



GENERAL CONDITIONS

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GENERAL CONDITIONS

SECTION 1 DEFINITIONS, TERMS, AND ABBREVIATIONS

1-1 DEFINITIONS

Whenever the following terms occur in the Contract Documents, the meaning shall be interpreted as follows:

ACCEPTANCE, FINAL ACCEPTANCE - The formal action by the Owner accepting the Work as being complete.

ACCEPTED BID - The bid (proposal) accepted by the Owner.

ADDENDUM - A document issued by the Owner during the bidding period that modifies or supersedes portions of the Contract Documents.

BIDDER - Any individual, partnership, corporation, joint venture, or other business entity submitting a bid (proposal) for the Work contemplated, acting directly or through an authorized representative.

CALENDAR DAY - Means all days of the week including Saturdays, Sundays, and holidays with the first day counted being the first day following the date specified.

CHANGE ORDER - A written agreement entered into by Owner and Contractor after the award of the Contract that alters or amends the Contract or the Work, including, without limitation, the Plans, Specifications, or any other Contract Document.

CONTRACT - The Contract Documents collectively represent the entire agreement between the Owner and the Contractor for the performance of the Work, is sometimes referred to as the Contract. The Contract Documents supersede any prior negotiations, representations, or agreements either written or oral. The Contract includes the written Agreement executed between the Owner and the Contractor for the performance of the Work, which incorporates the remaining Contract Documents. The form of Agreement is included among the Bid Documents to which these General Conditions are attached.

CONTRACTOR - The individual, partnership, corporation, joint venture, or other business entity who has entered into the Contract with the Owner for the performance of the Work. The term "Contractor" means the Contractor or the Contractor's authorized representative.

CONTRACT DOCUMENTS - Contract Documents shall have the same meaning as that term is defined in the Agreement. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Contractor and any engineering professional, consultant, or other contractor hired by Owner to perform any work or services related to the Work, between the Owner and any Subcontractor or sub-subcontractor of any tier performing

work or services, or providing materials, equipment's or other supplies for the Work, or between any persons or entities other than between the Owner and Contractor.

DAYS - Unless otherwise specified, days shall mean Calendar Days.

DIVISION I REQUIREMENT – This shall include all Contractor obligations and requirements specified in Division I of the Specifications for administration of Work.

DISPUTED WORK ORDER - A Disputed Work Order is a written order prepared by the Owner, directing a change in the Work, within the general scope of the Contract consisting of additions, revisions, or deductions, prior to agreement on any appropriate equitable adjustment in the Contract amount and/or the time for completion of the Work. Such a Disputed Work Order shall not invalidate the Contract.

ENGINEER –The Engineer shall be the registered Engineer, whether an employee of Owner or an outside third party under contract with Owner, duly authorized by Owner to serve as the Engineer under the Contract and designated in writing as the Engineer for the Contract in the Bid Documents. Owner reserves the right to change the identity of the Engineer upon written notice to Contractor.

OWNER - The Owner is the Vallecitos Water District. The term "Owner" means the Owner or his authorized representative. The Owner is sometimes referred to as the District in the Contract Documents.

OWNER'S REPRESENTATIVE - The person or firm authorized by the Owner to represent it during the performance of the Work by the Contractor. For purposes of the Contract, the Owner's representative shall be the Owner's Engineering Manager, whose address is Vallecitos Water District, 201 Vallecitos de Oro, San Marcos, California 92069 and whose telephone number is (760) 744-0460. By written notice to Contractor, Owner may designate a new or additional Owner's Representative.

PLANS, DRAWINGS - The plans include the drawings which show elevations, sections, details, schedules, diagrams, information, notes, or reproductions or any of these, and which show the location, character, dimensions, and details of the Work to be done.

SUPPLEMENTARY CONDITIONS - Additions, deletions, and changes to the General Conditions.

SPECIAL PROVISIONS - The instructions and requirements which describe the manner of performing the Work and/or the quantities, qualities and types of materials to be furnished. The Special Provisions in the Contract Documents are sometimes referred to as the Technical Specifications.

SUBCONTRACTOR - Any person or business entity that contracts with Contractor to conduct any portion of the Work including, without limitation, furnishing labor, equipment, materials, transportation, or services used in relation to the Work. Sub-subcontractors include any persons

or entities employed by any Subcontractor to furnish labor, equipment, materials, transportation, or services used in relation to the Work and include sub-subcontractors of lower tiers.

UTILITY - Public or private fixed works for the transportation of fluids, gases, power, signals, or communications.

WORK – The performance of all labor and services and the furnishing of all equipment, machinery, tools, supplies, material, transportation, and all other items necessary and incidental to complete the construction of the Work undertaken by Contractor as described in, and as required by, the Contract Documents.

1-2 TERMS

Wherever the terms "required," "permitted," "ordered," "designated," "directed," "prescribed," or terms of like import are used, it shall be understood that the requirements, permission, order, designation, direction, or prescription of the Owner's Representative is intended. Similarly, the terms "acceptable," "satisfactory," "or equal," or terms of like import shall mean acceptable to or satisfactory to the Owner's Representative, unless otherwise expressly stated. The word "provide" shall be understood to mean furnish and install. The use of the word “including” shall be interpreted as inclusive rather than exclusive as in the phrase: “including, without limitation.”

1-3 ABBREVIATIONS

Wherever the following abbreviations are used, they shall have the meanings indicated:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGA	American Gas Association
AI	The Asphalt Institute
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron & Steel Institute
ANSI	American National Standards Institute (formerly USASI, USAS, ASA)
API	American Petroleum Institute
APWA	American Public Works Association
AREA	American Railway Engineering Association
ASA	American Standards Association (Now ANSI)
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating, and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials

AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
IEEE	Institute of Electrical and Electronics Engineers
NBFU	National Board of Fire Underwriters
NEMA	National Electrical Manufacturers Association
PCA	Portland Cement Association State California Standard Specifications, Specifications State of California, Department of Transportation, Division of Highways
SSPC	Steel Structures Painting Council
UBCU	Uniform Building Code, Pacific Coast Building Officials Conference of the International Conference of Building Officials
U/L or UL	Underwriters' Laboratories, Inc.
USASI or USAS	United States of American Standards Institute (Now ANSI)

SECTION 2 PROPOSAL REQUIREMENTS AND CONDITIONS

2-1 CONTRACT DOCUMENTS

The Contract Documents are as defined as in the Agreement.

2-2 LICENSE AND BIDDER'S EXPERIENCE

No bid will be accepted from a bidder who is not authorized to conduct business in California and licensed by the California Contractors State License Board to perform the class of work defined by the Contract Documents. All bidders shall complete the Bidder's Experience form as part of their bid. Bidders failing to complete and submit the Bidder's Experience form with their bid may be treated as nonresponsive at the option of the Owner. Bidders unable to demonstrate five (5) years' prior experience performing the type and scope of work required by the Contract Documents may also be rejected as nonresponsive.

2-3 PROPOSALS

Bids shall be made upon the Bid Form furnished by the Owner as a part of the Bid Documents to which these General Conditions are attached. All bids shall be properly executed, and all items shall be filled in; and, the signatures of all persons signing the bid and the other documents included with the Bidding Documents shall be in longhand. Erasures, interlineations, or other corrections shall be authenticated by affixing in the margin immediately opposite the correction the initials of a person signing the bid. Written amounts shall govern in case of discrepancy between the amounts stated in writing and the amounts stated in figures. If the unit price and the total amount named by a bidder for any item are not in agreement, the unit price alone shall be

considered as representing the bidder's intention, and the totals shall be corrected to conform thereto. The Owner reserves the right to reject any and all bids and to waive any and all irregularities or defects in any bid.

Bids shall not contain any recapitulation of the Work to be done. Alternative bids or proposals will not be considered, except as called for. No oral, telegraphic, or telephonic bids or proposals or modifications thereof will be considered.

Bids shall be accompanied by a Bid Bond in the form of cash, a cashier's check, a certified check, or bidder's bond executed by an admitted surety insurer (as that term is defined in California Code of Civil Procedure Section 995.120), in an amount not less than ten percent (10%) of the amount of the bid, and made payable to or for the benefit of the Owner. Said cash, check, or bond shall be given as a guarantee that the bidder will enter into the Contract and furnish the required bonds or substitutes and the insurance certificates and endorsements if awarded the Contract; and, in case of the successful bidder's refusal or failure to enter into said Contract, furnish the required bonds or substitutes, and/or furnish the required insurance certificates and endorsements within fifteen (15) calendar days after notice of award by the Owner in writing, the cash or the check and the money represented by said check shall be forfeited to the Owner, or in the event that a bond is deposited, said security shall be forfeited. Forfeiture does not preclude the Owner from seeking all other remedies provided by law to recover losses sustained as a result of the Contractor's failure to enter into the Contract, furnish the required bonds or substitutes, and/or furnish the required insurance certificates and endorsements.

Bids shall be sealed in an envelope marked and addressed as set forth in the Bid Documents. Bids shall be delivered to personnel of the Owner at the location designated in the Notice Inviting Sealed Proposals (Bids) on or before the day and hour set for the opening of bids. Bids not marked as being received by personnel of the Owner on or before the day and hour of bid opening will be rejected. It is the responsibility of the bidder to ensure that the bid is received by personnel of the Owner on or before the day and hour of bid opening.

2-4 WITHDRAWAL OF BID

A bidder may withdraw his bid by a signed written request any time prior to the day and hour for receiving bids designated in the Notice Inviting Sealed Proposals. Thereafter the Bid may be withdrawn only as permitted in accordance with Public Contract Code Section 5100, et seq., regarding relief of Bidders.

The withdrawal of a bid does not prejudice the right of a bidder to file a new bid so long as the new bid is delivered as set forth in Section 2-3 (PROPOSALS) on or before the day and hour of bid opening specified in the Notice Inviting Sealed Proposals (Bids).

2-5 BIDDERS INTERESTED IN MORE THAN ONE BID

No person, partnership, or corporation shall be allowed to make or file, or be interested in more than one bid for the Work, unless alternative bids are called for. A person, partnership, or corporation submitting a subproposal to a bidder, or who has quoted prices on material to a bidder, is not thereby disqualified from submitting a subproposal or quoting prices to other bidders.

2-6 INTERPRETATION OF PLANS AND OTHER CONTRACT DOCUMENTS

If any person or entity contemplating submitting a bid for the proposed Contract is in doubt as to the true meaning of any part of the Plans, Specifications, or other Contract Documents, or finds discrepancies in, or omissions from the Plans and Specifications or other Contract Documents, the bidder may submit to the Owner a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. An interpretation or correction of the Contract Documents will be made only by Addendum duly issued by the Owner. A copy of such Addendum will be mailed or delivered to each person or entity that has purchased and received a set of the Contract Documents available at the Owner's offices, as provided in the Notice Inviting Sealed proposals (Bids). The Owner, the Engineer, and their respective consultants will not be responsible to bidders or potential bidders for any other explanation or interpretation of the Contract Documents.

2-7 ADDENDA

Addenda issued before the date and time in which to submit bids expires, as specified in the Notice Inviting Sealed Proposals (Bids), shall become a part of the Contract Documents for purposes of preparing complete and responsive bids.

2-8 EXISTING CONDITIONS AND EXAMINATION OF CONTRACT DOCUMENTS

The bidder represents that the bidder has carefully examined the Contract Documents and the site where the Work is to be performed and that the bidder is familiar with all local conditions and federal, state and local laws, ordinances, rules, and regulations that may affect in any manner the performance of the Work. The bidder further represents that the bidder has studied all surveys and investigation reports about subsurface and latent physical conditions pertaining to the job site, that the bidder has performed such additional surveys and investigations as the bidder deems necessary to complete the Work for the bid price, and that the bidder has correlated the results of all such data with the requirements of the Contract Documents. The submittal of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be

encountered, including locality, uncertainty of weather and all other contingencies, and as to the character, quality, quantities, and scope of the Work.

In the event the Plans and Specifications for the Work show subsurface conditions or other hidden conditions, such conditions shall be interpreted as conditions as they are supposed or believed by the Owner and/or Engineer to exist; provided, however, that the conditions as shown thereon are not intended, and shall in no way be interpreted or inferred, as constituting a representation by Owner that such conditions are actually existent or that they actually exist as shown. Except as otherwise specifically provided in the Contract Documents, the Owner, the Engineer and their respective consultants shall not be liable for any loss sustained by the Contractor as a result of any variance between conditions as shown on the Plans and Specifications and the actual conditions revealed during the progress of the Work or otherwise.

Where the Owner or the Engineer or their respective consultants have made investigations of subsurface conditions in areas where the Work is to be performed, such investigations were made only for the purpose of study and design. The conditions indicated by such investigations apply only at the specific location of each boring or excavation at the time the borings or excavations were made. Where such investigations have been made, bidders or Contractors may inspect the records as to such investigations subject to and upon the conditions hereinafter set forth. The inspection of the records shall be made at the office of the Owner.

The records of such investigations are not a part of the Contract Documents and are made available solely for the convenience of the bidder or Contractor. It is expressly understood and agreed that the Owner, the Engineer, and their respective consultants assume no responsibility whatsoever in respect to the sufficiency or accuracy of the investigations; the records thereof; or of the interpretations set forth therein or made by the Owner, Engineer or their respective consultants in the use thereof by the Owner or Engineer. Owner makes no warranty or guarantee, either express or implied, and nothing in the Contract Documents shall be construed as a warranty or guarantee by Owner, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout the Work site, or any part thereof, or that unlooked-for developments may not occur, or that materials other than, or in proportions, densities, or other characteristics different from, those indicated may not be encountered.

When a log of test borings showing a record of the data obtained by the investigation of subsurface conditions by the Owner, the Engineer, or their respective consultants is included with the Plans or other documents, it is expressly understood and agreed that said log of test borings does not constitute a part of the Contract Documents, represents only the opinion of the Owner or the Engineer or their respective consultants as to the character of the materials encountered by them in the test borings, is included in the Plans or other documents only for the convenience of bidders, and its use is subject to all of the conditions and limitations set forth in this Section.

