owner, in writing, either within 15 days of receipt of the written response or within 15 days of the Engineer's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such a timely demand by Contractor, the Engineer and Owner shall schedule a meet and confer conference within 30 days for settlement of the dispute. Within 30 days after such conference, a final written response to the Claim shall be issued which will serve as the new final decision on the Claim. Pursuant to Public Contract Code section 20104.6, the Owner shall not fail to pay money as to any portion of a Claim which is undisputed, except as otherwise provided in the Contract Documents.
5. For Claims Greater Than \$375,000. For Claims over three hundred seventy-five thousand dollars (\$375,000), the Engineer shall respond in writing to the Notice of Final Claim within 60 days of receipt thereof Claim, or may request, in writing,

within 45 days of said receipt, any additional information or documentation relating to the Claim or any defenses to the Claim the Owner may have against the Contractor. Contractor shall comply with the request within the reasonable time deadline provided by Engineer in the request. If any additional information is thereafter requested by Engineer, it shall likewise be provided by Contractor within the reasonable time deadline provided by Engineer in such follow-up request. The written response to the Notice of Final Claim shall be submitted to the Contractor within 30 days after receipt of such further information and documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or documentation, whichever is greater. Contractor may request an informal conference to meet and confer for settlement of the issues in dispute, but Contractor shall have no right to demand such a conference. Neither the requesting of any such conference by Contractor, Engineer or Owner, nor the holding of such conference shall affect the date of the final decision on the Claim. No written communications of Engineer and/or Owner sent to Contractor after any such conference will change the date of the final decision on the Claim unless the writing expressly states that the date of the final decision is being changed to a new specific date.

F. ~~Contractor's Continuing Obligations. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.~~

1. At all times during the processing of Contractor's potential or final Claim, Contractor shall diligently proceed with the performance of the Disputed Work and other Work, unless otherwise specified or directed by Engineer.
2. Contractor shall provide Owner and Engineer the opportunity to examine the Site of the Disputed Work as soon as reasonably possible, and in no event later than 5 days from the date of the Initial Notice of Potential Claim. Throughout the processing of Contractor's potential or final Claim, Contractor shall provide Owner and Engineer a reasonable opportunity to examine the Site of the Disputed Work within 5 days of the date of Owner's or Engineer's written request therefor.
3. Contractor shall promptly respond to any requests for further information or documentation regarding Contractor's potential or final Claim. If Contractor fails to provide an adequate written response to Engineer or Owner within 15 days of Engineer's or Owner's written request for such further documentation or information, Contractor shall be deemed to have waived its Claim. If the further documentation or information requested by Owner or Engineer would, in the opinion of the Engineer, reasonably take the Contractor more than 15 days to comply with, the written request shall provide the Contractor a specific response deadline that is commensurate to a reasonable response time.
4. Throughout the performance of the Disputed Work, Contractor shall maintain records that provide a clear distinction between the incurred direct costs of Disputed Work and other Work. Contractor shall allow Owner and Engineer access to Contractor's Project records deemed necessary by Owner or Engineer to evaluate the potential or final Claim within 15 days of the date of Owner or

Engineer's written request. Contractor's failure to comply with the provision of this Paragraph 10.05 shall constitute a waiver of the Contractor's Claim.

5. All Subcontractor and Supplier claims of any type shall be brought only through Contractor pursuant to the provisions of this Paragraph 10.05. Under no circumstances shall any Subcontractor or Supplier make any direct claim against Owner.
6. Except where provided by law, or elsewhere in these Contract Documents (if applicable), OWNER SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES, AND CONTRACTOR SHALL NOT INCLUDE THEM IN ITS CLAIMS. Contractor shall be limited in its recovery on any Claim(s) to the adjustments allowed in Articles 11 and 12 of the Contract Documents.
7. During each step in the processing of Contractor's Claim, each notice shall be accompanied by Contractor's written statement that the adjustment or relief claimed is the entire adjustment or relief to which the claimant believes it is entitled as a result of the event, issue, or circumstance giving rise to the Claim.
8. Contractor shall be responsible for providing written evidence of the date any of the notices referenced in paragraphs 10.05.B through 10.05.C above were provided to Engineer and Owner, and shall provide Engineer and Owner a copy of such written evidence within 5 days of a request thereof. Such evidence shall be either a written receipt of actual delivery from U.S. Postal Service or other reputable delivery service, or by the recipient's written acknowledgement of receipt.
9. The rights of Owner and Engineer to request further records, documents, or information from Contractor regarding a Claim are for the sole benefit of Owner and Engineer, and may be exercised at their sole discretion. Any failure by Owner and/or Engineer to exercise their rights does not provide the Contractor any excuse for not providing all of the records, documents, and other information it is requested to provide under Paragraph 10.05 or any other provision of the Contract Documents.
10. Under no circumstances may Contractor submit an Initial Notice of Potential Claim, Supplemental Notice of Potential Claim, or Final Notice of Potential Claim after the date of final payment.

G. Exclusive Remedy.

1. The administration of a Claim as provided in this Paragraph 10.05, including Contractor's performance of its duties and obligations specified in this Paragraph 10.05 is Contractor's sole and exclusive remedy for disputes of all types pertaining to the payment of money, extension of time, the adjustment or interpretation of the Contract Documents terms or other contractual or tort relief arising from Contract Documents. This exclusive remedy and the limitation of liability (expressed herein and elsewhere throughout the Contract Documents) apply notwithstanding the

completion, termination, suspension, cancellation, breach, or rescission of the Work or Contract Documents, the negligence or strict liability of Owner, its representatives, consultants, or agents, or the transfer of Work or the Project to Owner for any reason whatsoever.

2. Contractor waives and covenants not to raise any claims of waiver, estoppel, release, bar, or any other type of excuse for non-compliance with these Paragraph 10.05 requirements. Compliance with the procedures described in this Paragraph 10.05 is a condition precedent to the right to file a Government Code Claim, commence litigation, or commence any other legal action. Claim(s) or issue(s) not raised in a timely Claim submitted under this Paragraph 10.05 may not be asserted in any subsequent Government Code Claim, litigation, or legal action. Owner shall not be deemed to waive any provision under this Paragraph 10.05, if at Owner's sole discretion, a claim is administered in a manner not in accordance with this Paragraph 10.05.