The availability or use of information described in this Section is not to be construed in any way as a waiver of the provisions of the first paragraph in this Section and a bidder or Contractor is cautioned to make such independent investigations and examination as such bidder or Contractor deems necessary to be satisfied as to conditions to be encountered in the performance of the Work.

No information derived from such inspection of records of investigations or compilation thereof made by the Owner, the Engineer, or their respective consultants will in any way relieve the bidder or Contractor from any risk or from properly fulfilling the terms of the Contract nor entitle the Contractor to any additional compensation or time for completion of the Contract.

SECTION 3 AWARD AND EXECUTION OF CONTRACT

3-1 AWARD OF CONTRACT OR REJECTION OF BIDS

The Owner shall have absolute discretion in awarding the Contract. The Owner is not required to contract with the lowest qualified responsible bidder. The Owner further reserves the right to select the schedules under which the bids are to be compared, to reject any and all bids, and to waive any irregularity in bids received. If, in the judgment of the Owner, a bid is unbalanced, or the bid is not responsive, or if the bidder is not responsible, it shall be considered sufficient grounds for rejection of the entire bid.

The Owner shall have sixty (60) days after the opening of the bid within which to accept or reject the bid. No bid may be withdrawn by any bidder during said period. The Owner will return the Bid Bonds, except any Bid Bonds which have been forfeited, to the respective bidders whose bids (proposals) they accompanied after the successful bidder receiving the Contract award timely executes the Contract and furnishes the required bonds or substitutes and insurance certificates and endorsements. The Bid Bonds of the unsuccessful bidders will be returned to such bidders by the Owner no later than sixty (60) calendar days following the date of award of Contract.

Before award of the Contract, any bidder shall furnish upon request a recent statement of the bidder's financial condition and previous construction experience or such other evidence of the bidder's qualifications as may be requested by the Owner. If a bidder fails to furnish in a timely manner the information requested, it shall be considered sufficient grounds for rejection of such bidder's entire bid.

3-2 EXECUTION OF CONTRACT

The form of Agreement, bonds, certificates of insurance, insurance endorsements, and other documents which the successful bidder, as Contractor, will be required to execute are included as a part of the Bid Documents and comprise a part of the Contract Documents.

The Contract shall be signed by the successful bidder and returned to the Owner, together with the required bonds or substitutes and the required insurance certificates and insurance endorsements, within fifteen (15) calendar days of Owner's written notice of Contract award to the successful bidder. The Agreement, bonds (or documents substituting security), insurance certificates, insurance endorsements, and other documents to be executed by the Contractor shall be executed in original-quadruplicate, one each of which shall be filed with the Owner, the Owner's attorney, and Engineer.

3-3 BONDS

The successful bidder, simultaneously with execution of the Contract Documents, shall either furnish a payment bond and a performance bond, each in an amount equal to one hundred percent (100%) of the bid price, or shall furnish equivalent cash or securities in lieu of these bonds in accordance with Code of Civil Procedure Section 995.710. Alternative securities proposed by the Contractor shall be subject to review and approval by Owner. Contractor agrees to provide Owner with a deposit in a sum determined adequate by the Owner to cover all attorney's fees and all other fees, costs, and expenses incurred by the Owner in reviewing Contractor's request to use alternative securities in lieu of the required bonds and to prepare all agreements determined necessary by Owner to adequately protect Owner's interest. Performance and payment bonds shall be furnished by surety companies meeting the requirements of Code of Civil Procedure Section 995.660 and shall be effectuated on the forms furnished as part of the Bid Documents. Surety companies, to be acceptable to Owner, must meet all requirements of Code of Civil Procedure Section 995.660.

If at any time a surety on any such bond fails to comply with Code of Civil Procedure Section 995.660, the Contractor shall, within ten (10) calendar days after notice from the Owner, substitute new payment and performance bonds with surety companies meeting all requirements of Code of Civil Procedure Section 995.660. All premiums on these new bonds shall be paid solely by the Contractor. No further payments to Contractor for the Work shall be deemed due and shall not be made until the new surety or sureties have furnished new bonds to Owner meeting all requirements of Code of Civil Procedure Section 995.660 and this Section.

The Performance Bond and the Payment Bond, or alternative securities meeting the requirements of Code of Civil Procedure Section 995.710 approved by the Owner, must remain in full effect throughout the period of the Work and for the one (1) year warranty period described in Section 5-14 (ONE-YEAR GUARANTEE) of these General Conditions.

3-4 INSURANCE REQUIREMENTS

The successful bidder will be required to furnish the Owner with proof of full compliance with all insurance requirements as specified in Section 8 (CONTRACTOR'S INSURANCE) of these General Conditions and by providing the fully executed certificates of insurance and insurance endorsements, the forms of which are included among the Bid Documents to which these General Conditions are attached.

3-5 FAILURE TO EXECUTE CONTRACT

Failure by the successful bidder to whom the contract is awarded to execute the Contract and to furnish the required bonds (or substitute security as provided in these General Conditions), insurance certificates, and/or insurance endorsements shall be just cause for Owner to annul the Contract award to such bidder and, as provided in Section 2-3 (PROPOSALS) of these General Conditions, the forfeiture of such bidder's Bid Bond. In addition, in the event the successful bidder who is awarded the Contract fails to timely execute the Contract or to furnish the required bonds or (or substitute security as provided in these General Conditions), the insurance certificates, and/or the insurance endorsements, such bidder shall be liable to the Owner for all damages available to Owner at law resulting therefrom, including reasonable attorneys' fees and costs. The forfeiture of the bidder's Bid Bond shall not be a limitation on the amount or type of damages Owner may recover in such event.

SECTION 4 SCOPE OF WORK

4-1 WORK TO BE DONE

The Work to be done consists of furnishing all transportation, labor, materials, tools, machinery, equipment, services, permits, utilities and all other items which are necessary, incidental, or appurtenant to complete the Work as described and required in the Contract Documents, and to leave the Work site in a neat and presentable condition upon completion of the Work.

4-2 CHANGES IN THE WORK

The Owner may require changes in, additions to, or deductions from the Work, within the general scope of the Contract Documents, including complete termination thereof, for cause or for convenience. Equitable adjustment, if any, in the amounts to be paid to the Contractor or in the time for completion of the Work, by reason of any such change, addition, or deduction shall be determined as set forth in Section 9 (ESTIMATES AND PAYMENTS) and Sections 6-4 and 6-5 (TIME FOR COMPLETION AND FORFEITURE DUE TO DELAY and EXTENSION OF TIME) of these General Conditions, respectively, pursuant to a Change Order.

Owner may prepare and issue a Disputed Work Order directing such changes in the Work and providing such equitable adjustment in the Contract amount and/or time for completion of the Work as Owner reasonably determines to be due or subtracted for such change. The Disputed Work Order may be issued prior to Owner and Contractor achieving an agreement concerning any such equitable adjustment in the Contract amount or time for completion of the Work. Upon receipt of a Disputed Work Order, Contractor shall promptly proceed with the change in the Work and advise Owner of Contractor's agreement or disagreement with Owner's determination concerning the equitable adjustment in the Contract amount and/or the time for completion of the Work as a result of such change. If the Contractor is in agreement with the Disputed Work Order, Contractor shall signify such agreement by signing the Disputed Work Order, whereupon the same shall be logged as a Change Order. Pending an agreement between the Owner and Contractor concerning any equitable adjustment for the change in the Work or a resolution of the same under the Section 10 (CLAIMS AND DISPUTES) of these General Conditions, such portion of the Disputed Work Order concerning which the parties are in agreement shall be entered into a Change Order and such portion of the Disputed Work order concerning which the Contractor remains in disagreement shall be resolved in accordance with Section 10 (CLAIMS AND DISPUTES) of these General Conditions. Undisputed amounts due Contractor for such change in the Work shall be included in Contractor's progress payment requests for payment by Owner.

To the extent Contractor does not agree with Owner's determination concerning the appropriate equitable adjustment to the Contract amount or to the time for completion of the Work arising from a change in the Work directed by Owner, within the general scope of the Contract Documents, any such disagreement or dispute shall not relieve Contractor of its obligation to continue performing the Work, and any changes in the Work, in accordance with the Contract Documents. Pending final resolution of such dispute, Contractor shall proceed diligently with performance of the Work, and changes in the Work, and Owner shall continue to make payments in accordance with the Contract Documents. In the event the parties are not able to resolve any such disagreement, the same shall be resolved in accordance with Section 10 (CLAIMS AND DISPUTES) of these General Conditions.

Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract.

Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the work, including additional work, promptly and expeditiously.

Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

4-3 OBSTRUCTIONS

The Contractor shall remove and dispose of all structures, debris, or other obstructions of any character necessary to accommodate the Work. Where such obstructions consist of improvements not required by law to be removed by the Owner thereof, all such improvements shall be removed, maintained, and permanently replaced by the Contractor at his expense except as otherwise specifically provided in the Contract Documents.

4-4 UTILITIES

The Owner or the Engineer has endeavored to determine the existence of Utilities at the site of the Work from the records of the owners of known Utilities in the vicinity of the Work. The positions of these Utilities as derived from such records are shown on the Plans. The service connections to these Utilities may or may not be shown on the Plans.

The Contractor shall make Contractor's own investigations, including exploratory excavations, to determine the horizontal and vertical locations and type of existing Utilities, including Utility service laterals, mains or appurtenances when their presence can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the Work. The extent of Contractor's Utility investigations shall be to the Owner's satisfaction and include such investigations and actions required by California Government Code Sections 4216 et seq., California Business and Professions Code Section 7110, and other applicable law. If the Contractor discovers Utility facilities not identified in the Plans or Specifications or in a position different from that shown in the Plans and Specifications or the results of Contractor's investigations, Contractor shall immediately provide written notification to Owner and the owner of the Utility facility.

The Contractor shall complete all required exploratory investigations and investigations and actions required by law within ten (10) working days following the issuance of the Notice To Proceed.

In case it should be necessary to remove, relocate, protect, or temporarily maintain a Utility facility because of interference with the Work, the work to remove, relocate, protect, or temporarily maintain such Utility facility shall be performed and paid for as follows:

- (a) When it is necessary to remove, relocate, protect, or temporarily maintain an existing Utility facility, including Utility facilities owned by Owner, Contractor shall obtain the written approval of Owner prior to conducting any work related to the removal, relocation, protection, or temporary maintenance of such Utility facility. The

work related to the removal, relocation, protection, or temporary maintenance of such Utility facility shall be conducted by Contractor and paid for by Owner in accordance with the Contract Documents.

(b) Except as otherwise provided in the Contract Documents, when the Contract Documents do not provide for Contractor to conduct work related to the removal, relocation, protection, or temporary maintenance of a Utility facility, as described in (a) above, the Owner may direct the Contractor to conduct such work pursuant to a Change Order or a Disputed Work Order and, to the extent the following activities are authorized therein, Owner will compensate Contractor for the reasonable costs of locating the Utility facility, repairing damage to the Utility facility to the extent such damage was not caused by the negligent acts or omissions, recklessness, or willful misconduct of the Contractor, and for removing, relocating, protecting, or temporarily maintaining such Utility facilities, and for the costs for equipment on the Work site reasonably and necessarily idled during such work.

(c) Except as otherwise provided in the Contract Documents, when the Contract Documents do not provide for Contractor to conduct work related to the removal, relocation, protection, or temporary maintenance of a Utility facility, as provided in (a) above, and when Owner does not direct Contractor to conduct such work pursuant to a Change Order or a Disputed Work Order, as provided in (b) above, such as in the event the owner of the Utility facilities, Owner, or a third party will conduct such work, Owner shall reimburse Contractor for equipment at the work site necessarily idled during such work and make such equitable adjustments to the Contract amount and/or the time to complete the Work prescribed under the Contract Documents as reasonable and appropriate due to any delays in the Work caused by work related to the removal, relocation, protection, or temporary maintenance of such Utility facility.

(d) Any equitable adjustment in the Contract amount and/or the time for completion of the Work shall be covered by a written Change Order or, if an agreement cannot be reached concerning such equitable adjustment, Owner may issue a Disputed Work Order conforming to the provisions of Section 4-2 (CHANGES IN THE WORK), Section 6-5 (EXTENSION OF TIME) and Section 9-1 (PAYMENT FOR CHANGES IN THE WORK) of these General Conditions.

(e) Owner may make changes in the alignment and grade of Work to avoid or minimize the necessity for work related to the removal, relocation, protection, or temporary maintenance of such Utility facility or to reduce the costs of the same in accordance with Section 4-2 (CHANGES IN THE WORK) of these General Conditions.

No representations are made that the obligations to remove, relocate, protect, or temporarily maintain any Utility and to pay the cost thereof is or is not required to be borne by the owner of

such Utility under applicable law or by agreement, and it shall be the responsibility of the Contractor to investigate to find out whether or not said work is required to be conducted by, or whether the cost thereof is required to be borne by, the owner of the Utility facility.

4-5 PLANS AND SPECIFICATIONS FURNISHED BY THE OWNER

The Owner will furnish to the Contractor, free of charge, six (6) copies of the Plans and Specifications for the execution of the Work. The Contractor shall keep one set of such Plans and Specifications in good order at the Work site and make the same available to the Owner's Representative during regular business hours.

4-6 MAINTAIN CLEAN SITE

The Contractor shall maintain the work sites in a neat and orderly manner throughout construction. If, in the determination of the Owner, the Contractor has not adequately maintained a clean, neat and orderly work site, the Owner, following reasonable notice to Contractor, may clean the Work site and charge the Contractor for its costs and expenses in doing so. Upon completion and before making application for acceptance of the Work, Contractor shall clean and remove all rubbish, construction debris, excess materials, temporary structures, machinery, and equipment from all rights-of-way, streets, borrow pits, and all other grounds occupied or affected by Contractor (including its employees, subcontractors, sub-subcontractors of every tier, suppliers, representatives, and agents) arising out of or in connection with the Work; and the same shall be left in a neat and presentable condition.