10.06 Other Requirements Relating to Claims

A. Government Code Claim Requirements:

For all Claims not resolved as a result of the Paragraph 10.05 procedures, Contractor must submit each Claim in a Government Code Section 910 form of claim for final investigation and consideration of its settlement prior to initiation of any litigation on any such Claim, as required by Government Code Section 945.4. Pursuant to Government Code Section 930.2, the one-year period in Government Code Section 911.2 is hereby reduced to 150 days. This time deadline is measured from the accrual date of each separate cause of action.

B. Tolling.

1. For each unresolved Claim properly processed by Contractor in accordance with Paragraph 10.05, the running of the period of time within which a Government Code claim must be submitted shall be tolled during the time the Contractor is processing the Claim in compliance with Paragraph 10.05. Under no circumstances shall the time for submitting a Government Code Claim be extended beyond 150 days of the date of the final decision on the Claim under Paragraph 10.05. Contractor waives the right to pursue or submit any Claims not processed in accordance with Paragraph 10.05.
2. Other than as expressly provided in Paragraph 10.06.B.1., the time deadline for filing a Government Code claim shall not be tolled by any action or inaction by Contractor, Engineer or Owner, including but not limited to any action or inaction to try to resolve the Claim through negotiation, mediation, settlement, agreement (including Change Order), or by any other means, other than by a separate written tolling agreement expressly approved as to form (on the face of the agreement) by the County Counsel's Office of Owner.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the ~~W~~extra work. When the value of any ~~W~~extra work covered by a Change Order is determined on the basis of Cost of the Work, or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

- ~~1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner. The cost of labor for the workers, under schedules of job classifications agreed upon by Owner and Contractor (including foreman when authorized in writing by Engineer), used in the actual and direct performance of the extra work. The cost of labor, whether the employer is Contractor, Subcontractor, or other forces, will be the sum of the following:~~
 - ~~a. The actual wages paid (including basic hourly wage, health and welfare, pension, vacation, training, and other State and Federal recognized fringe benefit payments)~~
 - ~~b. The employer labor surcharge, as set forth in the Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates which is in effect on the date upon which the extra work is accomplished and which is part of this Contract, constituting full compensation for worker's compensation insurance, social security contributions, Medicare, federal unemployment insurance, state unemployment insurance, and state training taxes; and~~
 - ~~c. Subsistence and travel allowances paid to the workers.~~
2. Cost of all materials and equipment necessarily furnished and incorporated in the ~~W~~extra work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to

Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

The cost of materials will be the cost to the purchaser, whether Contractor, Subcontractor, or other forces, from the supplier thereof, except as the following are applicable:

- a. If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to the purchaser, the cost of those materials shall be deemed to be the price paid to the actual supplier plus the actual costs, if any, incurred in the handling of the materials.
 - b. If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of those materials shall not exceed the price paid by the purchaser for similar materials furnished from that source on contract items or the current wholesale price for those materials delivered to the Project Site, whichever price is lower.
 - c. If the cost of the materials is, in the opinion of Engineer, excessive, then the cost of the material shall be deemed to be the lowest current wholesale price at which the materials were available in the quantities concerned delivered to the Project Site, less any discounts as provided in this paragraph.
 - d. If Contractor does not furnish satisfactory evidence of the cost of the materials from the actual supplier thereof within 60 days after the date of delivery of the material or within 15 days after acceptance of the Contract, whichever occurs first, the Owner reserves the right to establish the cost of the materials at the lowest current wholesale prices at which the materials were available in the quantities concerned delivered to the location of the Work, less any discounts as provided in this paragraph.
 - e. The Owner reserves the right to furnish materials for the extra work and no request for Change Order or Claim will be allowed by Contractor for costs and profit on such materials.
3. Costs of special work or services are defined as that work characterized by extraordinary complexity, sophistication, innovation, or a combination of the foregoing attributes which are unique to the construction industry. When Engineer and Contractor, by agreement, determine that a special service on an item of extra work cannot be performed by Contractor's forces or those of any of its Subcontractors, that service or extra work item may be performed by a specialist. Payment for special services work will be subject to the following: ~~Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any~~

~~subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.~~

- a. Invoices for the service or item of extra work on the basis of the current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide a complete itemization;
 - b. In those instances wherein Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the Project Site, the charges for that portion of the extra work performed in the facility may, by agreement, be accepted as a special service and accordingly, the invoices for the work may be accepted without detailed itemization; and
 - c. All invoices for special services will be adjusted by deducting all cash or trade discounts offered or available, whether or not the discount may have been taken. An allowance 15 percent will be added to invoices for special services, in lieu of the percentages provided in Paragraph 12.01.C.
4. Equipment: Cost of equipment necessarily used in the performance of the extra work will be paid at the rental rates listed for that equipment in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of this Contract, regardless of ownership and any rental or other agreement, if they may exist, for the use of that equipment entered into by Contractor, except that for those pieces of equipment with a rental rate of \$10.00 per hour or less as listed in the Labor Surcharge And Equipment Rental Rates publication and which are rented from a local equipment agency, other than Contractor owned, Contractor will be paid at the hourly rate shown on the rental agency invoice or agreement for the time used on the extra work as provided in this paragraph. If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged will be paid to Contractor. If it is deemed necessary by Engineer to use equipment not listed in the Labor Surcharge And Equipment Rental Rates publication, a suitable rental rate for that equipment will be established by Contractor. If the rental rate established by Contractor is \$10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply. Payment for equipment shall be subject to the following: ~~Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.~~
- a. The rental rates shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals.