4-7 ACCEPTANCE OF WORK

Upon completion of the Work, the Work shall be presented to the Board of Directors for the Vallecitos Water District for acceptance and the filing of a Notice of Completion. The Board of Directors shall have no obligation to accept the Work or file a Notice of Completion until all Work has been completed to its satisfaction.

SECTION 5 QUALITY OF THE WORK

5-1 AUTHORITY OF THE OWNER'S REPRESENTATIVE

The Owner's Representative, by direction of the Vallecitos Water District, shall be authorized to act as liaison between the Contractor and the Owner's governing Board of Directors in the administration of this Contract, the Work to be conducted hereunder, and shall have full authority to act for the Owner for all purposes under this Contract, except as provided in Section 4-7 (ACCEPTANCE OF WORK) of these General Conditions. The Owner may, by written

notice, designate one or more persons to assist or to act on his or her behalf as the Owner's Representative

5-2 SUPPLEMENTAL DRAWINGS

The Owner shall supplement the Plans with such drawings to better define the Work as reasonably necessary to enable the Contractor to conduct and complete the Work as required by the Contract Documents. All such supplemental drawings delivered to the Contractor by the Owner's Representative shall be deemed written instructions to the Contractor. If the Contractor believes that any supplemental drawings call for changes in the Work for which the Contract amount or time for completion of the Work should be changed, Contractor shall not proceed with the changes in the Work so called for and shall within seven days of the receipt of the supplemental drawings notify the Owner's Representative in writing of Contractor's estimate of the changes in the Contract amount and/or the time for completion of the Work Contractor believes to be appropriate. No payment for changes in the Work will be made and no change in the time for completion of the Work by reason of changes in the Work will be made, unless the changes are covered by a written Change Order or Disputed Work Order approved by the Owner in advance of the Contractor's proceeding with the changed Work.

To the extent Contractor disagrees with the Owner's determination concerning the appropriate equitable adjustment to the Contract amount or to the time for completion of the Work arising from a change in the Work directed by Owner, any such disagreement or dispute shall not relieve Contractor of its obligation to continue performing the Work, and any changes in the Work, in accordance with the Contract Documents and such supplemental drawings. Pending final resolution of such dispute, Contractor shall proceed diligently with performance of the Work, and changes in the Work and Owner shall continue to make payments in accordance with the Contract Documents. In the event the parties are not able to resolve any such disagreement or dispute, the same shall be resolved in accordance with Section 10 (CLAIMS AND DISPUTES) of these General Conditions.

5-3 CONFORMITY WITH CONTRACT DOCUMENTS AND ALLOWABLE DEVIATIONS

The Work shall conform to the lines, grades, dimensions, tolerances, and material and equipment requirements shown on the Plans or as set forth in the Specifications. Although measurement, sampling, and testing may be considered evidence as to such conformity, the Owner's Representative shall be the sole judge as to whether the Work or the materials and equipment deviate from the requirements of the Plans and Specifications, and the decision of the Owner's Representative as to any allowable deviations therefrom shall be final. If specific lines, grades, and dimensions are not shown on plans, those furnished by the Owner's Representative shall govern.

5-4 MANUFACTURER'S INSTRUCTIONS

All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier, or distributor, except as otherwise specifically provided in the Contract Documents.

5-5 COORDINATION OF CONTRACT DOCUMENTS

The Specifications, Plans, and each of the other documents and instruments which together comprise the Contract Documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to include all items necessary for the proper execution and completion of the Work by Contractor. Contractor's performance of the Work shall meet the express requirements of the Contract Documents and shall be consistent with the requirements and standards which are reasonably inferable from them as being necessary to produce the indicated results. In the event of an apparent difference between Plans and Specifications, reference shall be made to the Owner's Representative whose decision thereon shall be final. Where a conflict exists between the Contract Documents, including the General Conditions, Supplementary Conditions and Technical Specifications, the Technical Specifications shall govern.

5-6 INTERPRETATION OF PLANS AND SPECIFICATIONS

The Contract Documents are intended to be fully cooperative and complementary. If the Contractor observes that any documents are in conflict, the Contractor shall promptly notify the Owner in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

- A. Change Orders
- B. Addenda
- C. Special Provisions
- D. Supplementary General Conditions
- E. Technical Specifications
- F. Plans (Contract Drawings)
- G. Agreement
- H. General Conditions
- I. Notice Inviting Bids
- J. Contractor's Bid Forms
- K. Standard Drawings
- L. Reference Drawings

Figured dimensions on drawings shall govern but work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or

specified. Large-scale details shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials and workmanship. Drawings and specifications are intended to be fully complementary and to agree. The Specification calling for the higher quality material or workmanship shall prevail. Materials or work described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized meanings. In the event of any discrepancy between any drawings and the figures thereon, the figures shall be taken as correct. In the event of any doubt or question arising respecting the true meaning of the Plans or Specifications, reference shall be made to the Owner's Representative whose decision thereon shall be final.

5-7 ERRORS OR DISCREPANCIES NOTED BY CONTRACTOR

It is the duty of the Contractor to promptly notify the Owner's Representative in writing of any design, materials, or specified method that the Contractor believes may prove defective or insufficient. If the Contractor believes that a defect or insufficiency exists in design, materials, or specified method and fails to promptly notify the Owner's Representative in writing of this belief, the Contractor waives any right to assert that defect or insufficiency in design, materials, or specified method at any later date in any legal or equitable proceeding against Owner, or in any subsequent arbitration or settlement conference between the Owner and the Contractor. The Owner's Representative, on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to the Contractor. Until such instructions are given, any work done by the Contractor after he comes to the belief that a defect or insufficiency exists in design, materials, or specified method which is directly or indirectly affected by such alleged defect or insufficiency in design, materials, or specified method will be at Contractor's own risk and Contractor shall bear all costs and expenses and be responsible for all damages arising therefrom.

If the Contractor, either before commencing Work or in the course of the Work, finds any discrepancy between the Specifications and the Plans or between either of them and the physical conditions at the site of the Work or finds any error or omission in any of the Plans or in any survey, he shall promptly notify the Owner's Representative of such discrepancy, error, or omission. If the Contractor observes that any Plans or Specifications are at variance with any applicable law, ordinance, regulation, order, or decree, he shall promptly notify the Owner's Representative in writing of such conflict. The Owner's Representative, on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to the Contractor. Until such instructions are given, any work done by the Contractor after his discovery of such error, discrepancy, or conflict which is directly or indirectly affected by such error, discrepancy, or conflict will be at Contractor's own risk and Contractor shall bear all costs and expenses and be responsible for all damages arising therefrom.

The Contractor shall supervise 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. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but the Contractor shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence, or procedure of construction which is indicated in and required by the Contract Documents, except as otherwise provided in Section 5-7 (ERRORS OR DISCREPANCIES NOTED BY CONTRACTOR) of these General Conditions. The Contractor shall be responsible to see that the completed Work complies with the Contract Documents.

The Contractor shall designate and keep on the Work at all times during its progress a competent superintendent who shall not be replaced without written notice to the Owner's Representative. The superintendent will be the Contractor's representative at the Work site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. During periods when the Work is suspended, the Contractor shall make appropriate arrangements for any emergency work which may be required. Whenever the superintendent is not present on any particular part of the Work where the Owner's Representative may desire to inform the Contractor relative to interpretation of the Plans and Specifications or to the disapproval or rejection of materials or Work performed, the Owner's Representative may so inform the foreman or other worker in charge of the particular part of the Work in reference to which the information is given. Information so given shall be as binding as if given to the superintendent.

Contractor shall enforce strict discipline and good order among its officers, employees, and Subcontractors performing any aspect of the Work. Contractor shall not permit unfit persons or persons lacking the necessary skills for the tasks assigned to them to perform any aspect of the Work. A person demonstrating a lack of acceptable job skills, insubordination, actions disrupting the Work or good order of others, or faulty workmanship shall be deemed to present good cause for Owner to direct, by notice to Contractor, that such person be removed from performing any aspect of the Work. Within ten (10) days of its receipt of such notice, Contractor shall replace, or ensure the replacement of, such individual with a qualified person. Neither the Owner's Representative nor the Owner shall be liable to Contractor, any Subcontractor, or any other person or entity for directing the removal of a workman or supervisor in accordance with the terms of this Section.

“Submittals” are drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier, or distributor and which illustrates some portion of the Work.

The Contractor shall review, certify with its approval, and submit for review by the Owner's Representative Submittals as called for in the Contract Documents (including the Specifications and Special Provisions), or requested by the Owner's Representative. Submittals shall be submitted in sextuplet to the Owner's Representative and be accompanied by a letter of transmittal (using the form supplied in the Construction Forms Section of the Bidding Documents) listing the drawings submitted. Submittals shall show the name of the Work, the name of the Contractor, and, if any, the names of Contractor's Subcontractors, vendors, suppliers, and manufacturers. Submittals shall be submitted with promptness and in orderly sequence so as to cause no delay in prosecution of the Work.

Submittals shall be complete in all respects. If the Submittals show any deviations from the requirements of the Plans and Specifications because of standard shop practices or other reasons, the deviations and the reasons therefore shall be set forth in the letter of transmittal. Incomplete Submittals shall be returned to the Contractor, not reviewed by the Owner. No time extensions shall be given due to incomplete shop drawing Submittals. By submitting shop drawings, the Contractor represents that material, equipment, and other Work shown thereon conforms to the Plans and Specifications, except for any deviations set forth in the letter of transmittal.

Within thirty (30) calendar days after receipt of said Submittals, the Owner's Representative will return two of the copies of the Submittals to the Contractor with any comments noted thereon. If so noted by the Owner's Representative, the Contractor shall correct the Submittals and resubmit them in the same manner as specified for the original submittal. The Contractor in the letter of transmittal accompanying resubmitted Submittals shall direct specific attention to revisions other than the corrections requested by the Owner's Representative on previous submittals. The review by the Owner's Representative is only of general conformance with the design concept of the Work and general compliance with the Plans and Specifications and shall not be construed as relieving the Contractor of the full responsibility for: providing materials, equipment, and Work required by the Contract Documents; the proper fitting and construction of the Work; the accuracy and completeness of the Submittals; selecting fabrication processes and techniques of construction; and performing the Work in a safe manner. No portion of the Work requiring a Submittal shall be commenced until the Submittal has been reviewed by the Owner's Representative and returned to the Contractor with a notation indicating that resubmittal is not required.

If the Contractor believes that any Submittal or communication relative thereto calls for changes in the Work for which the Contract amount or time for completion of the Work should be changed, Contractor shall not proceed with the changes in the Work so called for and shall promptly notify the Owner's Representative in writing of his estimates of the changes in the Contract amount and time for completion of the Work he believes to be appropriate. No payment for changes in the Work will be made and no change in the time for completion of the Work by reason of changes in the Work will be made, unless the changes are covered by a

written Change Order or Disputed Work Order approved by the Owner in advance of the Contractor's proceeding with the changed Work.

To the extent Contractor is in disagreement with the Owner's determination concerning the appropriate equitable adjustment to the Contract amount or to the time for completion of the Work arising from a change in the Work or whether there has been a change in the Work, any such disagreement or dispute shall not relieve Contractor of its obligation to continue performing the Work, and any changes in the Work arising relative to such Submittals, in accordance with the Contract Documents. Pending final resolution of such disagreement or dispute, Contractor shall proceed diligently with performance of the Work, and changes in the Work and Owner shall continue to make payments in accordance with the Contract Documents. In the event the parties are not able to resolve any such disagreement or dispute, the same shall be resolved in accordance with Section 10 (CLAIMS AND DISPUTES) of these General Conditions.

5-10 QUALITY AND SAFETY OF MATERIALS AND EQUIPMENT

All equipment, materials, and supplies to be incorporated in the Work shall be new, unless otherwise specified. All equipment, materials, and supplies shall be produced in a good and workmanlike manner. When the quality of a material, process, or article is not specifically set forth in the Plans and Specifications, the best available quality of the material, process, or article shall be provided.

Whenever any material, process, or article is indicated or specified by grade, patent or proprietary name, or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of the materials, process, or articles desired and shall be deemed to be followed by the words "or equal", and the Contractor may offer any material, process, or article which shall be substantially equal or better in every respect to that so indicated or specified; provided, however, that if the material, process, or article offered by the Contractor is not, in the opinion of the Owner's Representative, equal or better in every respect to that specified, then the Contractor must furnish the material, process, or article specified or one that in the opinion of the Owner's Representative is the substantial equal or better in every respect. In the event that the Contractor furnishes material, process, or article more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by the Contractor.

In accordance with Public Contract Code Section 3400, the Contractor shall submit data substantiating requests for substitution of "or equal" items, or of the manufacturers listed in the LISTING OF MATERIALS AND EQUIPMENT component of the Bid Form, within thirty-five (35) calendar days after award of the Contract. This 35-day period of time is included in the number of days allowed for the completion of the Work.

All materials, equipment, and supplies provided shall, without additional charge to Owner, fully conform with all applicable local, state and federal laws, rules, regulations, and orders (including those pertaining to safety, environmental requirements, and construction standards) for their use in the Work, and it shall be Contractor's responsibility to provide only such materials, equipment, and supplies notwithstanding any omission in the Contract Documents therefore or that a particular material, equipment, or supply was specified.

All machinery and equipment provided by the Contractor for the Work shall include locking mechanisms capable of locking any shut-down devices on the machinery and equipment before commencement of any repairs or other work. Any machinery or equipment provided by the Contractor, which does not have this locking ability, shall be altered at the expense of the Contractor to provide these locking mechanisms without compromising any safety features on the equipment or machinery prior to the commencement of any repairs or work on the equipment or machinery. The Contractor shall not commence any work or repairs on any machinery or equipment which has been shut down until the locking mechanism has been activated and the Contractor has tagged the applicable machinery or equipment with a tag stating, "Danger Do Not Operate." This tag shall include the name of the employee who locked the equipment prior to the commencement of any work or repairs. The Contractor shall insure that all equipment and machinery fully comply with Title 8 of California Administrative Code Sections 3202, 3314, 6003, 2320.4-2320.6, 2530.43, and 2530-86 at all times during performance of the Work.