- b. Operators of rented equipment will be paid for as provided in Paragraph 11.01.A.1.
 - c. All equipment shall, in the opinion of Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used.
 - d. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
 - e. Individual pieces of equipment or tools not listed in the Labor Surcharge and Equipment Rental Rate publication and having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.
 - f. Rental time will not be allowed while equipment is inoperative due to breakdowns.
5. Equipment at the Work Site: The rental time to be paid for equipment on the Site at the time required to perform the extra work will be the time the equipment is in productive operation on the extra work being performed and, in addition, will include the time required to move the equipment to the location of the extra work and return it to the original location (or to another location requiring no more time than that required to return it to its original location); except that moving time will not be paid if the equipment is used at the site of the extra work on other than the extra work. Loading and transporting cost will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made for loading and transporting costs when the equipment is used at the site of the extra work on other than extra work. The rental time of equipment on the Site operated to perform the extra work will be computed subject to the following:
- a. Hourly rates are paid in 1/2-hour increments
 - b. Daily rates are paid in 1/2-day increments.
 - c. Payment for the equipment will be made in accordance with the provisions in Paragraph 11.01.A.4;

Supplemental costs including the following:

- ~~a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.~~
- ~~b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the~~

~~performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.~~

~~e. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.~~

~~d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.~~

~~e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.~~

~~f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.~~

~~g. The cost of utilities, fuel, and sanitary facilities at the Site.~~

~~h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.~~

~~i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.~~

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
 6. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by Paragraph 11.01.C).
 7. Costs associated with the preparation or submittal of any requests for Change Orders (whether or not ultimately authorized), cost estimates, Claims.
 8. Contractor's expenses associated with anticipated lost profits or lost revenue, lost income or earnings, lost interest or earnings or unpaid retention.
 9. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the submittal or resolution of a Claim, dispute, or other matter relating to the acceptability of the Work.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor shall submit to Engineer a daily extra work report, on a form acceptable to Engineer, which provides an itemized cost breakdown together with supporting data, at the end of the week~~Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.~~

11.02 Allowances

- A. Any allowances provided for in the Contract Documents are for the sole use of Owner to cover the costs of certain types of extra work that may need to be performed as part of the Project. The allowance may be used in whole, in part, or not at all as determined by Owner and Engineer. No portion of any sum of money designated as an allowance shall become due or payable to the Contractor unless there is a Change Order specifically allocating a portion of an allowance to the work described in the

~~Change Order. All such work will be considered extra work that was not included in the original Contract, but which has been provided for as an allowance. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.~~

- B. ~~Notwithstanding 11.02.A. above, the allowance for the HMA Price Index Fluctuation Adjustment shall not be limited to only extra work. (See Par. 1.28 of Section 01025 "Measurement and Payment".)~~*Cash Allowances:*

~~1. Contractor agrees that:~~

- ~~a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and~~
- ~~b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.~~

C. Contingency Allowance:

- ~~1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.~~

~~D.C. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer, and approved by Owner, to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted. Contractor shall make no Claim nor receive any compensation for anticipated profits, loss of profit, damages, or any extra payment due to the difference between the amount of Work actually completed and the original amount allocated for the allowance.~~

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

- D. ~~Owner or~~ Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 for Unit Price Work only when the following conditions are satisfiedif:
1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement, and if the change increases or decreases the actual unit cost of the changed item as compared to the estimated actual unit cost of performing the Work; and
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. ~~Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.~~If Contractor has incurred additional expense justifying an increase in Contract Price for the Unit Price Work, Contractor's exclusive remedy is set forth in Paragraph 10.05.

11.04 Extra Work

- A. "Extra work" consists of work, desired or performed, not included in the original Contract, which the Engineer determines is not covered by any of the various items for which there is a Bid price or by combinations of those items. In the event portions of this work are determined by the Engineer to be covered by some of the various items for which there is a Bid price or combinations of those items, the remaining portion of the work will be classed as extra work. Extra work also includes work specifically designated as "extra work" in the Specifications.
- B. The Contractor shall do the extra work and furnish labor, material and equipment therefor upon receipt of a Change Order or Work Change Directive from the Engineer, and in the absence of such Change Order or Work Change Directive, the Contractor shall not be entitled to payment for the extra work.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by ~~the party making the Claim to the Engineer and the other party to the Contract~~Contractor in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents and the total pay quantity varies from the estimated quantity of such item indicated in the Agreement by 25% or less, by application of such unit prices

to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C); or-
4. where the Work involved is covered by unit prices contained in the Contract Documents and the total pay quantity of any item of Work required under the Contract exceeds the total pay quantity of the item indicated in the Agreement therefor by more than 25 percent, the Work in excess of 125 percent and not covered by an executed Change Order specifying the compensation to be paid therefor will be paid for by adjusting the Contract unit price, as hereinafter provided, or at the option of Engineer, payment for the Work involved in the excess will be paid for as extra work as provided in Paragraph 11.01.

The adjustment of the unit price for said Work in excess of 125 percent will be the difference between the Contract unit price and the actual unit cost which will be determined as hereinafter provided, of the total pay quantity of the item. If the costs applicable to the item of work include fixed costs, the fixed costs will be deemed to have been recovered by Contractor by the payments made for 125 percent of the estimated quantity of such item indicated in the Agreement, and in computing the actual unit cost, the fixed costs will be excluded. Subject to the above provisions, the actual unit cost will be determined by Engineer in the same manner as if the work were to be paid for as extra work as provided in Paragraph 11.01; or the adjustment will be as agreed to by Contractor and Engineer.

When the compensation payable for the number of units of an item of work performed in excess of 125 percent of the total pay quantity of the item indicated in the Agreement is less than \$5,000 at the applicable Contract unit price, Engineer reserves the right to make no adjustment in the Contract unit price if Engineer so elects, except that an adjustment will be made if requested in writing by Contractor; or

5. where the Work involved is covered by unit prices contained in the Contract Documents and the total pay quantity of any item of Work required under the Contract is less than 75 percent of the total pay quantity of the item indicated in the Agreement therefor, an adjustment in compensation pursuant to this paragraph will not be made unless Contractor submits a written request to Engineer. If Contractor so requests, the quantity of the item performed, unless covered by an executed Contract Change Order specifying the compensation payable therefor, will be paid for by adjusting the Contract unit price as hereinafter provided, or at the option of Engineer, payment for the quantity of the work of the item performed will be paid

for as extra work as provided in Paragraph 11.01, provided however, that in no case shall the payment for that Work be less than that which would be made at the Contract unit price.