5-11 STANDARDS, CODES, SAMPLES, AND TESTS

Whenever reference is made to a standard, code, specification, or test and the designation representing the date of adoption or latest revision thereof is omitted, it shall mean the latest revision of such standard, code, specification, or test in effect on the day the Notice Inviting Sealed Proposals (Bids) is dated.

Tests shall be made in accordance with commonly recognized procedures of technical organizations and such special procedures as may be prescribed elsewhere in the Plans and Specifications. The Contractor shall furnish without charge such samples for testing as may be required by the Owner's Representative.

5-12 OBSERVATION OF WORK BY OWNER'S REPRESENTATIVE

The Owner's Representative shall at all times have access to the Work during construction and shall be furnished with every reasonable facility for ascertaining full knowledge respecting the progress, workmanship, and character of materials and equipment used and employed in the Work.

Whenever the Contractor varies the normal period during which Work or any portion of it is carried on each day, Contractor shall give timely notice to the Owner's Representative so that the

Owner's Representative may be present to observe the Work in progress. If the Contractor fails to give such timely notice, any Work done in the absence of the Owner's Representative will be subject to rejection.

The Contractor shall give timely notice to the Owner's Representative in advance of backfilling or otherwise covering any part of the Work so that the Owner's Representative may observe such part of the Work before it is concealed.

Any observation of the Work by the Owner's Representative shall not relieve the Contractor of any of Contractor's obligations to fulfill the Contract as required in the Contract Documents. Defective Work shall be made good, and materials and equipment furnished, and Work performed which is not in accordance with the Contract Documents may be rejected notwithstanding the fact that such materials, equipment, and work have been previously observed by the Owner's Representative or that payment therefore has been made.

In addition, the Owner's Representative shall decide any and all questions which may arise as to the interpretation of the Plans and Specifications and, subject to Section 4-7 (ACCEPTANCE OF WORK) of these General Conditions, the Owner's Representative shall have authority to disapprove or reject materials, machinery, equipment, and services furnished and Work performed which, in his or her opinion, is not in accordance with the Contract Documents.

5-13 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

Any Work which does not conform to the requirements of the Contract Documents shall be remedied or removed and replaced by the Contractor, together with any other Work which may be displaced in so doing, and no compensation or additional time for completion of the Work will be allowed Contractor for such removal, replacement, or remedial Work. All nonconforming materials shall be immediately removed from the site.

Any Work done beyond the lines and grades shown on the Plans or established in writing by the Owner's Representative, or any changes in, additions to, or deductions from the Work made by Contractor without Owner's written approval will be considered as unauthorized and Contractor shall not be paid for such unauthorized work. Owner may require, by written notice to Contractor, that any unauthorized work be promptly remedied, removed, or replaced by Contractor at Contractor's expense. Contractor's failure to promptly comply with Owner's notice shall entitle the Owner to cause nonconforming materials, rejected Work, or unauthorized Work to be remedied, removed, or replaced at the Contractor's expense and to deduct the costs and expenses reasonably incurred in taking such action from any moneys due or to become due Contractor under the Contract.

In addition to any guarantees or warranties provided by Contractor elsewhere in the Contract Documents, Contractor shall and hereby does warrant that the Work and all equipment and materials shall be free from all defects due to faulty materials, equipment, or workmanship for a period of one year after the date of acceptance of the entire Work by Owner. Owner shall have the right to make all inspections of the equipment and materials necessary to determine defects due to faulty materials, equipment, or workmanship. Under such warranty, Contractor shall repair or remove and replace any and all Work, together with any other Work which may be displaced in so doing, that is found to be defective within said one-year periods, without expense whatsoever to Owner, ordinary wear and tear and unusual abuse or neglect excepted. In the event of Contractor's failure to comply with the above-mentioned warranty within one week after being notified by Owner in writing of any defect in the Work, Owner is hereby authorized to proceed to have such defect(s) remedied and made good at the expense of Contractor and Contractor hereby agrees to pay the cost and charges therefore immediately on demand by Owner. Such action by Owner will not relieve Contractor of its duties and obligations under the warranty required by this Section or any other warranties or guarantees provided by Contractor elsewhere in the Contract Documents.

If, in the opinion of the Owner, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the Owner or to prevent interruption of operations of the Owner, or in case of emergency, the Owner will attempt to give the notice required by this Section where feasible. However, if the Contractor cannot be contacted or does not comply with the Owner's request for correction within a reasonable time as determined by the Owner, the Owner may, notwithstanding the provisions of this Section, proceed with such corrective action as Owner deems reasonable to repair or remove and replace any and all defective Work at the expense of Contractor and Contractor hereby agrees to pay the cost and charges therefore immediately on demand by Owner. Such action by the Owner will not relieve the Contractor of the guarantees or warranties required by this Section or elsewhere in the Contract Documents.

This Section does not in any way limit the Contractor's duty to satisfy its guarantee or warranty on any items for which a longer guarantee is specified in the Plans or Specifications or on any items for which a manufacturer or supplier gives a guarantee or warranty for a longer period. The Contractor agrees to act as a co-guarantor or co-warrantor with such manufacturer or supplier for the one-year period provided in this Section or for such longer period designated in the guarantee or warranty provided by a manufacturer or supplier, whichever is longer, and shall furnish the Owner all appropriate guarantee or warranty certificates provided by manufacturers and suppliers upon completion of the Work. No Contractor guarantee or warranty period, whether provided for in this Section or elsewhere, shall in any way limit the liability of Contractor or his sureties or insurers under the indemnity or insurance provisions of these General Conditions.

Nothing in the Warranty or in the Contract Documents shall be construed to limit the rights and remedies available to Owner at law or in equity, including, but not limited to, Code of Civil Procedure Section 337.15.

SECTION 6 PROSECUTION AND PROGRESS

6-1 SUBCONTRACTING

The Contractor remains responsible for conducting and completing all Work in accordance with the Contract Documents, whether the Work is performed by Contractor, its Subcontractors, or by sub-subcontractors of any tier employed directly or indirectly by its Subcontractor. All deliverables will be prepared in a form and content satisfactory to Owner and delivered in a timely manner consistent with the requirements of the Contract Documents. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor, or sub-subcontractor of any tier, and the Owner. In its contracts with Subcontractors, Contractor shall require such Subcontractors to comply with the terms of the Contract Documents as applicable to their respective portions of the Work. The divisions and sections of the Specifications and the identifications of any drawings shall not control the Contractor in dividing the Work among Subcontractors.

6-2 ASSIGNMENT

Contractor's obligations, duties, and responsibilities under the Contract may not be assigned, except upon the written consent of the Owner. Consent will not be given to any proposed assignment which would relieve the original Contractor or Contractor's surety of their responsibilities under the Contract, nor will the Owner consent to any assignment of a part of the Work under the Contract.

Upon obtaining a prior written consent of the Owner, the Contractor may assign moneys due or to become due Contractor under the Contract, to the extent permitted by law, but any assignment of moneys shall be subject to all proper setoffs in favor of the Owner and to all deductions provided for in the Contract, and particularly all money withheld, whether assigned or not, shall be subject to being used by the Owner for the completion of the Work or, to remedy defects in the Work as provided in the Contract Documents..

No assignment of this Contract will be approved unless it shall contain a provision that the funds to be paid to the assignee under the assignment are subject to a prior lien for labor or services rendered or for equipment or materials supplied for performance of the Work called for under the Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such equipment or materials and that the Owner may withhold funds, as provided in

the Contract, until all Work required by the Contract Documents is completed to the Owner's satisfaction.

6-3 CONTRACTOR'S CONSTRUCTION SCHEDULE AND COST BREAKDOWN

Within ten (10) days after execution of the Contract, the Contractor shall deliver to the Owner's Representative, for approval, a construction progress schedule in bar chart form and cost breakdown showing the proposed dates of commencement and completion and cost of each of the various parts of the Work and the anticipated amount of each monthly payment that will become due the Contractor in accordance therewith. A progress schedule and cost breakdown form is included in the Bidding Documents, Construction Forms section, for this purpose. A current, updated progress schedule and Contractor daily activity log shall be submitted for Owner's approval with each monthly payment request. Contractor agrees that for purposes of withholding disputed amounts from payments made in response to the monthly payment requests, the value of the approved progress schedule is twenty-five percent (25%) of the relevant monthly payment request. The Owner shall be entitled to terminate this Contract if, in the Owner's opinion, the Contractor is failing to carry on the work diligently or in accordance with the approved construction schedule and breakdown. The Contractor has been advised and understands that time is of the essence in this Contract and with respect to completion of all phases of the Work in accordance with the approved construction schedule.

6-4 TIME FOR COMPLETION AND FORFEITURE DUE TO DELAY

The Contractor shall complete all or any designated portion of the Work called for under the Contract within the time set forth in the Contract Documents and the Contractor's Construction Progress Schedule and Cost Breakdown, as approved by Owner. Failure of the Contractor to perform any covenant or condition contained in the Contract Documents within the time period specified shall constitute a material breach of this Contract entitling the Owner to terminate the contract unless the Contractor applies for, and receives, an extension of time in accordance with the procedures set forth in this Section and Section 6-5 (EXTENSION OF TIME) of these General Conditions. Failure of the Owner to insist upon the performance of any covenant or condition within the time period specified in the Contract Documents including the Contractor's Construction Progress Schedule and Cost Breakdown, as approved by Owner, shall not constitute a waiver of the Contractor's duty to complete performance of the Work within the specified time unless the waiver is in writing signed by Owner. Owner's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of the Contractor to complete performance promptly within the additional time authorized in the waiver or Change Order shall constitute a material breach of this Contract entitling the Owner to terminate the Contract for cause.

The Contractor shall not be deemed in breach of this Contract and no forfeiture due to delay shall be made to the extent any delay in the completion of the Work is due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor (including its officers, employees, Subcontractors, and sub-subcontractors of every tier, representatives, agents, successors, and assigns), provided Contractor notifies Owner of the delay and its causes and applies for an extension of time in accordance with the procedures set forth in this Section and Section 6-5 (EXTENSION OF TIME) of these General Conditions. Unforeseeable causes of delay beyond the control of Contractor shall include acts of God, acts of a public enemy, acts of the government, acts of the Owner, or acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather, or delays caused by failure of the Owner or the owner of a Utility to provide for the necessary removal or relocation of existing Utility facilities. To the extent delays in the Work are caused by the negligent acts or omissions, recklessness, or willful misconduct of Contractor, its officers, employees, Subcontractors (including sub-subcontractors of any tier), representatives, agents, successors or assigns), such delays shall not be excusable delays. Excusable delays (those beyond Contractor's control) shall not entitle the Contractor to any additional compensation, subject to the provisions of Section 7102 of the California Public Contract Code which allow for Contractor's recovery of damages in instances of unreasonable delay caused by Owner and not contemplated by the parties.

6-5 EXTENSION OF TIME

The Contractor shall not be entitled to any increase in the Contract amount as a result of the Owner's approval of any extension of time, except to the extent that Contractor notifies Owner of its request for an increase in the Contract amount as a result of the Owner's approval of any extension of time and the Owner approves an increase in the Contract amount on a properly executed Change Order pursuant to Section 9-1 (PAYMENT FOR CHANGES IN THE WORK) of these General Conditions. The time specified in the Contract Documents for completion of all of the Work or any part of the Work may be extended only by a written Change Order executed by the Owner and Contractor or other written form executed by the Owner.

Requests for an extension of time must be delivered to the Owner's Representative within ten (10) consecutive calendar days following the date of the occurrence which caused the delay. The request must be submitted in writing and must state the cause of the delay, the date of the occurrence causing the delay, and the amount of additional time requested. Requests for extensions of time shall be supported by all evidence reasonably available or known to the Contractor which would support the extension of time requested. Requests for extensions of time failing to include the information specified in this Section and requests for extensions of time which are not received within the time specified above shall result in the forfeiture of the Contractor's right to receive the extension of time requested.

If the Contractor is requesting an extension of time for completion of the Work because of weather, Contractor shall supply daily written reports to the Owner's Representative describing such weather and the Work which could not be performed that day because of such weather or conditions resulting therefrom and which Contractor otherwise would have performed. The Owner's acceptance of the daily reports shall not be deemed an admission of the Contractor's right to receive an extension of time for completion of the Work or a waiver of the Owner's right to strictly enforce the time provisions contained in the Contract Documents.

When the Contractor has submitted a request for an extension of time in accordance with the procedures of this Section and Section 6-4 (TIME FOR COMPLETION AND FORFEITURE DUE TO DELAY) of these General Conditions, the Owner will ascertain the facts and extent of the delay asserted by Contractor and extend the time for completing the Work if, in its reasonable judgment, the facts and circumstances justify such an extension, and its determination thereon shall be final and conclusive. Contractor's entitlement to an extension of the Contract Times is limited to an Owner-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. No time extension shall be allowed unless, and then only to the extent that, the Owner-caused delay extends the critical path beyond the previously approved Contract Time. If approved, the increase in time required to complete the Work shall be added to the Contract Time. Contractor shall not be entitled to an adjustment in the Contract Time 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.

If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions (as determined by the Owner), 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 a time extension when the Work stopped is on the critical path. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays. Contractor must submit a timely request in accordance with the requirements of this Section

An extension of time may be granted by the Governing Body of the Owner after the expiration of the time originally fixed in the Contract or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration.

Any extension of time shall not release the sureties upon any bond required under the Contract.

6-6 USE OF COMPLETED PORTIONS

When the Work or any portion of it is sufficiently complete to be utilized or placed into service, the Owner shall have the right upon written notification to the Contractor to utilize such portions of the Work and to place the operable portions of the Work into service and to operate same.

Upon said notice and commencement of utilization or operation of such portion of the Work by Owner, Contractor shall be relieved of the duty of maintaining the portions so utilized or placed into service and operation; provided, however, that nothing in this Section shall be construed as relieving the Contractor of the full responsibility for completing the Work in its entirety as required by the Contract Documents, for making good defective Work and materials, for protecting the Work from damage, and for being responsible for damage and for the Work as set forth in the General Conditions and other Contract Documents nor shall such action by the Owner be deemed completion and acceptance of all or any portion of the Work, and such action shall not relieve the Contractor, his sureties, or insurers of the provisions of Section 8 (CONTRACTOR'S INSURANCE), Section 7-12 (INDEMNITY), and Section 5-14 (ONE-YEAR WARRANTY OF WORK) of these General Conditions.

SECTION 7 LEGAL RELATIONS AND RESPONSIBILITIES

7-1 OBSERVING LAWS AND ORDINANCES

The Contractor shall keep fully informed of all existing and future laws, ordinances, and regulations which in any manner affect those engaged or employed in the Work or the equipment and materials used in the Work or which in any way affect the conduct of the Work and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work. If any discrepancy or inconsistency is discovered among the Plans, Specifications, or other Contract Documents for the Work in relation to any such law, ordinance, regulation, order, or decree, Contractor shall forthwith report the same to the Owner's Representative in writing and cease operations on that portion of the Work which may be affected by the discrepancy or inconsistency until the Owner's Representative has given Contractor appropriate instructions as provided for in Section 5-7 (ERRORS OR DISCREPANCIES NOTED BY CONTRACTOR) in these General Conditions.

The Contractor shall at all times observe and comply with and shall cause all his officers, employees, Subcontractors, suppliers, representatives, agents and suppliers to observe and comply with all existing and future laws, ordinances, regulations, orders, and decrees, and shall hold harmless, indemnify, and defend the Owner, the Engineer, the Owner's Representative, and their consultants, and each of their directors, officers, employees, representatives, and agents against any loss, liability, claim, cause of action, judgment, penalty, costs and expenses (including reasonable attorney's fees and costs) arising from or in connection with the violation of any such law, ordinance, regulation, order, or decree by the Contractor, its officers, employees, Subcontractors (including suppliers and sub-subcontractors of every tier), representatives, and/or agents.

7-2 PERMITS AND LICENSES

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

7-3 INVENTIONS, PATENTS, AND COPYRIGHTS

The Contractor shall pay all royalties and license fees and assume all costs arising from the use of any invention, design, process, materials, equipment, product, or device which is the subject of patent rights or copyrights.

The Contractor shall hold harmless, indemnify, and defend the Owner, the Engineer, the Owner's Representative, and their consultants, and each of their directors, officers, employees, representatives, and agents from and against all claims, damages, losses, expenses, and other costs, including costs of defense and attorneys' fees, arising out of 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, materials, equipment, product or device, and shall defend all such claims in connection with any alleged infringement of such rights; provided, however, that Contractor shall not be responsible for such defense or loss, when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in the Plans, Specifications or other documents prepared by the Owner. However, if the Contractor becomes aware or has a reasonable basis for believing that the required design, process or product is an infringement of a copyright or patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner Representative.

7-4 PUBLIC CONVENIENCE AND SAFETY

The Contractor shall conduct the Work in such a manner which avoids, or minimizes where avoidance is not feasible, any obstruction or inconvenience to the public, to the extent feasible. Contractor shall have under construction no greater length or amount of Work than Contractor can properly prosecute safely and efficiently with due regard to the public convenience and safety.

Convenient access to driveways, houses, and buildings along the line of Work shall be maintained and temporary crossings shall be provided and maintained in good condition where necessary. Not more than one crossing or intersecting street or road shall be closed at any one time.

The Contractor shall provide and maintain such fences, barriers, directional signs, lights, and flagmen as are necessary to give adequate warning to the public at all times of any dangerous

conditions to be encountered as a result of the construction Work and to give directions to the public for safely avoiding any such dangerous condition.

7-5 RESPONSIBILITY FOR LOSS, DAMAGE, OR INJURIES

Without in any way limiting any other provision of these General Conditions, the Contractor shall be responsible for all losses, liabilities, claims, demands, costs and expenses by reason of any personal injury (including, injury, disease, or death) or damage to or destruction of real or tangible personal property arising out of or in connection with the negligent acts or omissions, recklessness, or willful misconduct of Contractor, Subcontractor, any sub-subcontractor of any tier, or anyone for whose acts or omissions they may be liable, in the performance of the Work, except to the extent the same were caused by the negligent acts or omissions, recklessness, or willful misconduct of the Owner Indemnitees, or any of them. Such responsibility shall extend to claims, demands, or liability for loss, damage, or injuries occurring after completion of the Work as well as during the progress of the Work.

In the event any hazardous materials, including but not limited to asbestos, are utilized in construction or hazardous materials are otherwise encountered during construction, the Contractor shall take all appropriate precautions to protect persons and property and shall comply with all applicable federal, state, and local laws and regulations applicable to the installation and handling of such hazardous materials. The Contractor is solely responsible for protection of persons and property that could be affected by construction and the Contractor's handling of such hazardous materials.

Contractor has been advised that the Owner has Safety Data Sheets (hereinafter "SDS") available for review on any hazardous chemical they may be exposed to while working in or around Owner's facilities. It shall be the sole responsibility of Contractor to request and inspect these SDS forms prior to commencement of any Work and to alert all Contractor employees, Subcontractors (including all sub-subcontractors of every tier), representatives, and agents of the potential for exposure to hazardous materials and/or chemicals known to California to cause cancer or reproductive harm, as defined in California Health and Safety Code Section 25249.6, as a result of working in the vicinity of Owner's facilities. It shall be the sole responsibility of Contractor to provide the Owner's Representative with completed SDS forms for all hazardous substances that the Contractor utilizes as part of the Work prior to the use of any hazardous substance and to provide these SDS forms to the Contractor's employees, Subcontractors (including all sub-subcontractors of every tier), representatives, and agents prior to their exposure to any hazardous substance utilized in the Work. Further, Contractor shall comply with all provisions contained in General Industry Safety Orders Section 5194 of Title 8 of the California Administrative Code (the California Hazard Communication Regulation) at all times during performance of the Work.

Until the acceptance of the Work by Owner's Board of Directors, the Contractor shall have the responsible charge and care of the Work and of the equipment and materials to be used therein (including equipment and materials for which he has received partial payment or equipment or materials which have been furnished by the Owner) and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether or not arising from the execution of the Work.

The Contractor shall promptly rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the Work or the equipment or materials occasioned by any cause before its completion and acceptance by Owner's Board of Directors and shall bear the expense thereof. Where necessary to protect the Work and the equipment or materials from damage, the Contractor shall at his expense provide suitable drainage and erect such temporary structures as are necessary to protect the Work and/or the equipment or materials from damage. The suspension of the Work or the granting of an extension of time to complete the Work for any reason whatever shall not relieve the Contractor of his responsibility for the Work and the equipment and materials as herein specified.

Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage (Gov. Code, § 4216). In an emergency, the Contractor, without special instructions or authorizations from Owner, shall undertake such acts as are reasonable and necessary to prevent or mitigate any such loss, damage or injury threatened by the emergency.

Notwithstanding the foregoing provisions of this Section, the Contractor shall not be responsible for the cost of repairing or restoring damage to the Work or to the equipment or materials, which damage is determined to have been proximately caused by an Act of God, in excess of five percent (5%) of the Contract amount, provided that the Work or the equipment or materials damaged is built or provided in accordance with accepted and applicable building standards and the Contract Documents including the Plans and Specifications. For the purposes of this paragraph, "Acts of God" shall include only the following occurrences or conditions and effect: earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves. Contractor shall also not be responsible for repairing or restoring damage to the Work to the extent caused by the negligent acts or omissions, recklessness, or willful misconduct of the Owner Indemnitees.

PRESERVATION OF PROPERTY

The Contractor shall exercise due care to avoid injury to existing improvements or facilities, Utility facilities, adjacent property, and trees and shrubbery that are not to be removed.

All trees, shrubbery, and landscaping that are not to be removed, Utility facilities, pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and waterlines, all highway or street facilities, and any other improvements or facilities within or adjacent to the Work site shall be protected from injury or damage, and the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operation, they shall be replaced or restored at the Contractor's expense to a condition as good as when the Contractor entered upon the Work, or as good as required by the Contract Documents including the Plans and Specifications if any such objects are a part of the Work being performed. The fact that any such pipe or other underground facility is not shown on the Plans shall not relieve the Contractor of his responsibility under this Section.

In addition to any requirements imposed by law, the Contractor shall shore up, brace, underpin, and protect as may be necessary, all foundations and other parts of all existing structures adjacent to and adjoining the Work site which may in any way be affected by the excavations or other operations connected with the performance of the Work. Whenever any notice is required to be given by the Owner or the Contractor to any adjacent or adjoining landowner or other party before commencement of any Work, such notice shall be given by the Contractor.

REGIONAL NOTIFICATION CENTER CONTACT

Contractor shall be responsible for fully complying with the requirements of California Government Code Sections 4216 through 4216.9. Without in any way limiting the foregoing requirement, Contractor shall contact the appropriate regional notification center at least two working days, but not more than 14 calendar days, prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the Owner, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any Subcontractor of the Contractor and the Owner has been given the identification number by the Contractor. Contractor shall also determine the location of any storm sewers and Utility facilities owned by Owner in the area of the excavation.

EXCAVATION PLANS FOR WORKER PROTECTION REQUIRED BY
LABOR CODE SECTION 6705

If the total amount of the contract is in excess of Twenty-Five Thousand Dollars (\$25,000), the Contractor shall submit to the Owner for review and acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five (5) feet or more in depth. The plan shall be prepared by a registered civil or structural engineer. As a part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with all CAL-OSHA Construction Safety Orders and regulations, or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the CAL-OSHA Construction Safety Orders and regulations.

The Owner or the Engineer or their respective consultants may have made investigations of subsurface conditions in areas where the Work is to be performed. If so, these investigations are identified in the Special Provisions and the records of such investigations are available for inspection at the office of the Owner. The detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection, which the Contractor is required to submit to the Owner for acceptance in advance of excavation will not be accepted by the Owner if the plan is based on subsurface conditions which are more favorable than those revealed by the investigations made by the Owner or the Engineer or their respective consultants; nor will the plan be accepted if it is based on soils-related design criteria which is less restrictive than the criteria set forth in the report on the aforesaid investigations of subsurface conditions. The detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection, shall include surcharge loads for nearby embankments and structures, for spoil banks, and for construction equipment and other construction loadings. The plan shall indicate for all trench conditions the minimum horizontal distances from the side of the trench at its top to the near side of the surcharge loads. Nothing contained in this Section shall be construed as relieving the Contractor of the full responsibility for providing shoring, bracing, sloping, or other provisions which are adequate for worker protection.

If in the discretion of the Owner's Representative, the Contractor is not maintaining provisions, including sheeting, sloping, shoring, or bracing, of any trench excavation adequate to protect the safety of workers, the Owner's Representative shall have the right to immediately shut down the Work site until the Owner's Representative determines that the Contractor is in compliance with the requirements of this Section. Contractor shall not be entitled to any compensation/delays in the event of a shut down.

7-10 SAFETY

The Contractor shall be solely and completely responsible for inspecting and correcting all on-site safety hazards relating to and during any and all aspects of construction of the Work. In addition, the Contractor's project manager or construction manager shall have primary, specific authority to order the correction of all on-site safety hazards relating to and during any and all aspects of construction of the Work. The Contractor shall be considered the controlling employer or correcting employer having specific authority to correct any and all violative safety conditions which may exist at the Work site during construction of the Work consistent with Labor Code Section 6400, et seq. The Contractor shall instruct any Subcontractors that the Contractor's project manager or construction manager is the designated source of information regarding safety hazards which may exist at the Work site.

Contractors shall provide Owner with its confined space program if the Work will involve activities or work within a confined space or the construction and maintenance of a confined space. The Owner or its designee shall be the final authority for classifying confined spaces as either permit or non-permit spaces.

The right of the Owner or the Owner's Representative to observe or review the Work or Contractor's performance does not include and shall not be construed as a review or observation of the adequacy of any aspect of the Contractor's safety measures in, on, or near the Work site.

7-11 PERSONAL LIABILITY

No director, officer, employee, representative, or agent of the Owner, the Engineer, the Owner's Representative, or their consultants shall be personally responsible for any liability arising under or by virtue of the Contract.

7-12 INDEMNITY

To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the Owner's choosing), indemnify and hold harmless the Owner, its officials, officers, agents, employees, and representatives, and each of them from and against:

- A. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and

regardless of any negligence of the Owner or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the Owner or its officials, officers, employees, or authorized volunteers.

- B. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.
- C. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor.
- D. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under the agreement. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the Owner's Governing Board's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Owner, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Owner, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the Owner, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code Section 2782.

7-13 HOURS OF LABOR

As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one

calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the Owner and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

The Contractor shall forfeit as a penalty to the Owner Twenty-Five Dollars (\$25) for each worker employed in the execution of the Work by the Contractor, or any Subcontractor, sub-subcontractor of any tier, or supplier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the California Labor Code and, in particular, Sections 1810 through 1815 thereof, inclusive; except that Work performed by employees of Contractor, or any Subcontractor, sub-subcontractor of any tier, or supplier, in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay as provided in said Section 1815.

Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the Owner. Contractor shall also timely notify the Owner when work will be performed outside regular working hours or on weekends or holidays.

7-14 PREVAILING WAGE

The Contractor is aware of the requirements of Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. Since this Project involves an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the Owner’s Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each

craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the Owner, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

The Contractor shall forfeit as a penalty to the Owner not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code Section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

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

7-15 PAYROLL RECORDS; LABOR COMPLIANCE

Pursuant to Labor Code Section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.

In accordance with Labor Code Section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code Section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the Owner. Contractor shall defend, indemnify and hold the Owner, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the Owner. The Contractor shall also provide the following:

- A. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- B. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.

Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the Owner, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the contract shall not be marked or obliterated.

In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Section. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to the Owner 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 payment then due.

The responsibility for compliance with this Section shall rest upon the Contractor.

7-16 APPRENTICES

Contractor and all subcontractors shall comply with the requirements of Labor Code Sections 1777.5 and 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Knowing violations of Labor Code Section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code Section 1777.7.

The responsibility for compliance with this Section shall rest upon the Contractor.