The adjustment of the Contract unit price will be the difference between the Contract unit price and the actual unit cost, which will be determined as hereinafter provided, of the total pay quantity of the item, including fixed costs. The actual unit cost will be determined by Engineer in the same manner as if the Work were to be paid for as extra work as provided in Paragraph 11.01; or the adjustment will be as agreed to by Contractor and Engineer.

The payment for the total pay quantity of the item of work will in no case exceed the payment which would be made for the performance of 75 percent of the of the total pay quantity of the item indicated in the Agreement of the quantity for the item at the original contract unit price.

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be ~~15-10~~ percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of ~~15-10~~ percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor, provided, however, that on any subcontracted work the total maximum fee to be paid by Owner under this subparagraph shall be no greater than 27 percent of the costs incurred by the Subcontractor who actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by ~~the party making the Claim to the Engineer and the other party to the Contract~~ Contractor in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.
- C. All time limits stated in the Contract Documents are of the essence of the Agreement. Contractor acknowledges and understands that Owner has a need for the completed Work, shortly after the date set forth in the Agreement.

12.03 *Delays*

- A. ~~If Contractor believes it has been prevented from completing any part of the Work with the Contract Times due to delay beyond the control of Contractor, Contractor's exclusive remedy is set forth in Paragraph 10.05. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.~~
- B. ~~If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.~~
 - 1. Owner shall not be liable, as damages for delays under Paragraph 12.03.B, for any consequential damages, lost opportunity costs, impact damages, or other similar remuneration. Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, directing suspension, rescheduling, or correction of the Work, or terminating this Agreement for its convenience), regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference with Contractor's performance of the Work. If Contractor submits a Progress Schedule or any other schedule indicating, or otherwise expressing, an intention to achieve completion of the Work prior to any completion date required by the Contract

Documents, or expiration of the Contract Times, Owner shall have no liability to Contractor for any failure of Contractor to so complete the Work according to such schedule.

- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

F. In no event shall Owner or Engineer be liable to Contractor, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. any delays caused by or within the control of Contractor, its Subcontractors, Suppliers, agents and representatives; or
2. any delays beyond the control of Owner including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. ~~Prompt~~ Reasonable notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, the State Water Resources Control Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, the President of the United States, or

any authorized representative of the foregoing, and governmental agencies with jurisdictional interests will have access to the Site and the Work at ~~reasonable-all~~ times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Inspection of the Work shall not relieve Contractor of the obligation to fulfill all conditions of the Contract.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely-sufficient advanced written notice of Contractor's intention to cover the same and Engineer has not acted in the time set forth in Contractor's notice, or by the end of the next business day after Engineer receives Contractor's notice, whichever is later,~~with reasonable promptness~~ in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, ~~attorneys~~, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. ~~If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.~~
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction, unless Contractor failed to provide the written notice required in Paragraph 13.03.F. If Contractor believes it is entitled to an adjustment in Contract Price and/or Contract Time, or any other relief, Contractor's exclusive remedy is set forth in Paragraph 10.05. ~~If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.~~

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, ~~attorneys~~, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such

correction or removal (including but not limited to all costs of repair or replacement of work of others).

- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee or warranty specified or required by the Contract Documents) ~~or by any specific provision of the Contract Documents~~, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. repair such defective land or areas; ~~or~~
 2. correct such defective Work; ~~or~~
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, ~~attorneys~~, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service for the benefit of Owner before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed, or for such additional period as specified in the Contract Documents.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to Contractor's general warranty and guarantee under Paragraph 6.19 and any other obligation or

warranty required by the Contract Documents. The provisions of this Paragraph 13.07 and Paragraph 6.19 shall not be construed as a substitute for, or a waiver of, or limitation upon the provisions of any applicable statute of limitation or repose. Establishment of the one-year correction period relates only to the specific obligation of the Contractor to correct defective Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be enforced.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay Owner all of the following sums (hereafter "Paragraph 13.08 Costs"): (1) all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, ~~attorneys,~~ and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work; (such costs to be approved by Engineer as to reasonableness) (2) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, ~~reflecting the diminished value of Work so accepted in the sum of the Paragraph 13.08 Costs.~~ If the parties are unable to agree as to the amount thereof, Owner may withhold the sum of the Paragraph 13.08 Costs from any payments otherwise due Contractor, and Contractor may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation or if the amount of the payment(s) otherwise due the Contractor are less than the Paragraph 13.08 Costs, Contractor shall pay Owner the appropriate amount to fully compensate the Owner for all Paragraph 13.08 Costs, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and

Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, ~~attorneys~~, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 (hereafter, collectively "Paragraph 13.09 Costs") will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price in the sum of the Paragraph 13.09 Costs. If the parties are unable to agree as to the amount of the adjustment, Owner may withhold the sum of the Paragraph 13.09 Costs from any payments otherwise due Contractor, and Contractor may make a Claim therefor as provided in Paragraph 10.05. If the amount of the payment(s) otherwise due Contractor are less than the Paragraph 13.09 Costs, Contractor shall pay Owner the appropriate amount to fully compensate Owner for all Paragraph 13.09 Costs. Such claims, costs, losses and damages will include but not be limited to Paragraph 13.09 Costs include, but are not limited to, all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments:*

1. ~~At least 20 days before the date established in the Agreement for each progress payment~~On the first business day of the month (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents including, but not limited to, a Schedule of Values reflecting current status; an updated Project Schedule; and affidavits signed by all Subcontractor performing the Work to date, stating that each of them has been paid, less earned retainage, as their interest appeared in the last preceding Application for Payment. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that

Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage, or invest the retainage for the benefit of Contractor.
4. The Application for Payment Form to be used on this Project is located in Section 00820. The Agency must approve all Applications for Payment before payment is made.