7-17 PUBLIC WORKS CONTRACTOR REGISTRATION

Pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and its subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code Sections 1725.5 and 1771.1 in any subcontract and ensure that all subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

7-18 DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code Section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the Owner. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

7-19 LABOR/EMPLOYMENT SAFETY

The Contractor shall comply with all applicable laws and regulations of the federal, state, and local government, including Cal/OSHA requirements and requirements for verification of employees' legal right to work in the United States.

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512.

The Contractor shall submit the Illness and Injury Prevention Program and a Project site specific safety program to the Owner prior to beginning Work at the Project site. Contractor shall maintain a confined space program that meets or exceeds the Owner Standards. Contractor shall adhere to the Owner's lockout-tagout program.

7-20 NONDISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Labor Code Section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to ensure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

Employment Eligibility; Contractor. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Contract and shall not violate any such law at any time during the term of the Contract. Contractor shall avoid any violation of any such law during the term of this Contract by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification and shall make them available to the

Owner or its representatives for inspection and copy at any time during normal business hours. The Owner shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for or referred to herein.

Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any part of the Work or of this Contract to make the same verifications and comply with all requirements and restrictions provided for herein.

Employment Eligibility; Failure to Comply. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the Owner to terminate the Contract for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for herein; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

7-21 WARRANTY OF TITLE

No materials, supplies, or equipment for the Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. The Contractor warrants clear and good title to all materials, supplies, and equipment installed and incorporated in the Work and agrees upon completion of all Work to deliver the premises together with all improvements and appurtenances constructed or placed thereon by him to the Owner free from any claims, liens, encumbrances, or charges and further agrees that neither he nor any person, firm, or corporation furnishing any material or labor for any Work covered by the Contract shall have any right to a lien upon the premises or any improvement or appurtenance thereon, provided that this shall not preclude the Contractor from installing metering devices or other equipment of utility companies or of municipalities, the title of which is commonly retained by the utility company or the municipality. Nothing contained in this Section, however, shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the Contractor for their protection or any right under any law permitting such persons to look to funds due the Contractor in the hands of the Owner. The provisions of this Section shall be inserted by Contractor in all its contracts with Subcontractors, and notices of its provision shall be given to all persons furnishing materials, equipment, labor, services, or supplies for the Work when no formal contract is entered into for such materials.

Nothing in the Contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the Work or the soil. All such materials shall become the property of the Owner upon being so attached or affixed. Soil, stone, gravel, and other materials found at the site of the Work and which conform to the Plans and Specifications for incorporation into the Work may be used in the Work. No other use shall be made of such materials except as may be otherwise described in the Plans and Specifications.

Nothing in the Contract shall be interpreted as granting to the Contractor exclusive occupancy of the Work site. The Contractor must ascertain to his own satisfaction the scope of the Work and the nature of any other contracts that have been or may be awarded by the Owner in the construction of projects related to the Work or otherwise on or adjacent to the Work site, to the end that the Contractor may perform the Contract in the light of such other contracts, if any. The Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on projects related to the Work or otherwise on or adjacent to the Work site. If Contractor's performance of the Work under the Contract and the performance of any contract for projects related to the Work or otherwise on or adjacent to the Work site are likely to interfere with each other if the performance thereof occurs simultaneously, Owner's Representative shall decide which contractor shall cease work temporarily and which contractor shall continue or whether the work under the contracts can be coordinated so that the contractors under the various contracts may proceed simultaneously. On all questions concerning conflicting interest of such contractors, the decision of the Owner's Representative shall be binding upon Contractor and all other contractors concerned and the Owner Indemnitees, and each of them shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts, as discussed above, caused by a decision or omission of the Owner's Representative respecting the order of precedence in the performance of such contracts.

If through acts of neglect on the part of the Contractor, any other contractor or any subcontractor shall suffer loss or damage to their work, the Contractor agrees to settle with such other contractor or subcontractor by agreement or arbitration, if such other contractor or subcontractor will so settle. If such other contractor or subcontractor shall assert any claim against the Owner Indemnitees, or any of them, on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall hold harmless, indemnify, and defend the Owner Indemnitees against any such claim, including any loss, liability, damage, cost and expense (including reasonable attorneys' fees, witness fees, and any other costs incurred by the Owner Indemnitees) arising out of or in connection with any such claim.

Each of the following occurrences constitutes an Event of Default under the Contract:

- (1) Any representation of Contractor set forth in the Contract, or otherwise delivered to Owner pursuant to the Contract, which is false in any material respect when so made or furnished;
- (2) Contractor becomes insolvent or ceases doing business as a going concern, or makes an assignment for the benefit of creditors, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due; Contractor files a petition seeking for itself, or any proceeding is commenced against Contractor, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation relating to bankruptcy or insolvency or files a voluntary petition in bankruptcy, or is adjudicated a debtor under the United States Bankruptcy Code or an insolvent, or files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation relating to bankruptcy or insolvency, and such proceedings are not vacated, stayed, discharged, bonded or dismissed within 60 days following commencement of such proceedings; an appointment is made, with or without the Contractor's consent or acquiescence, of any trustee, receiver, liquidator or other custodian of all or any substantial part of Contractor's assets and properties, and such appointment will not have been vacated, stayed, discharged, bonded or otherwise dismissed within 60 days of the appointment; or, Contractor becomes a Debtor subject to the jurisdiction of the United States Bankruptcy Court, whether as a result of voluntary or involuntary proceedings, and such proceedings are not vacated or dismissed within 60 days of the commencement of Bankruptcy Court jurisdiction;
- (3) Contractor fails to carry on the Work diligently, for whatever reason, in accordance with the approved construction schedule and cost breakdown described in Section 6-3 (CONTRACTOR'S CONSTRUCTION SCHEDULE AND COST BREAKDOWN) of these General Conditions, or Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure its completion within the time specified in the Contract Documents, or any extension thereof, or Contractor fails to complete the Work within such time;
- (4) Contractor fails to make prompt payment to Subcontractors for material, equipment, services, or labor as required by the California Labor Code;

- (5) Contractor fails to prosecute the Work in accordance with applicable federal, state, and local law or the instructions given by the Owner or Owner's Representative; or,
- (6) Contractor's material failure to perform any of its obligations, duties, or responsibilities under the Contract Documents.

In the event Contractor fails to perform any of its obligations, duties, or responsibilities under the Contract Documents, or otherwise fails to complete the Work within the time prescribed by the Contract Documents, the Contractor shall be liable to Owner for the actual damages incurred. Notwithstanding the foregoing, Owner agrees that Contractor is not responsible for damages to the extent the same arise out of delays the cause of which is beyond Contractor's control and Contractor has met the requirements of Section 6-4 (TIME FOR COMPLETION AND FORFEITURE DUE TO DELAY) of these General Conditions. If an Event of Default occurs, Owner may, without prejudice to any other remedy Owner may have under the Contract, at law, or in equity, serve written notice upon the Contractor and its surety of Owner's intention to terminate the Contract, which notice shall set forth the reasons for Owner's intention to terminate the Contract and state that if Contractor fails to cure the Event of Default within ten (10) days after Contractor's receipt of such notice (or such longer period as Owner in its reasonable discretion may determine if such failure is not capable of being cured within such 10-day period), then Owner may exercise any right, power or remedy available to it under this Contract, or otherwise available to Owner at law or in equity, including the right to terminate the Contract upon written notice to Contractor, in which event Owner shall have no further obligations hereunder or liability to Contractor except as to payment for Work actually performed upon termination in accordance with this provision, the Contractor shall be entitled to no further payments over and above the reasonable value of the actual Work completed as of the effective date of termination, less any amounts owed to Owner by Contractor under this Contract and subject to set off of any claims of Owner against Contractor for failure to perform the Work and/or the Contract. No courses of dealing on the part of Owner or delay or failure on the part of Owner to exercise any right will operate as a waiver of such right or otherwise prejudice Contractor's rights, powers or remedies. Owner's decision to terminate this Contract is not subject to claim or dispute under Section 10 (CLAIMS AND DISPUTES) of these General Conditions.

Contractor shall include comparable provisions giving effect to this Section in its contracts with Subconsultants.

In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided, however, that if the surety within fifteen (15) calendar days after the serving upon it of a notice of termination does not give the Owner written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty (30) calendar days from the date of serving said notice, the Owner may take over the Work and

prosecute the same to completion by contract or by any other method it may deem advisable for the account and at the expense of the Contractor, and Contractor's surety shall be liable to the Owner for any excess cost or other damage occasioned the Owner thereby, and in such event the Owner may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plants, and other property belonging to the Contractor that may be on the Work site and be necessary therefore. For any portion of such Work that the Owner elects to complete by furnishing its own employees, materials, tools, and equipment, the Owner shall be compensated for such in accordance with the schedule of compensation for force account Work in Section 9-1 (PAYMENT FOR CHANGES IN THE WORK) of these General Conditions.

If the unpaid balance of the Contract amount exceeds the direct and indirect costs of completing the Work, including, but not limited to, all costs to Owner arising from professional services and attorneys' fees and all costs generated to insure or bond the Work of substituted contractors or subcontractors utilized to complete the Work, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner promptly upon demand; on failure of Contractor to pay, the Surety shall pay on demand by Owner. Any portion of such difference not paid by Contractor or surety within thirty (30) calendar days following the mailing of a demand for such costs by Owner shall earn interest at the rate of ten percent (10%) per annum or the maximum rate authorized by California law, whichever is lower.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the Owner under the Contract, at law, or in equity.

7-25 TERMINATION BY OWNER FOR CONVENIENCE

Owner may at any time, in the exercise of its sole discretion, terminate the Contract in whole or in part, with or without cause, by providing notice to Contractor of its intention to terminate the Contract for convenience at least 30 days before the effective date of termination. In the event Owner terminates less than the entire Contract and Work, Contractor's Total Compensation for the remaining Work shall be equitably adjusted. So long as the Contractor is not in default under this Contract at the time of such termination, Owner shall make an equitable adjustment to the compensation due Contractor taking into account the following:

- (1) All compensation and Reimbursable Expenses then due to Contractor for the terminated portion of the Work up to the effective date of termination.
- (2) Contractor's actual and reasonable costs of termination including the actual and reasonable costs of termination settlements paid to Subconsultants and properly chargeable to the terminated portion of the Contract.
- (3) The amount of any advance payments made by Owner to Contractor.

- (4) Any amounts owing by Contractor to Owner under the terms of the Contract, including any amounts that may be withheld by Owner pursuant to Paragraph 8.5.
- (5) No amount shall be payable by Owner for any part of the Work not performed by Contractor, for the Contractor's anticipated or loss of profits on the value of the Work not performed by the Contractor, or for any loss, cost, damage, administrative or overhead expenses, or consequential damages which Contractor, Subcontractor, or any sub-subcontractor of any tier, or any other party may sustain by reason of or in connection with Owner's termination of all or any portion of this Contract.
- (6) Contractor hereby expressly waives any and all claims for damages and compensation arising under this Section, except as set forth herein, in the event of such termination.

Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- (1) Cease operations as directed by the Owner in the notice;
- (2) Take actions necessary, or which the Owner may direct, for protection and preservation of the work; and
- (3) Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.

Contractor shall include comparable provisions giving effect to this subparagraph in its contracts with its Subcontractors.

7-26 NOTICE AND SERVICE THEREOF

Any notice required or given under the Contract shall be in writing, dated, and signed by the party giving such notice or its duly authorized representative, and shall be served as follows:

If to the Owner, by personal delivery or by deposit in the United States mail appropriately addressed to the Owner's Representative, as provided in the Bid Documents.

If to the Contractor, by personal delivery to the Contractor or to his authorized representative at the Work site or by deposit in the United States mail appropriately addressed to the Contractor or its authorized representative, as provided on the Bid Form.

If to the surety or any other person, by personal delivery to said surety or other person or by deposit in the United States mail appropriately addressed to such surety or other person, as provided on the bonds.

All mailed notices shall be in sealed envelopes, shall be sent by certified mail, return receipt requested, with postage prepaid, and shall be addressed to the addresses of the Owner's representative or Contractor, as appropriate, as set forth in the Contract Documents or such substitute addresses which a party designates by written notice to the other party.

Notices shall be deemed delivered upon personal delivery or two days after depositing the notice in the United States mail in an envelope properly addressed and stamped.

7-27 PARTIAL INVALIDITY

If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be enforceable to the extent allowed by applicable law, and the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

7-28 LANDS AND RIGHTS-OF-WAY

The lands and rights-of-way necessary for the Work to be constructed will be provided by the Owner. The Contractor shall make its own arrangements and pay all expenses for additional area required by Contractor outside the limits of the lands and rights-of-way provided by Owner.

Work in public right-of-way shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the Work is located in addition to conforming to the Plans and Specifications. If a permit is not required, the Work shall conform to the standards of the public agency involved in addition to conforming to the Plans and Specifications.

7-29 WAIVER OF RIGHTS

Except as otherwise specifically provided in the Contract Documents, no action or failure to act by the Owner, Engineer, Owner's Representative, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of the Contract, except as may be specifically agreed in writing.

7-30 TAXES

The Contractor shall pay all sales, consumer, use, employment, and other taxes.

7-31 ASSIGNMENT OF ANTI-TRUST ACTIONS

Section 7103.5 of the California Public Contract Code requires that subsection (b) of such Section 7103.5 be set forth in full in all public works contracts, as follows:

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the 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. Sec. 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 tender's final payment to the contractor, without further acknowledgment by the parties.

Contractor acknowledges such provision of Section 7103.5(b) and agrees to be bound thereby, and that Contractor shall include such provisions in its contracts with Subcontractors for any portion of the Work.

7-32 MODIFICATION

The Contract may not be altered in whole or in part except by modification in writing and properly executed by all parties hereto or as a result of changes in the Work as provided in Section 4-2 (CHANGES OF WORK) of these General Conditions.

7-33 GOVERNING LAW; VENUE

This Contract shall be governed by and construed in accordance with the laws of the State of California. In the event of any legal or equitable proceeding to enforce the terms or conditions of the Contract, the parties agree that venue shall lie only in the federal or state courts in or nearest to the North County Judicial District, County of San Diego, State of California.