B. Review of Applications:

1. Engineer will, within ~~40~~7 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application. Engineer will be acting as Owner's authorized representative in reviewing each Application for Payment, and Engineer shall perform such review in compliance with Public Contract Code section 20104.50. If Engineer determines that an Application for Payment is not proper, Engineer shall return said application to Contractor as soon as practicable, but not later than 7 days after Engineer's receipt of said application, and shall set forth in writing to Contractor the reasons why the payment request is not proper. If Engineer exceeds the 7-day return requirement set forth in this paragraph, the number of days available to Owner to make a payment without incurring interest shall be correspondingly reduced as set forth in Paragraph 14.02.C.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for

Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and

- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Contractor shall also comply with the following specific requirements:

- a. The aggregate cost of materials stored off site shall not exceed \$10,000.00 at any time without written approval of Owner.
- b. Title to such materials shall be vested in Owner, as evidenced by documentation satisfactory in form and substance to Owner, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- c. With each Application for Payment, Contractor shall submit to Engineer a written list identifying each location where materials are stored off the Project Site and the value of materials at each location. Contractor shall procure

insurance satisfactory to Owner for materials stored off the Project Site in an amount not less than the total value thereof.

d. The consent of any surety shall be obtained, to the extent required by the surety, or Owner prior to payment for any materials stored off the Project Site.

e. Engineer and Owner shall have the right to make inspections of the storage areas for any materials stored off the Project Site at any time.

f. Such materials shall be (1) protected from diversion, destruction, theft, and damage to the satisfaction of the Engineer and/or Owner; (2) specifically marked for use on the Project; and (3) segregated from other materials at the storage facility.

5.6. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

e. Third party claims filed or reasonable evidence indicating probable filing of such claims;

f. Contractor's failure to make payments properly to subcontractors or suppliers for labor, materials or equipment;

g. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

h. Damage to property, the Work, Owner, another contractor or a third party;

i. Reasonable evidence that the Work will not be completed within the Contract Times, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

- j. Work that required submittals was performed prior to obtaining in writing from the Engineer any required acceptance, approval or other response required under the Contract Documents for said submittals;
- l. Contractor's persistent failure to carry out the Work in accordance with the Contract Documents;
- m. Contractor's failure to submit a construction schedule or to update the construction schedule in accordance with the Contract Documents;
- n. Contractor's failure to timely provide or update any record documents, Shop Drawings, or Samples as required of Contractor under the Contract Documents (including, but not limited to, Paragraph 6.12);
- o. Contractor's failure to reinstate required insurance that has been allowed to lapse;
- p. Contractor's failure to pay money owed to Owner under the Contract Documents; or
- q. Contractor's failure to provide Engineer copies of any contracts with Subcontractors or Suppliers requested by Engineer.
- 6. Engineer will help coordinate and attend any Site visit(s) or other meetings requested by Agency or Owner to help facilitate Agency and/or Owner approval of a recommended payment. If so directed by Owner, Engineer shall simultaneously send to the Agency any payment recommendations it sends to Owner.

C. Payment Becomes Due:

- 1. Pursuant to Public Contract Code section 20104.50, Owner shall make a progress payment (subject to the provisions of Paragraph 14.02.D.) within 30 days of Engineer's receipt of an undisputed and properly submitted Application for Payment. If Owner fails to make a progress payment on an undisputed and properly submitted Application for Payment within said 30 day period, Owner shall pay interest to Contractor equivalent to the legal rate set forth in subdivision (a) of section 685.010 of the Code of Civil Procedure. The number of days available to Owner to make a payment without incurring interest pursuant to Public Contract Code section 20104.50 shall be reduced by the number of days by which Engineer exceeds the 7 day return requirement set forth in Paragraph 14.02.B.1. ~~Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.~~

D. Reduction in Payment:

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens, stop notices or third-party claims for non-payment have been filed in connection with the Work, except where Contractor has delivered a specific release bond satisfactory to Owner to secure the satisfaction and discharge of such Liens and stop notices;~~Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;~~
- c. there are other items entitling Owner to a set-off against the amount recommended; or
- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through ~~14.02.B.5.e~~14.02.D.5.q or Paragraph 15.02.A.
- e. Contractor's failure to submit or obtain acceptance of a progress schedule, schedule of values, and any updated schedules;
- f. Defective or non-conforming Work;
- g. Costs incurred by Owner to correct, repair or replace Defective or nonconforming Work, or to complete the Work;
- h. A reasonable doubt that the Work can be completed for the balance then unpaid;
- i. A reasonable concern by Owner that the materials, equipment or component parts are not in proper operating condition;
- j. Assessment of Liquidated Damages;
- k. Contractor's failure to perform in accordance with the Agreement;
- l. A reasonable concern that cost or liability that may occur to Owner as the result of Contractor's, Subcontractor's or Supplier's improper acts, omissions, fault, or negligence will cause Owner to incur cost, expense or liability (even if Owner is indemnified for such cost, expense or liability under Paragraph 6.15);
- m. Reduction in contract Work;
- n. Failure of Contractor to repair damaged materials, equipment, property, or Work;
- o. Contractor's failure to provide or obtain review of submittals;
- p. Contractor's failure to pay Subcontractors or Suppliers;
- q. Contractor's failure to keep record documents up to date;

- r. Contractor's failure to comply with all applicable federal, state, and local laws, statutes, regulations, codes, licenses, easements, and permits;
- s. Contractor's failure to obtain and maintain applicable permits, insurance, and bonds;
- t. Contractor's failure to provide certified payroll records
- u. Contractor's failure to comply with the contract safety requirements; and
- v. Contractor's failure to pay money owed to Owner under the Contract Documents.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

~~3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.~~

14.03 Contractor's Warranty of Title

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

1. Contractor further expressly undertakes to defend Owner and Engineer, at Contractor's sole expense, against any actions, lawsuits, or proceedings brought against Owner, Engineer, or any third party as a result of liens filed against the Work, the site of any of the Work, the Project Site and any improvements thereon, payments due Contractor, or any portion of the property of Owner, Engineer, or third party. Contractor hereby agrees to indemnify and hold Owner, Engineer, and third parties harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such action, lawsuit, or proceeding.

14.04 Substantial Completion

A. When Contractor considers the entire Work is properly completed in conformance with the Contract Documents and ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for minor items which do not materially affect the intended use of the Project and which are specifically listed in writing by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. Such written notification in writing by Contractor is a prerequisite

to any assertion or claim by Contractor that the entire Work is substantially complete, or that a certificate of Substantial Completion has been improperly withheld or delayed.

- B. After Contractor's notification and at a time Engineer and Owner determine to be reasonable, Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer or Owner does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor. Engineer shall provide Owner and Designer sufficient advance notice of any such inspection so as to provide Owner and Designer a reasonable amount of time to make arrangements to join Engineer and Contractor during such inspection. If requested by Owner, the date and time of any such inspection shall be rescheduled to allow Owner and/or Designer to accompany Engineer and Contractor during the inspection
- C. If Engineer and Owner considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of minor items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer or Owner concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer and Owner considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer and Owner believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer and Owner will deliver to ~~Owner and~~ Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on ~~Owner and Contractor~~ until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its

intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer or Owner does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer and Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

~~4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.~~

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, ~~marked up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments documents described in Paragraph 6.12, and other documents;~~
 - a. Engineer shall make a formal recommendation to Owner to initiate Owner's internal procedures that would allow the County Board of Supervisors to accept the Work at a future Board meeting.

b. Contractor may make an application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled (this list must accompany the final Application for Payment regardless of whether it has been previously delivered); and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

4. Paragraph 14.07.A.3 shall be interpreted in a manner consistent with the applicable California law relating to stop notices. To the extent there is any inconsistency between Paragraph 14.07.A.3 and California stop notice law, the applicable law shall prevail.

B. Engineer's Review of Application and Acceptance:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due:*

1. ~~Thirty-five days after the filing of a Notice of Completion with the County Recorder and after presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and payable by Owner to Contractor. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.~~

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims listed in the final Application for Payment that were made in accordance with Paragraph 10.05.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 1. ~~Blanka waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and~~
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements of Paragraph 10.05 that were listed in the final Application for Payment herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and

Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. If Contractor believes it is entitled to an adjustment in Contract Price and/or Contract Time, or any other relief, as a result of Owner suspending Work, Contractor's exclusive remedy is set forth in Paragraph 10.05. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to have Contractor's authorized representative, required by Paragraph 2.06.B, available as reasonably needed, including the repeated absence of such authorized representative for two business days consecutively or more at a time, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
 5. Contractor's persistent failure to provide enough workers or materials to properly pursue the Work as required to complete the Work within the Contract Time;
 6. Contractor's persistent failure to perform the Work in accordance with the Contract Documents including, but not limited to providing monthly updates to the schedule of Work and monthly updates to Record Drawings, or to correct or replace Defective Work when directed to do so;
 7. Contractor's failure to make payment to subcontractors or material suppliers;
 8. Contractor becomes insolvent, commences any form of voluntary bankruptcy proceedings, has any petition or action filed against it under any bankruptcy code or law, makes a general assignment for the benefit of creditors, or if a trustee, receiver or agent is appointed under law to take charge of Contractor's property or operations for the benefit of creditors;
 9. Contractor persistently disregards laws, regulations, rules or orders of public bodies having jurisdiction or persistently disregards the authority of Engineer or Owner;

10. Contractor's failure to retain a valid Contractor's license of the required class in the applicable jurisdiction; or

11. Contractor otherwise commits a material breach of the Contract.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice ~~thereof, of its intent to~~ terminate the services of Contractor, in whole or in part, without prejudicing any other right or remedy of Owner under the Contract. After giving Contractor (and surety) such written notice of its intent to terminate, in whole or in part, the services of Contractor, Owner may:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
3. complete the Work as Owner may deem expedient.

4. accept assignment of any or all agreements between Contractor and any Subcontractor or Supplier pursuant to Paragraph 6.06.K.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be ~~reviewed by Engineer as to their reasonableness and, when so approved by Engineer,~~ incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

~~F.If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.~~

15.03 Owner's May Termination For Convenience

~~A.Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):~~

~~1.completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;~~

~~2.expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;~~

~~3.all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and~~

~~4.reasonable expenses directly attributable to termination.~~

~~B.Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.~~

A. Owner may, at any time, terminate the Contractor's services in whole or in part, for Owner's convenience and without cause. Termination by Owner under this paragraph shall be by a written notice of termination delivered to Contractor specifying the extent of termination and the effective date. Any such termination of Contractor's services, in whole or in part, shall not prejudice any other right or remedy of Owner under the Contract.

B. Upon receipt of a notice of termination for convenience, Contractor shall immediately, in accordance with instructions from Owner, proceed with performance of the following duties regardless of any delay in determining or adjusting amounts due under this paragraph:

1. cease operations as specified in the notice;

2. place no further orders and enter into no further subcontracts for materials, labor, services, or facilities except as necessary to complete continued portions of the Contract;

3. terminate all subcontracts and orders to the extent they relate to the Work terminated

4. proceed to complete the performance of Work not terminated; and
 5. take actions that may be necessary, or that Owner may direct, for the protection and preservation of the terminated Work.
- C. Upon such termination, Contractor shall recover as its sole remedy for Work performed the percentage of the Contract Price equal to the percentage of the Work performed satisfactorily and not previously paid for as determined by Engineer and Owner (so if only 10 percent of a Bid item is completed, Contractor's sole remedy for that Work completed is recovery of 10 percent of that Bid item price, or 10 percent of the Schedule of Values relating to that bid item, whichever is the lesser amount). Contractor's sole remedy for uncompleted Work shall be the recovery of those reasonable expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus a five percent markup (that would cover all overhead and profit). Contractor's sole remedy for demobilization costs shall be the recovery of those reasonable costs incurred in demobilization, reduced by the percentage of the completed Work relating to the demobilization undertaken (so if certain reasonable demobilization costs relate to Work that is 60 percent completed, Contractor shall only be entitled to recover 40 percent of those costs). Contractor hereby waives and forfeits all other Claims for payment and damages, including, without limitation, anticipated profits or revenue or other economic loss arising out of or resulting from such termination.
- D. Owner shall be credited for: (1) payments previously made to Contractor for the terminated portion of the Work; and (2) the value of the materials, supplies, equipment, or other items that are to be disposed of by Contractor that are part of the Contract Price.