7-34 HAZARDOUS WASTE

It shall be the responsibility of the Contractor to pay all fees and costs associated with removal and cleanup of any hazardous waste used at or brought to the job site by the Contractor, any Subcontractor (including any sub-subcontractor of any tier), or any agent, representative, or employee of the Contractor or any Subcontractor. The Contractor shall identify and remove all

such hazardous waste in accordance with all applicable federal, state, and local laws, rules and regulations and shall promptly notify the Owner's Representative of any such hazardous waste. If hazardous waste is discovered during performance of the Work which has not been brought to, or used at, the Work site by the Contractor, any Subcontractor, or any agent, representative, or employee of the Contractor or any Subcontractor (including any sub-subcontractor of any tier), the Contractor shall identify and remove this hazardous waste in accordance with all applicable federal, state, and local rules and regulations and in accordance with the written directions of the Owner. Contractor shall be entitled to request an increase in compensation due for these removal and cleanup costs in accordance with Section 9-1 (PAYMENT FOR CHANGES IN THE WORK) of these General Conditions.

7-35 EXCAVATIONS BELOW FOUR (4) FEET

As required by Section 7104 of the California Public Contract Code, for any public works by the Owner which involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the Owner, in writing, of any:

- (1) Material that the Contractor believes may be 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 Work site differing from those indicated by information about the Work site made available to bidders prior to the deadline for submitting bids;
- (3) Unknown physical conditions at the Work 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.

In such event, Owner shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in the Contract. 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 the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the parties and shall

proceed in accordance with Section 10 (CLAIMS AND DISPUTES) of these General Conditions.

Nothing in this Section is intended to relieve the Contractor of his or her responsibility to carefully examine the Contract Documents and the site where the Work is to be performed in accordance with Section 2-8 (EXISTING CONDITIONS AND EXAMINATION OF CONTRACT DOCUMENTS) of these General Conditions; to familiarize himself or herself with all local conditions and federal, state, and local laws, ordinances, rules, and regulations that may affect the performance of any aspect of the Work; to study all surveys and investigation reports about subsurface and latent physical conditions pertaining to the Work site; to perform such additional surveys and investigations as the Contractor deems necessary to complete the Work at his bid price; and to correlate the results of all such data with the requirements of the Contract Documents.

Nothing in this Section shall relieve the Contractor of the obligation to pay all fees and costs associated with removal and cleanup of any hazardous waste used at, or brought to, the Work site by the Contractor as specified in Section 7-34 (HAZARDOUS WASTE) of these General Conditions. Nor shall this Section relieve the Contractor of responsibility for Work site conditions discoverable by any investigation required by the preceding paragraphs.

7-36 TRAFFIC CONTROL

The Contractor shall be fully responsible for complete, safe and adequate traffic control and shall provide and maintain all necessary equipment, signing, personnel, and whatever else may be necessary for traffic control as is required by the appropriate public agency responsible for permitting such activities, or as may otherwise be necessary. The Contractor shall also fully comply with requirements or recommended traffic and pedestrian control procedures in accordance with the California Department of Transportation, "Manual of Traffic Controls for Construction and Maintenance Work Zones," latest edition. In addition, flagmen shall be stationed by the Contractor on all Work sites where traffic lanes are diverted, constricted, relocated, detoured or wherever the traffic flow is disrupted.

Traffic control plans shall be prepared by a qualified transportation engineer registered by the State of California. If requested by the Owner a P.E. Certification Form shall be submitted by the Contractor to this effect.

Payment for all Work and materials required for all traffic control, including provision of any temporary detours or temporary traffic line relocations, and the provision of flagmen as may be necessary to keep two-way vehicular traffic, pedestrian traffic and bicycle traffic open and safe, shall be considered as included in the prices paid for the associated items of Contract Work, and no additional payment shall be made therefore.

If in the discretion of the Owner's Representative the Contractor is not maintaining a safe and adequate traffic control, the Owner's Representative shall have the right to immediately shut down the Work until the Owner's Representative determines that the Contractor is in compliance with the Contract Documents. Contractor shall not be entitled to any compensation/delays in the event of a shut down.

7-37 NOTICE OF THIRD-PARTY CLAIMS

Pursuant to Public Contract Code Section 9201, the Owner shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The Owner is entitled to recover reasonable costs incurred in providing such notification.

7-38 STATE LICENSE BOARD NOTICE

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

7-39 DOCUMENT RETENTION AND EXAMINATION

In accordance with Government Code Section 8546.7, records of both the Owner and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

Contractor shall make available to the Owner any of the Contractor's other documents related to the Project immediately upon request of the Owner.

In addition to the State Auditor rights above, the Owner shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the Owner, for a period of four (4) years after final payment.

SECTION 8 CONTRACTOR'S INSURANCE

8-1 GENERAL

Prior to commencing any Work under the Contract, Contractor shall procure and maintain, at its sole cost and expense, and at all times during the performance of the Work, policies of insurance providing coverage in the amounts and types set forth in the Contract Documents, insuring against injuries to persons and/or damages to property which may arise out of or in connection with Contractor's negligent performance of the Work. Included in such insurance shall be contractual coverage sufficiently broad to provide insurance coverage of the matters set forth in Section 7-12 (INDEMNITY) of these General Conditions. Contractor shall not commence conducting the Work until it has provided Owner with satisfactory evidence that such policies have been procured and are in effect. The policies of insurance shall be obtained from an insurer authorized to do business in the State of California having a rating of at least A: VIII or better as listed in A.M. Best's Insurance Guide. Proof of renewal shall be provided to Owner two weeks before any such policy of insurance expires during the term of the Contract. Contractor's insurance policies shall be primary to any insurance or other coverage available to Owner, which shall be deemed excess to Contractor's policies of insurance and non-contributing. All deductible amounts under Contractor's policies of insurance are payable by Contractor and shall be in amounts not exceeding the amount specified in the liability certificate form. Each insurance policy required hereunder shall provide that coverage shall not be suspended, voided, reduced (other than by endorsement), or cancelled except on thirty (30) days written notice by certified mail, return receipt requested, to Owner (except 10 days' notice if cancellation is due to non-payment of premium). The Comprehensive General Liability and Automobile policies of insurance shall name the Owner Indemnitees as additional insureds. The policies of insurance shall not preclude Contractor from waiving the right of subrogation prior to a loss, and Contractor hereby waives all rights of subrogation against Owner. Included in the liability insurance shall be a "Cross Liability" or "Severability of Interest" clause. To the extent Contractor cannot procure occurrence policies of insurance, it shall procure insurance covering claims made as a result of the performance of this Agreement with a reporting period of not less than three years following the completion of the Work. Contractor's contracts with Subcontractors shall each contain provisions making such Subcontractor subject to the same insurance requirements as required of Contractor under this Section, unless other requirements are approved by Owner in writing. Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder.

The types of insurance the Contractor shall obtain and maintain are Workers' Compensation Insurance and Employers' Liability Insurance, Commercial General Liability Insurance, Builders' Risk "All Risk" Insurance, and, if so determined by the Owner at the time of award of the Contract, Earthquake and Tidal Wave Insurance, all as set forth herein.

Workers' Compensation Insurance and Employers' Liability Insurance and Liability Insurance shall be maintained in effect for the full warranty period.

As evidence of specified insurance coverage, the Contractor shall provide certificates of insurance and endorsements on the forms provided as a part of the Bid Documents. No alteration or substitution of said forms will be allowed.

8-2 WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY INSURANCE

Upon execution of the Agreement, the Contractor shall provide a certificate(s) of insurance certifying that Contractor has obtained for the period of the Contract and the warranty period full Workers' Compensation Insurance coverage for no less than the statutory limits and Employers' Liability Insurance coverage in limits not less than the amounts set forth in the Contract Documents, for all persons whom Contractor employs or may employ in carrying out the Work under the Contract. At the same time, the Contractor shall provide the insurance endorsement(s) on the forms provided as part of the Bid Documents. The Contractor is required to secure payment of compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code. This insurance shall be in strict accordance with the requirements of the most current and applicable state Workers' Compensation Insurance laws.

8-3 LIABILITY INSURANCE

Upon execution of the Agreement, the Contractor shall provide a certificate(s) of insurance showing that Contractor has Liability Insurance coverage in limits not less than the amounts set forth in the Supplementary General Conditions. At the same time, the Contractor shall provide the insurance endorsement(s) on the forms provided as part of the Bid Documents.

Included in such insurance shall be contractual coverage sufficiently broad to insure the matters set forth in Section 7-12 (INDEMNITY) of these General Conditions. The Liability Insurance coverage shall include each of the following types of insurance:

A. General Liability

- (1) Comprehensive Form.
- (2) Premises-Operations.
- (3) Explosion and Collapse Hazard.
- (4) Underground Hazard.
- (5) Products/Completed Operations Hazard.
- (6) Contractual Insurance.
- (7) Broad Form Property Damage Including Completed Operations.
- (8) Independent Contractors.
- (9) Personal Injury.

B. Automobile Liability

- (1) Comprehensive Form Including Loading and Unloading.
- (2) Owned.
- (3) Hired.
- (4) Non-Owned.

The Liability Insurance shall include the Owner Indemnitees as additional insureds, to wit: The Owner, the Engineer, the Owner's Representative, and their respective directors, officers, employees, representatives, agents, successors, and assigns. The insurance afforded to these additional insureds shall be primary insurance. If the additional insureds have other insurance which might be applicable to any loss, the amount of the insurance provided under this Section shall not be reduced or prorated by the existence of such other insurance and Contractor's insurance policies shall be primary to any insurance or other coverage available to any additional insured, which shall be deemed excess to Contractor's policies of insurance and non-contributing. Defense costs shall be paid in addition to the limits.

8-4 BUILDER'S RISK ["ALL RISK"]

If designated in the Bid Documents, it is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The Owner accepts no responsibility for the Work until the Work is formally accepted by the Owner. The Contractor shall provide a certificate evidencing this coverage before commencing performance of the Work.

The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and Owner, its elected officials, officers, employees, agents and authorized volunteers, as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by Owner.

Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or

off the Site. Such insurance shall be on a form acceptable to Owner to ensure adequacy and sublimit.

In addition, the policy shall meet the following requirements:

- A. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
- B. Coverage shall include all materials stored on site and in transit.
- C. Coverage shall include Contractor's tools and equipment.
- D. Insurance shall include boiler, machinery and material hoist coverage.

8-5 CONTRACTOR'S LIABILITY NOT LIMITED BY INSURANCE

Nothing contained in these insurance requirements is to be construed as limiting the liability of the Contractor or the Contractor's sureties.

SECTION 9 ESTIMATES AND PAYMENTS

9-1 PAYMENT FOR CHANGES IN THE WORK

The Contractor shall not be entitled to any increase in the Contract price due to any change in the Work unless the Contractor submits a written request within ten (10) calendar days from the date of the event which causes the Contractor to request a change in the price.

Changes in, additions to, or deductions from the Work, including increases or decreases in the quantity of any item or portion of the Work, shall be set forth in a written Change Order executed by the Owner and by the Contractor, or a Disputed Work Order signed by the Owner, which shall specify:

The changes, additions, and deductions to be made.

The increase or decrease in compensation due the Contractor, if any.

Adjustment in the time for completion of the Work, if any.

Adjustment in the compensation due the Contractor shall be determined by one or more of the following methods in the order of precedence listed below:

Unit price contained in the contract.

Mutually agreeable lump sum or unit prices. If requested by the Owner's Representative, the Contractor shall furnish an itemized breakdown of the quantities and prices used in computing proposed lump sum and unit prices.

Force account whereby the Contractor is compensated for furnishing labor, materials, tools, and equipment as follows:

Cost of labor plus fifteen percent (15%) for workers directly engaged in the performance of the work. Cost of labor shall include actual wages paid including employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes plus payments imposed on payroll amounts by state and federal laws plus subsistence and travel allowance payments to workers. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

Cost of material plus fifteen percent (15%). Cost of material shall include sales tax, freight, and delivery charges. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The Owner reserves the right to furnish such materials as he deems advisable and the Contractor shall not be paid the fifteen percent (15%) markup on such materials.

For tools and equipment actually engaged in the performance of the work, rental rates plus fifteen percent (15%). The rental rates shall be those prevailing in the area where the work is performed. No rental charge shall be made for the use of tools or equipment having a replacement value of Five Hundred Dollars (\$500) or less. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

Subcontractor invoices to the Contractor plus five percent (5%). Subcontractor invoices shall be based on the above-described cost of labor plus fifteen percent (15%), cost of material plus fifteen percent (15%), and tool and equipment rental rates plus fifteen percent (15%).

No payment shall be made for any item not set forth above, including without limitation, Contractor's overhead, general administrative expense, supervision, or damages claimed for delay in prosecuting the remainder of the work.

For force account Work, the Contractor shall submit to the Owner's Representative for his verification, daily work sheets showing an itemized breakdown of labor, materials, tools, and equipment used in performing the work. No payment will be made for Work not verified by the Owner's Representative. Any disagreement by the Contractor with the terms of an unexecuted change order or Disputed Work Order shall be resolved in accordance with Section 10 (CLAIMS AND DISPUTES) of these General Conditions.

9-2 PROGRESS PAYMENTS

Contractor shall not be entitled to any progress payment until Contractor has completed and signed the progress payment form included with the Bidding Documents and submitted the form to the Owner for processing. No progress payment will be processed unless all information required by the progress payment form has been completed, the progress payment form has been signed by the Contractor, and the progress payment form has been submitted to the Owner for review. Each progress payment request will be reviewed by Owner as soon as practicable after receipt to determine whether the payment request is a proper payment request. Any progress payment request determined not to be a proper payment request by the Owner, in the Owner's sole discretion, shall be returned to the Contractor as soon as practicable but not later than seven (7) days after receipt. Progress payment requests which are returned by the Owner will include a letter explaining the reasons why the payment request is not proper or fails to include information for payment determined necessary by Owner.