15.04 Contractor May Stop Work or Terminate

- ~~A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.~~
- ~~B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.~~

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 ~~before such decision becomes final and binding. Neither Owner nor Contractor is required to mediate any Claims. The cost of any mediator or mediation service shall be shared equally by Owner and Contractor. Each party shall be responsible for its own costs relating to its participating in any mediation. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.~~
- B. Once Owner and Contractor agree to mediate a Claim, Owner and Contractor shall participate in the mediation process in good faith. ~~The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.~~
- C. For all civil actions filed on Claims less than or equal to three hundred seventy-five thousand dollars (\$375,000), the applicable procedures set forth in Pubic Contract Code section 20104.4 and 20104.6 shall apply, including the mediation and judicial arbitration procedures set forth therein. ~~If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:~~
- ~~1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or~~
 - ~~2. agrees with the other party to submit the Claim to another dispute resolution process; or~~
 - ~~3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.~~

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

ARTICLE 18 – FEDERAL REQUIREMENTS

18.01 *Funding*

- A. This Contract is expected to be funded in part with funds provided by Agency. Neither Agency, nor any of its departments, entities, or employees is a party to this Contract.**
- A. This Contract is expected to be funded in part with funds provided by the State Water Resources Control Board. Neither the State Water Resources Control Board, nor any of its departments, entities, or employees is a party to this Contract.**

18.02 *Contract Approval*

- A. Owner and Contractor will furnish Owner’s attorney such evidence as required so that Owner’s attorney can complete and execute the following “Certificate of Owner’s**

Attorney” (Exhibit SC-A) before Owner submits the executed Contract Documents to Agency for approval.

B. Concurrence by Agency in the award of the Contract is required before the Contract is effective.

18.03 Conflict of Interest

A. Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the plans and specifications has a corporate or financial affiliation with the supplier or manufacturer. Owner’s officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in Contractor. Owner’s officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.

18.04 Gratuities

A. If Owner finds after a notice and hearing that Contractor, or any of Contractor’s agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Contractor, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may reviewed in proceedings under the dispute resolution provisions of this Contract.

B. In the event this Contract is terminated as provided in Paragraph 18.04.A, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as determined by Owner) which shall not be less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.

18.05 Audit and Access to Records

A. Owner, Agency, the Comptroller General of the United States, the State Water Resources Control Board, the Bureau of State Audits, the United States Environmental Protection Agency, and the Office of Inspector General, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of Contractor which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Contractor shall maintain all required records for six years after final payment is made and all other pending matters are closed.

18.06 Disadvantaged Business Enterprise Program Requirements

A. This Contract is subject to 40 CFR part 33 entitled "Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs." 40 CFR 33 in its entirety is incorporated herein by this reference.

The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or other legally available remedies.

B. DBEs, MBEs, and WBEs.

1. Disadvantaged Business Enterprise (DBE) means an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.

2. Minority business enterprise (MBE) means an entity that is at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively.

3. Women's business enterprise (WBE) means an entity that is at least 51% owned and/or controlled by women.

C. If Contractor intends to let any subcontracts for a portion of the Work, Contractor shall employ the six Good Faith Efforts described in 40 CFR 33.301 to assure that DBEs are used when possible as sources of supplies, equipment, construction, and services. Good Faith Efforts shall consist of: (1) including DBEs on solicitation lists and assuring that DBEs are solicited whenever they are potential sources; (2) establishing delivery schedules, where the requirements for the Work permit, which will encourage participation by DBEs; (3) dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of DBEs; (4) Encouraging contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually; (5) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and (6) requiring each party to a subcontract to take the steps in (1) through (5) of this paragraph.

D. Owner must be notified in writing by Contractor prior to any termination of a DBE subcontractor for convenience by the Contractor.

E. If a DBE subcontractor fails to complete work under the subcontract for any reason, the Contractor shall employ the six good faith efforts described in 40 CFR 33.301 if soliciting a replacement subcontractor.

F. DBE Certifications.

Contractors, Subcontractors, and Suppliers must be certified by one of the following:

1. The Environmental Protection Agency
2. The Small Business Administration (SBA) (both SBA 8(a) program certifications and SBA Small Disadvantaged Business (SDB) Program self-certifications);
3. The Department of Transportation's state implemented DBE Certification Program (with U.S. citizenship);
4. Tribal, State and Local governments; and
5. Recognized independent private organization certifications.

If an entity holds one of these certifications, it is considered acceptable for establishing MBE or WBE status.

18.07 Anti-Kickback

A. Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874 and 40 U.S.C. 276c) as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans and Grants of the United States.") The Act provides that Contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. Owner shall report all suspected or reported violations to Agency.

18.08 Clean Air and Pollution Control Acts

A. If this Contract exceeds \$100,000, Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h) and 42 U.S.C. 7401 et.seq.), section 508 of the Clean Water Act (33 U.S.C. 1368) and Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) is required. Contractor will report violations to the Agency and the Regional Office of the EPA.

18.09 State Energy Policy

A. Contractor shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency, contained in any applicable State Energy Conservation Plan, shall be utilized.

18.10 Equal Opportunity Requirements

- A. If this Contract exceeds \$10,000, Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- B. Contractor's compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographical area where the Contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees from Contractor to Contractor or from project to project for the sole purpose of meeting Contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
- C. Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.

18.11 Restrictions on Lobbying

- A. Contractor and each subcontractor shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable Agency regulations. This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Contractor must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to Owner. Necessary certification and disclosure forms shall be provided by Owner.

18.12 Environmental Requirements

In addition to complying with other environmental requirements and constraints described elsewhere in the Contract Documents, Contractor shall comply with the following environmental constraints:

- A. Wetlands- When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.
- B. Floodplains- When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency Floodplain maps, or other appropriate maps, i.e., alluvial soils on NRCS Soil Survey maps.
- C. Historic Preservation- Any excavation by Contractor that uncovers an historical or archaeological artifact shall be immediately reported to Engineer, Owner, and representatives of Agency and the State Water Resources Control Board. Construction shall be temporarily halted pending the notification process and further direction issued by Agency after consultation with the State Historic Preservation Officer (SHPO).
- D. Endangered Species- Contractor shall comply with the Endangered Species Act, which provides for protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of Contractor, Contractor will immediately report this evidence to Engineer, Owner, and representatives of Agency and the State Water Resources Control Board. Construction shall be temporarily halted pending notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service.
- E. Mitigation Measures- The project has an Environmental Assessment to meet the requirements of the National Environmental Policy Act, compliance with the mitigation measures, if any, in that document are hereby included as a condition of this Contract. The Environmental Assessment is available at the following website:

[http://www.slocounty.ca.gov/PW/LOWWP/DOCS/Environmental Documents/NEPA_DOCUMENTS.htm](http://www.slocounty.ca.gov/PW/LOWWP/DOCS/Environmental_Documents/NEPA_DOCUMENTS.htm)

18.13 Buy American (ARRA Section 1605)

- A. This Contract is funded in whole or in part using funds from the American Recovery and Reinvestment Act (ARRA). Section 1605 of the ARRA prohibits the use of these funds unless all iron, steel, and manufactured goods are produced in the United States. All iron and steel manufacturing processes must take place in the United States, except for metallurgical processes involving refinement of steel additives. There is no requirement for the origin of components and subcomponents of manufactured goods. Products listed at 48 CFR 25.104(a) have been determined to be unavailable in the United States and if required for the Project may be purchased from foreign sources. No unauthorized use of foreign iron, steel, and/or manufactured goods will be allowed on this Project.

18.14 Davis Bacon Wage Rates (ARRA Section 1606)

A. The ARRA requires compliance with the Davis-Bacon and Related Acts and adherence to the current U.S. Department of Labor Wage Decision (“Wage Decision”). Contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts. The Contract provisions and related matters set forth in 29 CFR Part 5- Section 5.5 are hereby made a part of this Contract. Attention is called to the fact that not less than the minimum salaries and wages set forth in the Contract Documents must be paid on this Project.

The Wage Decision, including modification, must be posted by Contractor on the Site. Contractor shall also maintain posted on site a copy of the Davis-Bacon and Related Acts poster (form WH-1321). The poster is available at the following website:

www.dol.gov/esa/WHD/regs/compliance/posters/davis.htm

The Engineer will review all certified payrolls or timesheets submitted to Engineer for compliance with the labor standards provisions. Copies of these payrolls will then be submitted to USDA Rural Development on a monthly basis along with the Application for Payment.

18.15 Non-Discrimination

A. During the performance of this Contract, Contractors and its Subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, National origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

B. Contractor and its Subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

C. Contractors and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-I) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-I), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full.

D. Contractor and Subcontractors shall give written notice of their obligations under this paragraph to labor organizations with which they have a collective bargaining or other agreement.

E. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.

18.16 Debarment

A. Contractor shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension".

B. Contractor shall not subcontract with any individual or organization on the United States Environmental Protection Agency's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477).

18.17 Prompt Payment to Subcontractors

A. Contractor shall pay Subcontractors for satisfactory performance no more than 30 days from the Contractor's receipt of payment from the Owner, as required by 40 CFR 33.302(a).

18.18 Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities

A. Contractor shall comply with the State Water Resources Control Board's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities," as amended from time to time.

ARTICLE 19 – BLANK

ARTICLE 20 – ADDITIONAL CALIFORNIA STATE REQUIREMENTS

20.01 In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to Contractor, without further acknowledgment by the parties.

20.02 Unless otherwise indicated in the Contract Documents, all utility lines, conduits, wires, or structures shall be maintained by Contractor and shall not be disturbed, disconnected, or damaged by Contractor during the progress of the Work, provided, that should Contractor in the performance of the Work disturb, disconnect, or damage any of the above, all expenses arising from such disturbance or in the replacement or repair thereof shall be borne by Contractor. However, Contractor may be entitled to compensation in accordance with Section 4215 of the California Government Code if any existing main or trunkline utility facilities located on the Site are not indicated in the Contract Documents with reasonable accuracy.

20.03 Notwithstanding any other provision of law, every contract involving the expenditure of public funds in excess of Ten thousand dollars (\$10,000) entered into by any state agency, board, commission, or department or by any other public entity, including a city, county,

city and county, or district, shall be subject to the examination and audit of State auditor, at the request of the public entity or as part of any audit of the public entity, for a period of three (3) years after final payment under the Contract.

ARTICLE 21 – LABOR STANDARD PROVISIONS FOR FEDERALLY ASSISTED PROJECTS, 29 CFR PART 5

Labor standards provisions applicable to contracts funded with federal assistance authorized by the American Recovery and Reinvestment Act of 2009 and Clean Water State Revolving funds are:

§ 5.5 Contract provisions and related matters.

(a) The Owner shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, the following clauses:

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the Site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the Site of the Work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Owner shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Environmental Protection Agency award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Owner agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Owner to the State Water Resources Control Board and the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Owner or will notify the Owner within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Owner do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Owner shall refer the questions, including the views of all interested parties and the recommendation of the State Water Resources Control Board, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Owner or will notify the Owner within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The **Owner** shall upon its own action or upon written request of an authorized representative of the Department of Labor or the Environmental Protection Agency Award Official, withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the Site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), all or part of the wages required by the Contract, the (Agency) may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to Engineer, Owner, and the USDA Rural Development. Such documentation shall be available on request to the State Water Resources Control Board or the Environmental Protection Agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/> or its successor site. The Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Owner, for transmission to the State Water Resources Control

Board, Environmental Protection Agency, USDA Rural Development, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Contractor to require a Subcontractor to provide addresses and social security numbers to the Contractor for its own records, without weekly submission to the Owner.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State Water Resource Control Board, Environmental Protection Agency, USDA Rural Development, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as

an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job Site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the Contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Owner, State Water Resources Control Board, Environmental Protection Agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any Contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or Subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall

require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any Subcontractor responsible there for shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The Owner shall upon its own action or upon written request of the Environmental Protection Agency Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Owner shall insert a clause requiring that the Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, Owner shall insert in any such Contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Environmental Protection Agency, State Water Resources Control Board, and the Department of Labor, and the Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.