Owner shall remit payments to Contractor within thirty (30) days of its receipt of Contractor's invoices. However, in the event Owner disputes, in good faith, all or any portion of Contractor's invoice, it shall timely pay any undisputed amounts invoiced and notify Contractor of the specifics of any disputed amounts within thirty (30) days of its receipt of Contractor's invoices. The parties shall resolve any disputed amounts in accordance with this Section and Section 10 (CLAIMS AND DISPUTES) of these General Conditions. Any such dispute shall not relieve Contractor of its obligation to continue performing the Work in accordance with this Contract. All payments to Contractor shall be made by check or, at the Contractor's written request, by wire transfer to an account designated in writing by Contractor. No payment by Owner for any of the Work shall in any way be deemed to constitute Owner's approval or acceptance of such Work and shall not relieve the Contractor of its obligation to perform the Work in accordance with the terms and conditions of the Contract Documents. The number of days available to Owner to make a payment shall be reduced by the number of days by which Owner exceeds the seven (7) day progress payment request return requirement set forth above. The parties agree that the thirty (30) day period for payment of undisputed and properly submitted progress payments, and the identification of disputed amounts shall not commence running until the Contractor has submitted a progress payment form containing all information determined necessary by Owner to properly process the progress payment request.

In considering any progress payment request, the Owner's Representative shall be entitled to use the cost breakdown as required by Section 6-3 (CONTRACTOR'S CONSTRUCTION SCHEDULE AND COST BREAKDOWN) of these General Conditions. No allowance shall be made for materials delivered but not installed unless set forth in the Supplementary General Conditions. In evaluating any progress payment request, the Owner's Representative may take into consideration, along with other facts and conditions deemed by him or her to be proper, the ratio of the difficulty or cost of the Work done to the probable difficulty or cost of the Work remaining to be done. Owner shall retain five percent (5%) of the Contract amount (proportionately withheld from progress payments) until final completion and acceptance of the Work as part security for the fulfillment of the Contract by Contractor, unless Contractor has substituted adequate equivalent securities as required by Section 9-5 (WITHHELD CONTRACT FUNDS) of these General Conditions. Any amounts requested by Contractor as part of a progress payment request which are not paid by Owner shall be deemed a "disputed" amount for the purposes of this Section.

Payment for mobilization, as set forth in Contractor's Bid Form, will be made as provided below. Mobilization shall consist of preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the site; for the establishment of all offices, buildings, and other facilities necessary for the Work; and for all other work and operations which must be performed, or costs incurred, prior to beginning the Work, as well as all demobilization costs. Payment for mobilization will be as follows:

- (a) When the Bid Form does not include a separate pay item for mobilization, full compensation for mobilization will be included in the Contract lump sum price or in the prices paid for the various items of work in a unit price contract, and no additional compensation will be paid.
- (b) When the Bid Form includes a separate item for mobilization, payment for mobilization will include full compensation for the furnishing of all labor, materials, tools, equipment, administrative costs, and incidentals for mobilization.

The Owner will pay no greater than ten percent (10%) of the Total Contract Price as a separate pay item for mobilization. In the event the Contractor submits a mobilization pay item greater than ten percent (10%) of the Total Contract Price, the Owner will pay any excess mobilization amount with the Final Estimate and Payment under Section 9-3 (FINAL ESTIMATE AND PAYMENT) of these General Conditions. Payment for mobilization will be prorated as follows:

- (1) When the monthly partial payment estimate of the amount earned, not including the amount earned for mobilization, bonds, and permits, is five percent (5%) or more of the original Contract amount, twenty percent (20%) of the price bid for mobilization or two percent (2%) of the original Contract amount, whichever is the lesser, will be included in said estimate for payment.

- (2) When the monthly partial payment estimate of the amount earned, not including the amount earned for mobilization, bonds, and permits, is ten percent (10%) or more of the original Contract amount, forty percent (40%) of the price bid for mobilization or four percent (4%) of the original Contract amount, whichever is the lesser, will be included in said estimate for payment.
- (3) When the monthly partial payment estimate of the amount earned, not including the amount earned for mobilization, bonds, and permits, is twenty percent (20%) or more of the original Contract amount, fifty percent (50%) of the price bid for mobilization or five percent (5%) of the original Contract amount, whichever is the lesser, will be included in said estimate for payment.
- (4) When the monthly partial payment estimate of the amount earned, not including the amount earned for mobilization, bonds, and permits, is fifty percent (50%) or more of the original Contract amount, seventy percent (70%) of the price bid for mobilization or seven percent (7%) of the original Contract amount, whichever is the lesser, will be included in said estimate for payment.
- (5) When the monthly partial payment estimate of the amount earned, not including the amount earned for mobilization, bonds, and permits, is seventy percent (70%) or more of the original Contract amount, eighty percent (80%) of the price bid for mobilization or eight percent (8%) of the original Contract amount, whichever is the lesser, will be included in said estimate for payment.
- (6) When the monthly partial payment estimate of the amount earned, not including the amount earned for mobilization, bonds, and permits, is ninety percent (90%) or more of the original Contract amount, ninety percent (90%) of the price bid for mobilization or nine percent (9%) of the original Contract amount, whichever is the lesser, will be included in said estimate for payment.
- (7) When the monthly partial payment estimate of the amount earned, not including the amount earned for mobilization, bonds, and permits, is one-hundred percent (100%) or more of the original Contract amount, and final cleanup operations have been satisfactorily completed, one-hundred percent (100%) of the price bid for mobilization or ten percent (10%) of the original Contract amount, whichever is the lesser, will be included in said estimate for payment.

- (8) After final acceptance of the Work, the amount, if any, of the price bid for mobilization in excess of ten percent (10%) of the original Contract amount may be included for payment in the final payment estimate in accordance with Section 9-3 (FINAL ESTIMATE AND PAYMENT) of these General Conditions.

No payment for mobilization will be paid pursuant to a change in the Work; and, payments for mobilization shall be subject to the retention provided in this Section.

No deduction shall be made from Contractor's progress payment request except for amounts disputed by Owner in a timely manner as provided above. The Owner may withhold money from any progress payment to cover any unpaid claims filed pursuant to Civil Code Sections 3179 et seq. Owner may also withhold money from progress payments, estimated or actual amounts as necessary to protect the Owner from loss or liability due to defective work not remedied, upon failure of the Contractor to make payments properly to Subcontractors for labor, materials, or equipment, upon Contractor's failure to carry out the Work in accordance with the Contract Documents (including withholds in accordance with California Labor Code Section 1727), amounts of any fines or damages incurred by the Owner as a result of the Contractor's actions, and amounts claimed by the Owner as forfeiture due to delay or other offsets. If, on completion or termination of the Contract, sums due the Contractor are insufficient to pay the Owner for charges against the Contractor, the Owner has the right to recover the balance from the Contractor or the Contractor's surety. Failure of Owner to deduct or dispute any amounts from a progress payment shall not constitute a waiver of the Owner's rights to such amounts and Owner shall be entitled to dispute amounts and withhold payment from all or any portion of any progress payment request and/or final payment request for this purpose, even if such dispute or objection was not made with respect to one or more earlier progress payment requests. In the event Owner shall dispute and/or withhold any amounts from a payment request, it shall, as a part of its notice to Contractor of such dispute, provide Contractor with an opportunity to meet and confer regarding such dispute within ten (10) days of Contractor's receipt of such notice. In the event Contractor shall fail to perform the Work, meet Contractor's schedule, as updated, or otherwise fail to perform in accordance with the Contract and Owner elects not to dispute a progress or final payment on such basis, Owner reserves the right to recover any damages it incurs or suffers arising out of or in connection with such failure(s) of performance by Contractor.

9-3 FINAL ESTIMATE AND PAYMENT

Contractor shall not make any request for the final payment until all Work required by the Plans and Specifications and Contract Documents has been completed to the satisfaction of the Owner's Representative. Upon receipt of a request from Contractor for final payment, the Owner's Representative will make a final inspection of the Work done and advise the Contractor of additional Work required before final payment will be processed. All prior progress estimates and payments shall be subject to correction in the final estimate and payment.

The final payment shall not be due and payable until sixty (60) days after the date of completion of the Work of improvement. The date of completion shall be determined in accordance with Public Contract Code Section 7107. In the event of a dispute between the Owner and the Contractor, Owner shall be entitled to withhold from the final payment (including retained amounts) an amount up to one hundred fifty percent (150%) of the disputed amount as provided in Public Contract Code Section 7107.

It is mutually agreed between the parties to the Contract that no certificate given, or payment made under this Contract shall constitute evidence of performance of the Work in accordance with the Contract Documents and no payment by Owner shall be construed as an acceptance of any defective Work or improper materials.

Contractor shall not be entitled to payment of the final amount due until Contractor has executed a release form in accordance with Section 9-6 (REQUIRED RELEASES) of these General Conditions. Contractor hereby expressly agrees that payment of the final amount due under the Contract shall release the Owner Indemnitees from any and all claims relating to the Work for which Contractor is being paid. It is the declared intention of the parties that this provision comply with Public Contract Code Section 7100 and that this Section shall be construed as in compliance with Public Contract Code Section 7100 to the maximum feasible extent.

9-4 OWNER'S RIGHT TO MAKE APPLICATION OF WITHHELD AMOUNTS

The Owner may apply amounts withheld from any progress or final payments to the payment or correction of such claims, losses, damages, defective work or other matters serving as the basis for the amounts withheld, in Owner's discretion. In so doing, the Owner shall be deemed the agent of the Contractor and any payments so made by the Owner shall be considered as a payment made under the Contract by the Owner to the Contractor, and the Owner shall not be liable to the Contractor for such payment made in good faith. Such payments may be made without prior judicial determination of such claims, losses, damages, defective work or other matters. The Owner will render to the Contractor a proper account of such funds disbursed on behalf of the Contractor.

9-5 WITHHELD CONTRACT FUNDS

Pursuant to Public Contract Code Section 22300, the Contractor may substitute equivalent securities for retention amounts which this Contract requires. However, the Owner reserves the right to solely determine the adequacy of the securities being proposed by the Contractor and the value of those securities. The Owner shall also be entitled to charge an administrative fee, as determined by Owner in its sole discretion, for substituting equivalent securities for retention amounts.

The Contractor agrees that the Owner's decision with respect to the administration of the provisions of Section 22300 shall be final and binding and not subject to subsequent litigation or arbitration of any kind as to acceptance of any securities being proposed, the value of these securities, the costs of administration and the determination of whether or not the administration should be accomplished by an independent agency or by the Owner. The Owner shall be entitled, at any time, to request the deposit of additional securities of a value designated by the Owner, in Owner's sole discretion, to satisfy this requirement. If the Owner does not receive satisfactory securities within twelve (12) calendar days of the date of the written request, Owner shall be entitled to withhold amounts due Contractor until securities of satisfactory value to Owner have been received.

9-6 REQUIRED RELEASES

In accordance with Public Contract Code Section 7100, the Contractor shall not be entitled to payment of any undisputed amounts under this contract until such time as the Contractor has executed the Monthly Progress Payment form included in the Bid Documents releasing the Owner from all claims relating to Work for which the Contractor is being paid. Particular attention is called to the Contractor's Certification clause which states that the "Contractor ... certifies that all bills for labor, materials and work due subcontractors and material suppliers for the specified period have been paid in full." The Monthly Progress Payment form contains space for the Contractor to assert that he or she is entitled to any disputed amount for each period associated with the Monthly Progress Payment. Contractor hereby expressly agrees that failure on his part to designate any disputed amount for each payment period on the Monthly Progress Payment form shall constitute an express waiver of the right of the Contractor to claim any disputed amount at any later date. The Owner shall have no obligation to pay the Contractor for any Work done until the Monthly Progress Payment form attached to these Contract Documents has been executed by the Contractor and submitted to the Owner. The Monthly Progress Payment form is included with the Bid Documents, bonds and other documents which the successful bidder will be required to execute.

SECTION 10 CLAIMS AND DISPUTES

Contractor shall timely comply with all notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of relating to changes and extra work, as a prerequisite to filing any claim governed by this Section. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the Contract Price or Contract Time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

10-1 INTENT

Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

10-2 CLAIMS

For purposes of this Section, “Claim” means a separate demand by the Contractor, after a change order duly requested in accordance with these General Conditions has been denied by the Owner, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the Owner. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, and Contractor’s request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than the date of final payment. The claim shall be submitted in writing to the Owner and shall include on its first page the following in 16-point capital font: “THIS IS A CLAIM.” Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

10-3 SUPPORTING DOCUMENTATION

The Contractor shall submit all claims in the following format:

- A. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made
- B. List of documents relating to claim:
 - i. Specifications
 - ii. Drawings
 - iii. Clarifications (Requests for Information)
 - iv. Schedules
 - v. Other
- C. Chronology of events and correspondence

- D. Analysis of claim merit
- E. Analysis of claim cost
- F. Time Impact Analysis in CPM format

10-4 DISTRICT'S RESPONSE

Upon receipt of a claim pursuant to this Section, Owner shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the Owner issues its written statement.

- A. If the Owner needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Owner's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Owner shall have up to 3 Days following the next duly publicly noticed meeting of the Owner's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
- B. Within 30 Days of receipt of a claim, the Owner may request in writing additional documentation supporting the claim or relating to defenses or claims the Owner may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of Owner and the Contractor. The Owner's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than \$15,000, 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 or requested documentation, whichever is greater.

10-5 MEET AND CONFER

If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Contractor may so notify the Owner, in writing, either within 15 Days of receipt of the Owner's response or within 15 Days of the Owner's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the Owner shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

Within 10 business Days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Owner shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the Owner issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Owner and the Contractor sharing the associated costs equally. The Owner and Contractor shall mutually agree to a mediator within 10 business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

- A. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
- B. For purposes of this Section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Section.
- C. Unless otherwise agreed to by the Owner and the Contractor in writing, the mediation conducted pursuant to this Section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.
- D. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

10-8 CIVIL ACTIONS

The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:

- A. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code Section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
- B. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

10-9 GOVERNMENT CODE CLAIMS

In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the Owner. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the Owner may be filed.

10-10 NON-WAIVER

The Owner's failure to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety.