

## **SECTION 00700 - GENERAL CONDITIONS**

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## ARTICLE 1 CONTRACT DOCUMENTS

### 1.1 **DEFINITIONS**

Whenever the following terms, titles, or phrases are used in the Contract Documents, the intent and meaning thereof shall be as defined in this article.

#### Addendum/Addenda.

"Addendum" or "Addenda" are written documents furnished by the Owner before award of the contract, interpreting or modifying plans and specifications or answering questions of intended bidders, and shall be incorporated in and are a part of the Contract Documents.

#### Adjustment Factor

"Adjustment Factor" means the Contractor's competitively bid price adjustment to the unit prices as published in the Construction Task Catalog. All adjustment factors are expressed as an increase or decrease from the published prices. The Adjustment Factors must include all overhead, profit and all indirect costs.

#### Architect.

The "Architect" is the architectural firm engaged as an agent by the Owner to perform the services set forth in the Contract Documents. Not all Job Orders will have an Architect associated with it.

The Architect is designated by the Board of Supervisors as the Owner's agent to perform all functions delegated to the Architect by the Contract Documents.

#### Bid.

"Bid" shall mean the offer of the bidder to do the work, when submitted on the prescribed bid form, properly executed and bonded, at the designated time and location.

#### Bid Documents

"Bid Documents" means the Bidding Documents and all of the Division 00 Requirements and the proposed Contract Documents, including the Construction Task Catalog and the Technical Specifications.

#### Change Order.

"Change Order" shall mean a written order to the Contractor, issued after execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum and/or the Contract Time.

#### Closeout Documents.

Documents as required to meet the requirements of final completion.

#### Construction Task Catalog (CTC)

"Construction Task Catalog (CTC)" - For this Contract, it is a comprehensive listing of specific repair or remodeling tasks together with a specific unit of measurement and a unit price.

#### Contract.

The legally binding agreement between the Owner and the Contractor wherein the Contractor agrees to furnish, the labor, materials, equipment, plant and appurtenances required to perform the work described in the Contract Documents and the County agrees to pay the Contractor for such work.

#### Contract Documents

"Contract Documents" means the Bid Form, Addenda, bid when attached as an exhibit to the Bid Form,

the Notice to Proceed, the bonds, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings, together with all Job Orders, Change Orders, Construction Directives.

Construction Manager.

"Construction Manager" shall mean the firm engaged by the Owner as an agent to perform all functions delegated to the Construction Manager by the Contract Documents. The Construction Manager will be the Contractor's primary contact during construction of the individual Job Order. Not all Job Orders will have a Construction Manager associated with it.

Job Order Construction Schedule.

The "Construction Schedule" is the schedule produced by the Contractor in response to the requirements shown in the Job Order.

Construction Administrative Procedures Manual.

The "Construction Administrative Procedures Manual" is the manual produced by the Construction Manager to describe the administrative procedures which will be used on the job-site during construction for an individual Job Order. The manual will be included in the Job Order RFP. This manual outlines administrative procedures which are described in detail in these General Conditions, as well as describing other administrative procedures which may be specific to the Job Order.

Contract Drawings or Plans.

The "Contract Drawings" (sometimes referred to as "drawings" or "plans") are the plans and working drawings which show the location, character, dimensions and details of the Work to be performed, and all supplemental drawings issued by the Owner for an individual Job Order. Once approved, all such supplemental drawings are incorporated into and become a part of the Contract Documents.

Contract Time.

"Contract Time" shall mean term of the Contract. This term shall be 365 days or award of the Maximum Contract Value which ever occurs first.

Contractor.

"The Contractor" shall mean the person or persons, partnership, or corporation, who has entered into the Agreement for Construction of the Work with the Owner or its legal representatives, or successors, assigns, executors, or heirs. The Contractor is required by law to be licensed as and will perform work or render services as a prime contractor.

Day.

Unless otherwise expressly defined, a "day" shall mean a calendar day of 24 hours, including each and every day of the year.

Inspector.

The "Inspector" shall mean the person or persons employed or engaged as (an) independent contractor(s) by the Owner to inspect the performance of the Work by the Contractor for compliance with the Contract Documents. The Owner Inspector is hereby designated as an agent of the Owner for such purpose and no other. The Owner Inspector is supervised by, and reports to, the Owner. The authority of the Owner Inspector to monitor the work shall be strictly limited to that authority specified herein and in Title 24, California Code of Regulations, and no additional authority has been granted nor shall be inferred. Where utilized, the Architect may be designated as the Owner Inspector, in which case the Architect shall perform the function and have the authority of both positions.

"Equipment" shall mean all pre-manufactured or partially preassembled products or components, assembled or partially assembled before delivery to the site.

Equal (as in "or equal").

"Equal" shall mean a system, product or material which is similar in all respects to that shown or specified but produced by a manufacturer not listed in the specification. See also: Substitution.

#### Final Completion of a Job Order

"Final Completion of a Job Order" means when, in fact, all Contract requirements regarding a Job Order have been met by the CONTRACTOR.

#### First Line Supervision.

"First Line Supervision" shall mean a working foreman or lead craft worker other than the project superintendent.

#### Interpretations.

"Interpretations" are all clarifications, additional instructions, and explanations issued by the Owner or his agent(s) pursuant to Article 5 hereof, after award of the contract.

#### Job Order

"Job Order" means a firm, fixed priced, lump sum order issued by the Owner under the Job Order Contract to the Contractor. The Job Order will set forth a definite project scope of work as compiled from the Construction Task Catalog to be performed pursuant to the Job Order Contract. Each individual project to be accomplished under this Job Order Contract will be through the issuance of a Job Order. A Job Order consists of plans, shop drawings, permits, specifications and the Scope of Work required to complete the work. The Owner will be responsible for the development of the Job Order as well as the observation and acceptance of the work contained within the Job Order. The Owner will review the Contractor's Proposal and if acceptable, shall sign the Job Order and issue a Notice to Proceed for the work described therein. Each Job Order will include a detailed scope of work, a firm fixed price proposal from the Contractor, a time duration for the completion of the work and any special conditions that might apply to that specific Job Order. There is no minimum value associated with an individual Job Order.

#### Job Order Amount

"Job Order Amount " means the dollar amount stated in the Job Order payable by Owner to Contractor.

#### Job Order Notice to Proceed

"Job Order Notice to Proceed" means the document issued by the Owner that authorizes the Contractor to commence work on an individual Job Order.

#### Job Order Proposal

"Job Order Proposal" Also sometimes referred to in the Contract Documents as a "Proposal", it is the Contractor's irrevocable offer to perform Work associated with a Job Order. It refers to the Contractor prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Contractor's Proposal must be on forms provided by the Owner and in an electronic version compatible with the Owner's systems. The Proposal may also contain approved drawings, work schedule, permits, or other such documentation as the Owner might require for a specific Job Order.

#### Job Order Time

"Job Order Time" means the duration of time, stated in number of days, as set forth in the Job Order. Job Order Time is the stated number of days the Contractor has to perform the tasks set forth in the Job Order. Job Order Time can also mean more or less days than the original number of days stated in the Job Order if the Job Order is modified by a written Change Order.

#### Materials.

"Materials" is a generic term which shall include all building materials, articles, supplies, and equipment delivered to the project for incorporation in the Work. "Materials" includes everything incorporated into the

Work except labor, unless otherwise noted.

#### Maximum Contract Value

"Maximum Contract Value" means the maximum dollar value of the Contract as defined in the Advertisement for Bids. The Owner may place orders for work utilizing Job Orders up to the maximum value of the Contract. The Maximum Contract Value may be increased by mutual consent of the Owner and Contractor to any amount up to the legally allowed limit set by law.

#### Milestone Completion Date

The "Milestone Completion Date" is the date certified by the Owner when construction of the work of any phase of a Job Order is 100% complete including acceptance by the Owner of all punch list corrections.

#### Minimum Contract Amount

"Minimum Contract Amount" means the minimum dollar value of the Contract as defined in the Advertisement for Bids. The Owner makes no guarantee and has no obligation whatsoever to award any Job Orders under the Contract in excess of the Minimum Contract Amount.

#### Non-Prepriced Tasks

"Non-Prepriced Tasks" As used herein, means those units of work that are not included in the CTC but within the general scope and intent of this Contract and may be negotiated into this Contract as needs arise. Such work requirements shall be incorporated into and made a part of this Contract for the Job Order to which they pertain, and **may** be incorporated into the CTC, if determined appropriate by the Owner, at the base price determined in this Job Order Contract. Non-prepriced work requirements shall be separately identified and submitted in the Job Order Proposal.

#### Notice of Completion

"Notice of Completion" is an Owner generated and recorded form establishing the completion date of an individual Job Order.

#### Notice of Intent to Award

The "Notice of Intent to Award" is issued following Owner approval of bids. It authorizes the Contractor to obtain required bonds and insurance, policies, certificates and any other documentation required by the Contract Documents.

#### Notice to Proceed

"Notice to Proceed" is the notice given to the Contractor following execution of the Agreement and receipt of all required preconstruction submittals as itemized in the Notice of Intent to Award, which establishes the start of the Contract Time.

#### Product Data

"Product Data" shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

#### Project

"Project" shall mean the complete work of improvement referenced in the individual Job Order.

#### Project Manager

"Project Manager" is the Owner's representative for the individual Job Orders. At the time of Joint Scope Meeting the Project manager will be identified by the Owner. The Project Manager will be the point of contact for the Contractor. All communication will be directed to the Project Manager and come through the Project Manager. The Owner reserves the right to change the Project Manager without consultation with the Contractor upon written notice.

Request For Proposal (RFP)

"Request For Proposal (RFP)" means an official request made by the Owner for the Contractor to provide a Job Order Proposal for an identified project.

Proposed Job Order (PJO).

A "Proposed Job Order (PJO)" is the name given to a document issued by the Owner authorizing work to proceed on a change in scope of a Job Order in anticipation of approval and issuance by the Owner of an additional Job Order.

Provide.

"Provide" shall mean to furnish, install, and connect complete and ready for use.

Reference to Codes.

Unless otherwise noted, all references to statutes are to the laws of the State of California as codified in the various specified codes.

Samples.

"Samples" shall mean physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

Scope Of Work

The Scope of Work for this Contract is determined by individual Job Orders issued under the Contract. The Scope of Work is the complete description of services to be provided by the Contractor under an individual Job Order. The Scope of Work will include documentation for a given project. Documentation may include a narrative description of the work.

Shop Drawings.

"Shop Drawings" shall mean drawings, diagrams, schedules and other data specifically prepared by the Contractor or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work required by an individual Job Order.

Site.

"Site" is the area within which work under an individual Job Order is to occur.

Special Inspector.

The "Special Inspector" shall mean the person or persons employed or engaged as (an) independent contractor(s) by the Owner to inspect the performance of specific aspects of the work as required by Title 24, California Code of Regulations.

Technical Specifications.

"Technical Specifications" are the specifications in sections 01000 to 16000 included in the Bidding Documents used to establish the quality of workmanship and material of the Contract.

Subcontractor.

"Subcontractor" shall mean each person or firm who is required by law to be and who is licensed to and will perform work, labor, or render services to the Contractor in or about the construction of the Work, or who, under subcontract to the Contractor, fabricates and installs a portion of the work or improvement.

"Subcontractor" shall include all persons or firms within the authority of the Subletting and Subcontracting Fair Practices Act, Chapter 2 of Division 5, Title I of the Public Contract Code, commencing with Section 4100.

Substitution.

"Substitution" shall mean a system, process, product or material similar in form or function and equal in

quality and performance to that shown or specified, but differing in some essential element, e.g., chemical composition, mechanism of action, surface finish, dimensions, durability, electrical or mechanical or plumbing requirements. See also: Equal.

Supply.

"Supply" shall mean to furnish only, complete and ready for installation, including shipping, delivery, protection, and any assembly required prior to installation.

Unit Price

"Unit Price" means the price published in the CTC for a specific repair or remodeling task. The unit prices are fixed for the duration of the Contract. Each unit price is comprised of the Labor, Equipment and Materials costs to accomplish that specific task.

Work.

The "Work" shall mean that scope of work included in this contract. All Work shall be accomplished by issuing individual Job Orders. Changes in Scope of Work due to differing site conditions or changes ordered by the Owner shall be accomplished by issuing additional Job Orders.

Work Hours.

"Work Hours" Normal Work Hours are defined as any eight hour shift between the hours of 7 am and 5 pm Monday through Friday. Other than Normal Work Hours are defined as any work done between 5 pm and 7 am Monday through Friday, weekends and County holidays.

#### **1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General and other Conditions), CTC, the Technical Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Agreement and all Job Orders. A Modification is (1) a written amendment to the Agreement signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Project Manager pursuant to Sub-paragraph 2.2.7 and 2.2.8, or (4) a written order for a minor change in the Work issued by the Owner pursuant to Paragraph 12.4. The Contract Documents shall also include; the Advertisement for Bid, Instructions to Bidders, accepted Bid Form, the Payment Bond, Performance Bond, Insurance Certificates and Notice to Proceed.

#### **1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between a Project Manager and the Contractor, but a Project Manager shall be entitled to performance of the obligations of the Contractor intended for their benefit and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner, a Project Manager and any Subcontractor or Sub-subcontractor.

#### **1.1.3 THE WORK**

The Work comprises the completed construction required of the Contractor by the individual Job Orders, and includes all labor, materials, equipment and services necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

## 1.2 EXECUTION, CORRELATION AND INTENT

- 1.2.0 Award of Contract – The Owner reserves the right to reject any or all proposals, or waive any discrepancy in a proposal. The decision of the Owner regarding the amount of a bid, or existence or treatment of a discrepancy in a bid will be final. The award of a contract, if it is awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed. Such award, if made, will be made within 60 days after the opening of proposals. This period may be subject to an extension for such further period as may be agreed upon in writing Owner and the bidder concerned. The following failures are not waivable and will be cause for the bid to be considered nonresponsive:

- Failure to sign the bid
- Failure to furnish the required bid bond
- Failure to include both Adjustment Factors
- Failure to submit a completed addenda certification statement

The contract shall be signed by the successful bidder and returned within 7 days, not including Saturdays, Sundays or Tulare County legal holidays, after the bidder has received notice that the contract has been awarded.

The Contractor shall file with the signed contract two bonds. These bonds shall be in the amount and for the purposes specified below. The bonds shall be surety bonds and shall be issued by corporations duly and legally licensed to transact business in the State of California. They shall be maintained by the Contractor, at his expense, during the entire term of the contract.

A Performance Bond shall be furnished in the amount of one hundred percent (100%) of the Maximum Contract Value, and shall guarantee faithful performance of the contract and shall insure the Owner during the life of the contract and for the term of 1 year from the date of acceptance of the work against faulty or improper materials or workmanship that may be discovered during that time.

A Payment Bond shall be furnished in an amount not less than one hundred percent (100%) of the Maximum Contract Value and shall guarantee the payment in full of all claims for labor and material in accordance with the provisions of Section 3247-3248 of the Civil Code of the State of California. The life of the Payment Bond shall extend to 30 days after Notice of Completion is recorded.

All bonds required, whether Bid Bonds, Performance, Payment or other Bonds, shall be issued by an admitted surety insurer. The Bid Bond, Performance Bond and Payment Bond must be issued by the same admitted surety insurer. The Payment and Performance Bonds required by these specifications will neither be accepted nor approved by the County unless bonds are in the forms shown in Sections 502 and 503 of the specifications and are underwritten by a California admitted surety. The County further reserves the right to satisfy itself as to the acceptability of the surety and the form of bond. The Bidder may be required to submit the following documents:

1. The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument authorizing the person who executed the bond to do so.
2. A certified copy of the certificate of authority of the insurer issued by the California Insurance Commissioner.
3. A certificate from the County Clerk that the certificate of authority has not been



surrendered, revoked, canceled, annulled, or suspended, or in the event that it has, that renewed authority has been granted.

4. A financial statement of the assets and liabilities of the insurer to the end of the quarter calendar year prior to 30 days next preceding the date of the execution of the bond, in the form of an officers' next preceding the date of the execution of the bond, in the form of an officers' certificate as defined in Corporations Code 173. If the surety insurer is not found to be an "admitted surety insurer" the bid shall be determined non-responsive and shall be rejected. If the surety insurer's assets do not exceed its liabilities in an amount equal to or in excess of the amount of the bond, subject to Section 12090 of the Insurance Code; or if the bidder fails to provide the specified documents; the bid may be determined non-responsive and may be rejected.

- 1.2.1 The Contract Documents shall be signed in not less than three original copies by the Owner and the Contractor.
- 1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has become familiar with the local conditions and has correlated personal observations with the requirements of the Contract Documents.
- 1.2.3 Subject to Article 12, the Scope of Work for an individual Job Order, including the specifications and any plans and drawings if any, are complementary and what is called for by any one shall be as binding as if called for by all. In case of conflict, large scale (detail) drawings shall govern over small-scale drawings, the Technical Specifications shall govern over the Scope of Work drawings except as noted below and subsequent addenda, interpretations, or change orders shall govern over the original documents, unless a different order of precedence is noted elsewhere in conjunction with a specific portion of the documents.
- 1.2.4 In case of conflict between the Scope of Work drawings and Technical Specifications, the drawings shall govern in matters of quantity, the Technical Specifications in matters of quality. In case of conflict within the Drawings involving quantities or within the Specifications involving quality, the greater quantity and the higher quality shall be provided.
- 1.2.5 Where on any drawing a portion of the Job Order is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply to all other like portions of the Job Order. Where ornament or other detail is indicated as starting, such detail shall be continued throughout the courses or parts in which it occurs and shall also apply to other similar parts in the Job Order, unless otherwise indicated.
- 1.2.6 Scale drawings, full-size details, and specifications are intended to be fully coordinated and to agree. Where not specifically stated otherwise, all work and materials necessary for each unit of construction, even though only briefly mentioned or indicated, shall be furnished and installed fully and completely, including, but not limited to, the manufacturer's instructions and/or recommendations, as part of the individual Job Order.
- 1.2.7 Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standards, shall comply with the requirements in the latest approved revision thereof and any amendments or supplements thereto in effect on the date of Notice to Bidders, except as limited to type, class, or grade, or modified in such reference. The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in these Specifications.
- 1.2.8 Diagrammatic Drawings: Drawings showing the locations of equipment, wiring, piping, etc.,

unless dimensioned, are diagrammatic, and conditions will not always permit their installation in the exact location shown. In such event, the Contractor shall notify the Owner and obtain an interpretation before proceeding with the work in question. Unless site conditions are significantly different than could have been reasonably anticipated, installation as specified in the interpretation shall be without any additional compensation to the Contractor.

1.2.9 Architect's Instruction Bulletins and Drawings.

In addition to the Drawings incorporated in the Contract Documents, the Architect, through the Owner, may furnish such supplemental drawings or instructions from time to time as may be necessary to make clear or to define in greater detail the intent of the Contract Drawings and Specifications. In furnishing additional drawings or instructions, the Architect shall have the authority to make minor changes in the Work, not involving any extra cost, and not inconsistent with the overall design of the Project. If extra cost is known to be involved, these instructions will be accompanied by a PJO/RFP. These supplemental drawings and instructions shall be signed and returned by the Contractor within five (5) days and shall become a part of the Contract Documents; the Contractor shall make its work conform to them.

1.2.10 If the Contractor observes any errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the Owner requesting clarification. If the Contractor proceeds with work affected by such errors, discrepancies or omissions, without having received such clarification, he does so at his own risk. Any adjustments involving such circumstances made by the Contractor, prior to approval by the Owner, shall be at the Contractor's risk and the settlement of any complications or disputes arising therefrom shall be at the Contractor's sole expense and Contractor shall indemnify, hold harmless and defend Owner, from any liability or loss with respect to said adjustments.

1.2.11 When the Contractor does not agree that work due to an interpretation or supplemental drawing or instruction is within the scope of the Contract Documents, the Contractor shall nevertheless perform such work without delay as directed in writing by the Owner. Within seven (7) days after receipt of the interpretation or instruction, the Contractor shall submit a change order request to the Owner specifying in detail in what particulars the contract requirements were exceeded and the change in cost resulting therefrom. The Owner shall then determine whether an additional Job Order shall be issued in accordance with Article 12 of these General Conditions.

The time during which the protest is pending shall not affect the Job Order Time.

1.2.13 All work and material shall be the best of the respective kinds specified or indicated. Should any workmanship or materials be required, which are not directly or indirectly called for in the Technical Specifications and/or shown on the Drawings or indicated in the Job Order, but which are necessary for proper fulfillment of the obvious intent thereof, said workmanship or materials shall be the same for similar parts that are detailed, indicated or specified, and the Contractor shall understand the same to be implied and provide for it in his tender as if it were particularly described or delineated.

1.3 **OWNERSHIP AND USE OF DOCUMENTS**

1.3.1 All Drawings, Specifications and copies thereof furnished are and shall remain the property of the Owner. With the exception of one contract set for each party to the Contract, such documents are to be returned by Contractor or suitably accounted for to the Owner on request at the completion of the work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the individual Job Orders is not to be construed as publication in derogation of the Architect's or Owner's common law copyright or other reserved rights. The Owner's use of the documents will not increase the Architect's design liability beyond the Project

and the site for which the design was originally intended.

## **ARTICLE 2**

### **ADMINISTRATION OF THE CONTRACT**

#### **2.1 THE PROJECT ARCHITECT**

Not all Job Orders will have a Project Architect associated with it. When a Project Architect is assigned to a Job Order, the Owner will inform the Contractor.

2.1.1 The Project Architect is the person lawfully licensed to practice architecture, or an entity lawfully practicing architecture, identified as such in the individual Job Orders. The term Project Architect means the Architect or the Architect's authorized representative.

2.1.2 The Project Architect is the architect or firm engaged as an independent Contractor by the Owner to design the individual Job Order, and all subconsultants or joint venturers of the Project Architect. The authority of the Project Architect to bind the County is limited to that authority specified in the Contract Documents, and no additional authority has been granted, nor shall be inferred.

2.1.3 The Project Architect advises the Owner and/or the Construction Manager where applicable in all aspects of the construction phase of the Job Order. His functions include advice and assistance to the Owner in the correct interpretation and application of the Contract Documents. However, the Construction Manager is the Owner's representative on the individual Job Order, not the Project Architect.

2.1.4 The Contractor shall deliver all correspondence relating to the proper execution of the Work to the Owner, with a copy delivered to the Project Architect. The Owner reserves the right to consult with the Project Architect prior to responding to the Contractor's correspondence.

2.1.5 When discussions between the Contractor and the Owner occur either on the site or elsewhere, but the Project Architect is not present, the Owner reserves the right to consult with the Project Architect prior to issuing his/her final decision or instructions.

2.1.6 The Architect will review or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Job Order and the information given in the Contract Documents. Such action shall be taken within ten (10) working days so as to cause no delay. The Project Architect's review of a specific item shall not indicate approval of an assembly or which the item is a component.

#### **2.2 THE CONSTRUCTION MANAGER**

Not all Job Orders will have a Construction Manager associated with it. When a Construction Manager is assigned to a Job Order, the Owner will inform the Contractor.

2.2.1 The "Construction Manager" is the independent contractor hired by the Owner to be its designated representative in all aspects of administering the individual Job Order on behalf of the Owner. All communications from the Contractor will be channeled through the Construction Manager. However, the Construction Manager does not have the authority to bind the Owner in matters affecting adjustments to the time or cost of Job Order as defined in Agreement for Construction.

- 2.2.2 The Construction Manager will be the Owner's representative during construction. The Construction Manager will advise and consult with the Owner. All instructions to the Contractor shall be forwarded through the Construction Manager. The Construction Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.17.
- 2.2.3 The Construction Manager will determine in general that the Work of the Contractor is being performed in accordance with the Contract Documents, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.
- 2.2.4 The Construction Manager will visit the Job Order site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Construction Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations and communication with the Contractor, the Construction Manager will keep the Owner informed of the progress of the Job Order, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.
- 2.2.5 The Construction Manager shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so that the Construction Manager may perform their functions under the Contract Documents.
- 2.2.6 Based on the Construction Manager's observations, and an evaluation of the Contractor's Application for Payment, the Construction Manager will determine the amount owing to the Contractor and will issue to the Owner Certificates for Payment incorporating such amount, as provided in Paragraph 9.4.
- 2.2.7 The Construction Manager will be the initial interpreter of the requirements of the Contract Documents and the initial judge of the performance thereunder by the Contractor.
- 2.2.8 The Construction Manager will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with agreed upon time limits. Either party to the Contract may make written request to the Construction Manager for such interpretations.
- 2.2.9 Claims, disputes and other matters in question between the Contractor and the Construction Manager relating to the execution or progress of the Job Order or the interpretation of the Contract Documents shall be referred to the County Administrative Officer of Tulare County or (his/her designee).
- 2.2.10 All interpretations and decisions of the Construction Manager shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in graphic form.
- 2.2.11 The Construction Manager's decisions in matters relating to artistic effect will be final.
- 2.2.12 The Construction Manager will have the authority to reject or recommend to the Owner the rejection of work, materials, or workmanship which does not conform to the Contract Documents. Whenever, in the Construction Manager's opinion, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Construction Manager will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.1 whether or not such Work be then fabricated, installed or completed.

- 2.2.13 The Construction Manager receives from the Contractor and reviews in conjunction with the Architect, where designated, all Shop Drawings, Product Data and Samples.
- 2.2.14 The Construction Manager will forward Contractor's submittals such as Shop Drawings, Product Data and Samples, to the Architect, where designated, for review and approve or for other appropriate action. The Architect's action is only for conformance with the design concept of the Work and the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.2.15 Following consultation with the Owner, the Construction Manger will take appropriate action on Change Orders or Job Order Proposals in accordance with Article 12, and will have authority to order minor changes in the Work as provided in Subparagraph 12.4.1.
- 2.2.16 The Construction Manager, in conjunction with, the Architect, where designated, will conduct inspections to determine the date of Substantial Completion and final completion of the Job Order, and will receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract and assembled by the Contractor. The Construction Manager will issue a final Job Order Certificate for Payment upon compliance with the requirements of Paragraph 9.8.
- 2.2.17 The duties, responsibilities and limitations of authority of the Construction Manager as the Owner's representatives during construction as set forth in the Contract Documents, will not be modified or extended without written consent of the Owner, the Contractor and the Construction Manager, which consent shall not be unreasonably withheld. Failure of the Contractor to respond within ten days to a written request shall constitute consent by the Contractor.
- 2.2.18 In case of the termination of the employment of the Construction Manager, the Owner may as his sole discretion appoint a Construction Manager, whose status under the Contract Documents shall be that of the former Construction Manager, respectively.
- 2.3 **PROJECT MANAGER**  
The Project Manager shall be the Owner's representative on the individual Job Order. At the time of Joint Scope Meeting the Project manager will be identified by the Owner. The Project Manager will be the point of contact for the Contractor. All communication will be directed to the Project Manager and come through the Project Manager. The Owner reserves the right to change the Project Manager without consultation with the Contractor upon written notice.

### **ARTICLE 3**

#### **OWNER**

#### **3.1 DEFINITION**

- 3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement. The term Owner means the Owner or the Owner's authorized representative for this Contract. The Owner's authorized representative for this project is the Tulare County Administrative Officer (or his/her designee).

#### **3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

When the individual Job Order does not have a Construction Manager and/or a Project Architect associated with it, the Owner will assume all duties outlined in the Contract Documents for both the Construction Manager and the Project Architect.

- 3.2.1 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.2.2 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.
- 3.2.3 The Contractor will be furnished not more than three (3) copies of the Contract Documents, free of charge. Additional copies over this number may be obtained by the Contractor, at the cost of reproduction.
- 3.2.4 The Owner shall forward all instructions to the Contractor through the Construction Manager if one is associated with the individual Job Order.
- 3.2.5 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work By Owner or By Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11, respectively.
- 3.3 **OWNER'S RIGHT TO STOP THE WORK**
- 3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work for an individual Job Order shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of any Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.
- 3.4 **OWNER'S RIGHT TO CARRY OUT THE WORK**
- 3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within three (3) days after receipt of written notice from the Owner to correct such default or neglect with diligence and promptness, the Owner may, after an additional written notice and without prejudice to any other remedy the Owner may have, make good such deficiencies, and may further elect to complete that portion of the Work through such means as the Owner may select, including the use of a new contractor. In such case an appropriate additional Job Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the additional services of the Construction Manager, Architect or other Professionals made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Construction Manager. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

## **ARTICLE 4 CONTRACTOR**

### **4.1 DEFINITION**

- 4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement. The term Contractor means the Contractor or the Contractor's authorized representative.

### **4.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS**

- 4.2.1 The Contractor shall carefully study and compare the Contract Documents and individual Job Order and shall at once report to the Owner any error, inconsistency or omission that may be discovered. The Contractor shall not be liable to the Owner for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistencies or omissions and knowingly failed to report it to the Owner. The Contractor shall perform no portion of the Work at any time unless authorized by the Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.
- 4.2.2 The Owner does not assume any responsibility for an understanding or representation made by any of their agents or representation prior to the execution of the Agreement unless (1) such understanding or representations are expressly stated in the Agreement, and (2) the Agreement expressly provides that responsibility therefore is assumed by the Owner.
- 4.2.3 Failure by the Contractor to acquaint himself with all available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing any individual Job Order.
- 4.2.4 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Owner at once.
- 4.2.5 Before submitting any Request for Information (RFI), or other contractor initiated request for information the Contractor shall determine that the information requested is not clearly provided in the Contract Documents. RFI submittals shall be submitted to the Owner only from the Contractor and not from any subcontractor, supplier or other vendor, and shall be on a form approved by the Owner. The Contractor shall provide a revised and updated RFI Priority Schedule on not less than a weekly basis. The RFI Priority Schedule shall rank RFI's in order of priority and include a brief statement of reason for priority. The Owner will endeavor to respect the order of priorities as requested by the Contractor for the overall benefit of the Job Order. The RFI process is for information and clarification only and may not be utilized to obtain approval for changes in the work.

#### 4.3 **SUPERVISION AND CONSTRUCTION PROCEDURES**

- 4.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences, procedures, or safety procedures at the Job Order site; and procedures; and shall coordinate all portions of the Work under the Individual Job Orders.
- 4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and any other persons performing any of the Work under a Job Order with the Contractor.
- 4.3.3 The Contractor shall not be relieved from the Contractor's obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Construction Manager in their administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.
- 4.3.4 The Owner, Construction Manager, and Architect will deal only with the Contractor; and not through subcontractors. The Contractor shall be responsible for the proper execution of the Work. Any and all discussions between any subcontractor and supplier and the Owner, Construction Manager or the Architect shall be initiated through the Contractor or its

representative.

#### 4.4 **LABOR AND MATERIALS**

- 4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Job Order, whether temporary or permanent and whether or not incorporated or to be incorporated in the Individual Job Order.
- 4.4.2 The Contractor shall at all times enforce strict discipline and good order among the Contractor's employees and shall not employ on any Job Order any unfit person or anyone not skilled in the task assigned them.
- 4.4.3 The Contractor shall deliver to the Owner, prior to final acceptance of the work as a whole, signed certificates from suppliers of materials and manufactured items stating that such items conform to the Contract Documents.
- 4.4.4 The Contractor, immediately upon Job Order Notice to Proceed (or where shop drawings, samples, etc., are required, immediately upon receipt of approval thereof) shall place orders for all materials, work fabrication, and/or equipment to be employed by him in that portion of the work contracted for. The Contractor shall keep all materials, work fabrications and/or equipment specified and shall advise the Owner promptly, in writing, of all orders placed and of such materials, work fabrications and/or equipment which may not be available in a timely manner for the purposes of the Job Order.
- 4.4.5 Workers whose work is unsatisfactory to the Owner, or are considered by the Owner to be careless, incompetent, unskilled or otherwise unfit shall be dismissed from work under the Contract upon written request to the Contractor from the Owner. Any costs associated with dismissal are the responsibility of the Contractor. Any termination of a subcontractor pursuant to this Section shall be in strict conformity with the requirements of the Subletting and Subcontracting Fair Practices Act, Part 1 of Division 2 of the Public Contract Code, commencing with Section 4100.
- 4.4.6 In the event that the Contractor furnishes a material, product, process, or article better than that specified in the Contract Documents, the difference in cost of that material, product, process, or article shall be borne by the Contractor.
- 4.4.7 As a part of the Contractor's Job Order Proposal, Contractor shall submit a list of all subcontractors and material suppliers including company name, address, business and emergency telephone numbers, and contact person.

#### 4.5 **WARRANTY**

- 4.5.1 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. The Contractor warrants to the Owner that to the best of the Contractor's knowledge, no installed materials or equipment contain asbestos. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2. Contractor shall guarantee all work required under the individual Job Order against faulty materials or poor workmanship during the construction period and for one year after the date of



completion and acceptance of the Job Order.

**4.6 TAXES**

- 4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Job Order or portions thereof provided by the Contractor which are legally enacted at the time bids are opened, whether or not yet effective.

**4.7 PERMITS, FEES AND NOTICES**

- 4.7.1 Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for any building permit and permanent utility connection fees. The Contractor shall secure and pay for temporary construction utilities, and all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the individual Job Orders are issued. The Owner will reimburse the Contractor for utility connection fees, encroachment permits, utility service charges other than temporary utility charges unless otherwise indicated, and all permit fees necessary for the completion of the Work. Proper documentation of fee, permit, and utility service charges shall be submitted to the Owner. No mark-up shall be allowed the Contractor on these reimbursable charges.
- 4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.
- 4.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, the Contractor shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate Modification.
- 4.7.4 If the Contractor performs any Work contrary to any laws, ordinances, rules and regulations, without notice to the Owner, the Contractor shall assume full responsibility therefore and shall bear all costs attributable thereto.
- 4.7.5 Any reference in the Contract Documents text to codes, standard specifications or manufacturer's instructions shall mean the latest printed edition of each in effect at the Job Order date.

**4.9 SUPERINTENDENT**

- 4.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Job Order site during the progress of the Job Order. The Contractor shall provide résumés for all of the Contractor's supervisory employees to be assigned to the Job Order for Owner review, and the Owner may reject any supervisory employees not deemed to be qualified at the sole discretion of the Owner. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed upon written request in each case.
- 4.9.2 The Superintendent who begins the Job Order shall remain on the Job Order until the Job Order is completed, as long as that person is employed by the Contractor. The Superintendent shall

not be replaced without the approval of the Owner.

#### **4.10 CONTRACTOR'S CONSTRUCTION SCHEDULE**

The Contractor is required to submit a construction schedule as part of the Proposal for all individual Job Orders. The format of the schedule will be determined by the Owner. When a Job Order is approved, the Contractor shall maintain the schedule weekly for the duration of the Work. In no case shall the format of the schedule be more stringent than the CPM schedule noted below. In most cases the schedule format shall be a bar chart schedule with milestones. The CPM format of construction schedule will only be used for large, complex Job Orders.

##### **4.10.1 Contract Schedule Development**

Within 5 days after receiving the Notice to Proceed, the Contractor shall submit a detailed proposed Contract Schedule presenting an orderly and realistic plan for completion of the work, in conformance with the requirements of this specification.

The Contract Schedule shall furnish or comply with the following requirements:

- A. Format: a time scaled CPM schedule.
- B. Overall time of completion and time of completion for each milestone shown on the Contract Schedule shall adhere to the times in the Job Order, if applicable.
- C. Calendar Schedule: Calendar days are the basis of the schedule.
- D. No activity on the schedule shall have a duration longer than fourteen (14) days, with the exception of fabrication and procurement activities, unless otherwise approved by the Construction Manager. Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.
- E. Procurement of major equipment, through receipt and inspection at the job site, identified as a separate activity.
- F. Owner furnished materials and equipment if any, identified as separate activities.
- G. Dependencies (or relationships) between activities shown.
- H. Processing/approval of submittals and shop drawings for major equipment shown. Activities that are dependent on submittal acceptance and/or material delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.
- I. The total cost of performing each activity shown. This cost shall be the total of labor, material, equipment, including overhead and profit. The sum of the cost for activities shall equal the total contract value.
- J. The resources required (manpower and major equipment) to perform each activity shown.
- K. Fourteen (14) days for developing punch list(s), completion of punch list items, and

- final clean up for the work or any designated portion thereof.
- L. Interface with the work of other Contractors (or entities).
- M. Separate buildings and other independent project elements shall be individually identified in the network.

Along with the schedule, Contractor shall provide a procurement log including the following information for each type of material or equipment to be provided:

- N. Material or equipment description.
- O. Technical specification reference.
- P. Duration in days required for preparation and review of submittals.
- Q. Duration in days required for fabrication and delivery.
- R. Cross references to activities, which will be affected by the delivery date of the material or equipment item.
- S. Scheduled delivery dates.

The Contractor shall submit the reports and number of copies as required under Division One of this specification.

The Construction Manager will review the Proposed Contract Schedule for conformance with the requirements of the Contract. Within seven (7) days after receipt, the Construction Manager will accept the Contract Schedule or will return it with comments. If the Proposed Contract Schedule is not accepted, Contractor shall revise the schedule to incorporate comments and resubmit the schedule for acceptance within seven (7) days after receiving the comments.

The accepted Contract Schedule shall be the basis for evaluating job progress, payment requests, and time extension requests. The responsibility for developing the Contract Schedule and monitoring actual progress as compared to the schedule rests with the Contractor.

Failure of the Contract Schedule to include any element of the work or any inaccuracy in the Contract Schedule will not relieve Contractor from responsibility for accomplishing all the work in accordance with the contract.

Acceptance of the Contract Schedule will not relieve the Contractor of the responsibility for accomplishing the work in accordance with the contract.

#### Monthly Updates

Contractor shall submit to the Construction Manager each month an up-to date status report of the work. The status report shall include:

- A. Contractor's estimated percentage complete for each activity not yet complete.
- B. Actual start/finish dates for activities as appropriate.
- C. Identification of processing errors, if any, on the previous update reports.
- D. Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.

- E. Identification of activities that are affected by Proposed Change Orders issued during the update period.
- F. Resolution of conflict between actual work progress and work schedule. When out-of-sequence activities develop in the Contract Schedule because of actual construction progress, the Contractor shall submit revisions to the schedule to conform to current status and direction.

The Construction Manager will review the updated information and meet with the Contractor each month at the site to determine the status of the work. If agreement cannot be reached on any issue, the Contractor will use the Construction Manager's determination in the processing of the update.

Progress payments pursuant to the contract will be based on the update of the Contract Schedule.

Short Interval Schedules.

Contractor shall prepare a Short Interval Schedule (SIS) to be used throughout the duration of Work. The SIS shall include all current activities and projected activities for the succeeding two (2) weeks. The SIS shall include actual start/finish dates for the preceding one (1) week. The SIS shall be submitted to the Construction Manager prior to the weekly construction meeting. The Contractor shall participate in short interval scheduling coordination during the weekly construction meetings.

Responsibility for Completion.

The Contractor shall furnish sufficient manpower, materials, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Sundays and holidays as may be necessary to insure the prosecution and completion of the Work in accordance with the accepted Construction Schedule. If work on the critical path is seven days or more behind the currently updated Construction Schedule and it becomes apparent that the Work will not be completed within the Contract Time, the Contractor will implement whatever steps it deems necessary to make up all lost time. If the Contractor's solution is not successful, it will make further attempts using the following sequence of events:

- A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.
- B. If the above cannot be achieved then;
  - 1. The Contractor shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the Construction Manager, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the Construction Manager the backlog of work.
  - 2. In addition, the Construction Manager may require the Contractor to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the Construction Manager finds the proposed recovery schedule unacceptable, it may require the Contractor to submit a new plan. If the actions taken by the Contractor or the second plan proposed are unsatisfactory, the Construction Manager may require the Contractor to take any of the actions set forth in the previous paragraph without additional cost to the Owner to make up the lag in scheduled progress.

Failure of the Contractor to comply with the requirements of "Short Interval Schedules" shall be considered grounds for a determination by the Owner, pursuant to Article 14 that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

#### Daily Reports

Contractor shall submit a Daily Activity Report to the Construction Manager for each workday including weekends and holidays, when worked.

Contractor may use their own report, provided it contains the same information included in the standard form furnished by the Construction Manager.

### **4.11 RECORDS, DOCUMENTS AND SAMPLES AT THE SITE**

- 4.11.1 The Contractor shall maintain all records of required City, County or State inspections and shall promptly notify the Owner of the results of any inspection. Copies of all such records shall be provided to the Owner upon request.
- 4.11.2 The Contractor shall secure and maintain required certificates of inspection, testing or approval and shall promptly deliver them to the Owner.
- 4.11.3 The Contractor shall maintain a master set of drawings and specifications at the Job Order site which shall be regularly updated to reflect current as-built conditions of the Job Order. The Contractor shall update the drawings as work progresses. The information to be recorded by the Contractor will be determined by the Owner or Architect, who will be responsible for preparing the final, reproducible as-built drawings based upon the information submitted by the Contractor. At a minimum, the following information shall be inserted and dimensioned on those drawings and specifications, in RED, by the Contractor: the exact horizontal and vertical location of all installations in their finished condition, including all electrical, plumbing and mechanical installations; all changes in construction, materials and installed equipment; adequate dimensional data, both horizontal and vertical, to allow location of covered installations and the identification of minor changes authorized. The updated drawings and specifications shall be available for review by the Owner, Construction Manager and/or the Inspector.

### **4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- 4.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.
- 4.12.3 Samples are physical examples, which illustrate materials, equipment or workmanship, and establish standards by which the work will be judged.
- 4.12.4 The Contractor, at its sole cost and expense, shall furnish to the Owner all drawings and other

descriptive material as are required by the specifications or requested by the Job Order. Shop drawings shall be done with sufficient detail to adequately describe items proposed to be furnished or methods of installation to enable the Owner and Architect to determine compliance with the specifications and with the design and arrangement shown on the working drawings. The Owner will not accept shop drawings or manufacturers' instructions which are not sufficiently dimensioned and detailed to demonstrate compliance with the Contract Documents.

The Contractor shall check and coordinate all submittals with the work of all trades involved before they are submitted.

All submittals for the Job Order shall be made within the time frame outlined in the individual Job Order; however, the Contractor shall have the additional responsibility to coordinate the schedule of its submittals with the requirements of the Construction Schedule so as not to delay the Project. No delay claims related to submittals will be entertained.

All submissions must be marked with the name of the Job Order and the name of the Contractor and shall be numbered consecutively and complete in every respect.

The drawings and instructions shall be submitted promptly, so as to cause no delay in the work. The drawings and instructions shall be submitted so as to allow the Construction Manager and the Architect a review period of no less than five (5) days.

Owner will note what submittals are required in the RFP for each individual Job Order.

- 4.12.5 By preparing, approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that the Contractor has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the Work, the Job Order and the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to shop drawings as may be issued by the Owner.
- 4.12.6 The Contractor shall not be relieved from responsibility to fulfill the Job Order at no extra cost to the Owner, within the Job Order Time, by approval of Shop Drawings, Product Data or Samples. The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.14, unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval of them.
- 4.12.7 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- 4.12.8 The Contractor shall direct specific attention, in writing or on resubmitted Shop drawings, Product Data, or Samples, to revisions other than those requested on previous submittals. It shall be the responsibility of the Contractor to specifically point out any variation or discrepancy between the shop drawings or manufacturers' instructions submitted and the Contract Documents.

The Contractor shall make specific mention of all variations, along with an explanation of why they are requested, in its letter of transmittal.

FAILURE BY THE CONTRACTOR TO IDENTIFY IN ITS LETTER OF TRANSMITTAL ANY VARIATION, DISCREPANCY, OR CONFLICT WITH THE CONTRACT DOCUMENTS SHALL RENDER THE APPROVAL NULL AND VOID, AND THE CONTRACTOR SHALL BEAR ALL RISK OF LOSS AND RECONSTRUCTION COSTS OR DELAYS.

If any architectural, plumbing, mechanical, electrical, or structural modifications are required as a result of the approval of shop drawings or manufacturers' instructions which deviate from or do not comply with the Contract Documents, those modifications shall be made without extra cost to the Owner, and without extension of the Job Order Time. Any other resultant costs, including but not limited to design fees, Construction Management fees, cost incurred by other contractors, or inspection fees, shall be at the expense of the Contractor.

- 4.12.9 No portion of the work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved. All such portions of the Work shall be in accordance with approved submittals.
- 4.12.10 Submission of Shop Drawings and Samples to the Owner is required for only those items specifically mentioned in the Specification Sections for the individual Job Orders. If Contractor submits Shop Drawings for items other than the above, the Owner will not be obligated to distribute or review them. Contractor shall be responsible for the procuring of Shop Drawings for his own use as he may require for the progress of the Work.
- 4.12.11 The term "Shop Drawings" as used herein also includes, but is not limited to fabrication, erection, layout and setting drawings, manufacturer's standard drawings, descriptive literature, catalogs, brochures, performance and test data, wiring and control diagrams, all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment or systems and the positions and layout of each conform to the Job Order requirements. As used herein the term "manufactured" applies to standard units usually mass-produced and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop Drawings shall establish the actual detail of all manufactured or fabricated items; indicate proper relation to adjoining Work; amplify design details of mechanical and electrical equipment in proper relation to physical spaces in the structure; and incorporate minor changes of design or construction to suit actual conditions.

Review of Shop Drawings.

Following submission, the shop drawings will be returned with one or more of five possible responses by the Owner. These possible responses are as follows:

- A. Unreviewed: If the submittal is not required, or if it is not complete, or if it does not meet the form, format, and number requirements specified, it may be returned unreviewed. If the submittal is not required, work may commence; if the submittal was returned due to form requirements, it shall be resubmitted and approval obtained prior to commencement of the work.
- B. Approved, Reviewed, or No exceptions taken: In the event the submittal is acceptable as submitted, it will be returned with this status. Work may proceed upon receipt of approved submittal.
- C. Make Corrections Noted: If the submittal is acceptable except for certain items which have been noted by the Architect, it will be so designated. Work may proceed with the corrections made, and no resubmittal is necessary.
- D. Revise and Resubmit: This status indicates that revisions are noted on the submittal, and an

additional submittal is required to reflect those revisions and/or additional information. Work may not commence until the resubmittal is approved.

- E. Rejected: A submittal may be rejected if it is not in compliance with the Contract Documents, or if it proposes an "or equal" or substitution which is not acceptable to the Architect. A superseding submittal shall be submitted and approved prior to commencement of the work.

Should the Contractor proceed with the work shown on a submittal before approval is received, it shall remove and replace or adjust any work which is not in accordance with the shop drawings or manufacturers' instructions as ultimately approved, and it shall be responsible for any resultant damage, defect, or added cost. The Owner shall be under no obligation to pay for work installed prior to approval of shop drawings, until the shop drawings are approved and the work in place is found to be in compliance with the Contract Documents.

The Contractor shall resubmit submittals in categories "D" and "E" above after making any changes required so that submittals will comply with the Contract Documents. When resubmitting, the Contractor shall direct specific attention to deficient areas. Resubmittals shall be made in the same number of copies as the original submittal. Resubmittals shall be made within ten (10) days of return of previous submittal, and in any event in sufficient time so as to avoid delay to the Work. No delay claims related to resubmittals will be entertained on the Project for any resubmittal originally received after the 10 days.

The Owner shall determine the adequacy and completeness of all submittals. Where the Owner deems a submittal to be inadequate, incomplete, or otherwise unsuitable for proper review, the Contractor shall submit all additional information requested by the Owner. There shall be no change to the Job Order Time or the Job Order Sum when such additional information is required.

- 4.12.12 Drawings: Following Contractor's review and approval, Contractor shall submit to the Owner one Sepia Transparency and two prints of each drawing for approval, accompanied by a letter of transmittal, to the Owner, listing the identifying number of the drawings submitted and cross-referencing them to the page or sheet in the specifications and/or working drawings to which they are related. The Construction Manager will check the submittal to see if it is complete. If complete, the Owner will forward the drawings to the Architect. The Architect will check the drawings and affix a stamp to the sepia, indicating the status of acceptance, and will return same to the Contractor, each retaining prints for his records. Comments, if any, will be noted directly on the sepia. The Contractor shall then print and distribute the appropriate number of copies to his job personnel as required. If a sepia is stamped "Rejected", the Contractor shall correct and resubmit as outlined above. When stamped "Note Markings", "Note Corrections", or similar instructions, the Contractor shall correct and resubmit for record only, two prints of each drawing.
- 4.12.13 Samples: Following Contractor's review and approval, he shall submit to the Owner, two samples of all materials in quantities and sizes as specified herein. Submittals shall be given to the Owner at a time determined by the Contractor, which allows for any necessary resubmittal and which will not cause any delay in the work. Samples will be forwarded to the Architect. If a sample is rejected, one sample noted so will be returned to the Contractor. If a sample is marked "Note Markings", one sample so noted will be returned. Corrected samples shall be resubmitted for approval as per the original submittal.
- 4.12.14 Brochures: Following Contractor's review and approval, he shall submit to the Owner, six (6) copies of all manufacturer's catalogs or brochures as required. If a brochure is stamped "No Exception Taken", two (2) copies will be returned to the Contractor. If stamped "Rejected", one



marked copy and two (2) unmarked copies will be returned. Corrected copies shall be re-submitted for approval as per the original submittal.

4.12.15 Manufacturer's Instructions: Where any item or work is required by Job Order to be furnished, installed or performed in accordance with a specified product manufacturer's instructions, Contractor shall procure and distribute the necessary copies of such instructions to all concerned parties.

4.12.16 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, and the Architect has no information creating doubt as to the reliability of such certification, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

#### 4.13 **USE OF SITE**

4.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment. The Contractor shall be liable for any and all damage caused by him to Owner's premises. The Contractor shall hold and save the Owner, its agents and representatives free and harmless and defend them from liability of any nature or kind arising from any use, trespass, or damage occasioned by his operations on premises or third persons.

4.13.2 The Contractor shall coordinate all of the Contractor's operations with, and secure approval from, the Owner before using any portion of the Job Order site.

4.13.3 All workers, contractors, or contractors' representatives are admitted to the Job Order site only for the proper execution of the Job Order, and have no tenancy.

#### 4.14 **CUTTING AND PATCHING OF WORK**

4.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor consent to cutting or otherwise altering the Work.

4.14.3 In all cases exercise extreme care in cutting operations, and perform such operations under adequate supervision by competent mechanics skilled in the applicable trade. Openings shall be neatly cut and shall be kept as small as possible to avoid unnecessary damage. Careless and/or avoidable cutting damage, etc., will not be tolerated, and the Contractor will be held responsible for such avoidable or willful damage.

4.14.4 All replacing, patching and repairing of all materials and surfaces cut or damaged in the execution of the Work shall be performed by experienced mechanics of the several trades involved. Such replacing, repairing or patching shall be done with the applicable materials, in such a manner that all surfaces so replaced, etc., will, upon completion of the Job Order, match the surrounding similar surfaces.

#### 4.15 **CLEANING UP**

- 4.15.1.1 The Contractor shall at all times maintain its work area in an orderly manner. The Contractor shall keep the premises, including the Job Order Site, the adjacent sidewalks and street free from accumulation of waste materials or rubbish caused by the Contractor's operations on a daily basis or as directed by the Construction Manager. At the completion of the Work, the Contractor shall remove all the Contractor's waste materials and rubbish from and about the Job Order site as well as all the Contractor's tools, construction equipment, machinery and surplus materials.

The Contractor shall clean the portions of existing improvements and facilities which are used by, traversed or dirtied by the workers on the Job Order ( normal maintenance due to use by the Owner's employees or the public excepted.)

The Contractor, at its sole cost, shall contract with a disposal company to remove all rubbish, and shall have the refuse containers emptied at frequent enough intervals so that waste does not overflow the containers.

- 4.15.2 If the Contractor fails to clean up during progress or at the completion of the Job Order, the Owner may do so as provided in Paragraph 3.4 and the cost thereof shall be paid and/or reimbursed by the Contractor.

4.15.3 Final Cleaning of Job Order site.

Prior to final acceptance and occupancy by the Owner, the Contractor shall thoroughly clean the interior and exterior of the buildings, and the Job Order Site and adjacent areas, of all material related to its performance of the Work, including spots, stains, paint spots, trade markings and labels, and accumulated dust and dirt. The following list is not inclusive but to act as a guideline to include:

- .1 Removal of all paint spots, stains, rubbish, debris, tools and equipment from all areas and broom clean. Steam clean all carpets and mop floors.
- .2 Cleaning interior and exterior of the buildings including all windows in any area affected by the Work.
- .3 Brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, chalk board trays and any adjoining rooms or areas that were affected by the work.
- .4 The Contractor shall clear grounds and exterior paved areas and walks of all construction debris, dirt and dust and shall repair any site areas damaged during the course of construction.

Prior to final completion of the Job Order or Owner occupancy, the Contractor shall conduct an inspection of sight-exposed surfaces, and all work areas, to verify that the entire work is clean. In the event the Contractor fails to do so, the Owner may cause this work to be done at the Contractor's expense in accordance with Paragraph 3.4.

4.16 **ROYALTIES AND PATENTS**

- 4.16.1 The Contractor shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent rights and shall defend and save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is selected by the Architect. If the Contractor has reason to believe that the design, process or product selected is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly given to the Owner in writing.

#### 4.17 INDEMNIFICATION

- 4.17.1 Contractor shall hold harmless, defend and indemnify Owner, its agents, officers, employees, Construction Manager and Project Architect from and against any liability, claims, actions, costs, damages or losses of any kind, including Owner property, arising from, or in connection with, the performance by CONTRACTOR or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against Owner by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against Owner alleging civil rights violations by CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on Owner of CONTRACTORS failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.
- 4.17.2 In any and all claims against the Owner, the Construction Manager and Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.17 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 4.17.3 The obligations of the Contractor under this Paragraph 4.17 shall not extend to the liability of the Architect or Construction Manager, their agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, their agents or employees, provided such giving or failure to give directions is the primary cause of the injury or damage.

The indemnity obligation expressly extends to and includes any and all claims, demands, damages, costs, expenses, or liability occasioned as a result of damages to adjacent property caused by the conduct of the Work on any individual Job Order.

The indemnity obligation expressly extends to and includes any and all claims, demands, damages, costs, expenses, or liability occasioned as a result of the violation by the Contractor, the Contractor's agents, employees, or independent contractors or subcontractors, of any provisions of federal, state or local law, including applicable administrative regulations.

The indemnity obligation also expressly extends to and includes any claims, demands, damages, costs, expenses, or liability occasioned by injury to or death of any person, or any property damage to property owned by any person while on or about the Job Order Site or as a result of the Work on any individual Job Order, whether such persons are on or about the Job Order Site by right or not, whenever the Work on any individual Job Order is alleged to have been a contributing cause in any degree whatsoever.

Nothing contained in the foregoing indemnity provisions shall be construed to require the Contractor to indemnify the Owner in contravention of Section 2782 of the Civil Code for the sole negligence or willful misconduct of the Owner.

##### Indemnification of Adjacent Property Owners.

In the event the Contractor enters any agreement with the owners of any adjacent property to enter upon or adjacent to such property for the purpose of performing any Job Order under this contract, the Contractor shall fully indemnify, defend and save harmless such person, firm, or

corporation, state or other governmental agency which owns or has any interest in the adjacent property. The form and content of the indemnification agreement shall be approved by the Owner prior to commencement of any work on or about such property. The Contractor also shall indemnify the Owner as provided in Article 10. These provisions shall be in addition to any other requirements of the owners of adjacent property.

#### **4.18 FAIR EMPLOYMENT PRACTICES CLAUSE**

- 4.18.1 Nondiscrimination: In connection with the performance of Work under the contract, the Contractor agrees (as prescribed in Chapter 6 of Division 3 of Title II of the Government Code of the State of California, Commencing at Section 12900 and by Labor Code Section 1735) not to 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 or sex. The aforesaid provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, Notices to be provided by the County, setting forth the provisions of this discrimination clause. The Contractor further agrees to insert the foregoing provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies of raw materials.

### **ARTICLE 5 SUBCONTRACTORS**

#### **5.1 DEFINITION**

- 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the Job Order site. The term Subcontractor means a Subcontractor or a Subcontractor's authorized representative. The term Subcontractor does not include any separate contractor or any separate contractor's subcontractors.
- 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the site. The term Sub-subcontractor means a Sub-sub contractor or an authorized representative thereof.

#### **5.2 AWARDS OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

- 5.2.1 The Contractor shall only use subcontractors included in his Job Order Proposal unless first approved by the Owner pursuant to statute. With respect to subcontractors ineligible to perform work on public works projects under Public Contract Code section 6109, the Contractor shall not use any such subcontractor, shall repay to the Owner any money paid to any such subcontractor, and shall pay the wages of the workers for any such subcontractor allowed to work on the Job Order .

#### **5.3 SUBCONTRACTUAL RELATIONS**

- 5.3.1 By an appropriate agreement, written where legally required for enforceability, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner, its agents, officers and employees. Said agreement shall preserve and protect the rights of the Owner, its agents, officers and employees under the Contract Documents with respect to the work to be performed by the Subcontractor

so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor Agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with their Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to their Sub-subcontractors. Nothing contained herein shall be deemed to create an agency relationship between the Owner and any Subcontractor or material supplier.

- 5.3.2 The submission or addition of Subcontractors shall be permitted only as authorized by Public Contracts Code Section 4100, et. seq. The Subcontractors employed by the Contractor shall be appropriately licensed in conformity with the laws of the State of California. Should the Contractor violate any of the provisions of this Section, the violation shall be deemed a breach of this contract and the Owner shall have all remedies provided by California law, including but not limited to those provided in Public Contract Code Section 4100, allowing termination of the contract or a penalty assessment of ten percent (10%) of the subcontract amount.
- 5.3.3 Nothing contained in this Contract shall create any contractual relationship between any Subcontractor and the Owner its agents, officers, and employees.
- 5.3.4 Jurisdictional disputes between Subcontractors or between Contractor and Subcontractor shall not be mediated or decided by the Owner, Architect or the Construction Manager. The Contractor shall be responsible for the resolution of all such disputes based upon his contractual relationship with his Subcontractors. If, through acts or neglect on the part of the Contractor, including failure to supervise and control its subcontractors or suppliers, any other contractor, subcontractor or supplier, or worker suffers loss or damage, the Contractor agrees to settle with such other contractor, subcontractor, supplier, or worker by agreement or arbitration, if such other contractor, subcontractor, or worker shall assert any claim against the Owner or any of its officers, agents, or employees, or account of any damage alleged to have been so sustained.

In the event of the receipt of any such claim, the Owner shall notify the Contractor, who shall defend, indemnify, and save harmless the Owner and all of its officers, agents, and employees against any such claim.

## **ARTICLE 6 WORK BY OWNER OR BY SEPARATE CONTRACTORS**

### **6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

- 6.1.1 The Owner reserves the right to perform work related to the individual Job Order with the Owner's own forces, and to award separate contracts in connection with other portions of the individual Job Order or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay, damage or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided elsewhere in the Contract Documents.
- 6.1.2 When separate contracts are awarded for different portions of the individual Job Order or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Job Order schedule deemed necessary after a joint review and mutual agreement. The Job Order schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Job Order with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract including, without excluding others, those stated in Article 4, this Article 6 and Articles 10, 11 and 13.

## 6.2 **MUTUAL RESPONSIBILITY**

6.2.1 The Contractor shall afford the Owner and separate contractor's reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 When any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive the Work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 If, following the reporting of any discrepancy or defect as required in subparagraph 6.2.2 above, the Contractor suffers damage due to disruption or delay caused by the separate contractor, without fault by the Owner, the Contractor's remedy shall be limited to seeking recovery from the separate contractor.

6.2.4 Any costs caused by defective or ill-timed work shall be borne by the Contractor or Subcontractor responsible therefore.

6.2.5 Should the Contractor cause damage to the work or property of the Owner or to other work or property on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.6 Should the Contractor wrongfully delay or cause damage to the work or property of any separate contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all costs which the Owner has incurred.

## 6.3 **OWNER'S RIGHT TO CLEAN UP**

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the Owner may clean up and the contractor's

responsible therefore shall pay Owner such portions of the cost thereof as the Owner shall determine to be just.

## **ARTICLE 7**

### **MISCELLANEOUS PROVISIONS**

#### **7.1 GOVERNING LAW**

7.1.1 The Contract shall be governed by the law of the State of California.

#### **7.2 SUCCESSORS AND ASSIGNS**

7.2.1 The Owner and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other.

#### **7.3 WRITTEN NOTICE**

7.3.1 Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

##### **COUNTY:**

Tulare County Administrative Office  
2800 W. Burrel Avenue  
Visalia, CA 93291

Phone: (559) 733-6531  
FAX: (559) 733-6318

##### **CONTRACTOR:**

Phone:  
FAX:

Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

#### **7.4 CLAIM REQUIREMENTS**

7.4.1 Statutory Claims Procedure.

All claims under this contract of less than \$375,000 shall be resolved in accordance with Section 20104 *et seq.* of the Public Contract Code.

Pursuant to Public Contract Code sections 20104-20104.8, in addition to the notice and claim provisions set forth throughout the Contract Documents, the following terms and conditions shall apply.

**§ 20104. Application of article; inclusion of article in plans and specifications**

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by Contractor for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

**§ 20104.2. Claims; requirements; tort claims not covered by this article**

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.



(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

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

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in 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. 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 claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by 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.

**§ 20104.4 Civil actions; mediation and arbitration; qualifications and expenses of mediators and arbitrators; trial de novo; witnesses**

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. 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 a court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) 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 1141.11 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.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorneys' fees of the other party arising out of trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in mediation or arbitration process.

**§ 20104.6. Payment by local agency of undisputed portion of claim; interest on arbitration award or judgment**

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

**7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

7.5.1 The Contractor shall furnish Performance Bond in the amount of 100% of the Maximum Contract Value and Payment Bond in the amount of 100% of the Maximum Contract Value. The Bonds shall be the forms shown in Sections 00502 and 00503 respectively. By mutual consent the Maximum Contract Value may be increased to any amount up to the maximum value allowed by law. The Contractor shall furnish additional bonds to cover the increase in the Maximum Contract Value.

7.5.2 All bonds required, whether Bid bonds, Performance, Payment, or other bonds, shall be on the forms provided in Sections 00501, 00502 and 00503 above. **The Bid Bond, Performance Bond, and Payment Bond must be issued by the same admitted surety insurer.** The payment and performance bonds required by these specifications will neither be accepted nor approved by the Owner unless the bonds are underwritten by an admitted surety and the requirements of California Code of Civil Procedure section 995.630(a) and (b) are met and the bonds are accompanied by the County Clerk's certificate as provided for in California Code of Civil Procedure Section 995.640(b). The Owner further reserves the right to satisfy itself as to the acceptability of the surety and the form of bond. **Upon request of Tulare County the bidder must submit the following documents:**

- .1 The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument authorizing the person who executed the bond to do so.
- .2 A certified copy of the certificate of authority of the insurer issued by the California Insurance Commissioner.
- .3 A certificate from the County Clerk that the certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended, or in the event that it has, that renewed authority has been granted.
- .4 A financial statement of the assets and liabilities of the insurer to the end of the quarter calendar year prior to 30 days next preceding the date of the execution of the bond, in the form of an officers' certificate as defined in Corporations Code § 173. If the surety insurer is not found to be an "admitted surety insurer" the bid shall be determined non-responsive and shall be rejected. If the surety insurer's assets do not exceed its liabilities in an amount equal to or in excess of the amount of the bond, subject to Section 12090 of the Insurance Code; or if the bidder fails to provide the specified documents; the bid may be determined non-responsive and may be rejected.

All bonds shall be duly executed by a responsible corporate surety listed in the current version of the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," admitted by the State of California Department of Insurance to do business in the State of California and acceptable to Owner.

Bond Costs in Bids.

All costs for applicable Bid Bonds, Labor and Material Payment Bonds, Performance Bonds, and Supply Bonds shall be included in Adjustment Factors.

**7.6 RIGHTS AND REMEDIES**

- 7.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.
- 7.6.2 No action or failure to act by the Owner, the Construction Manager, the Architect or the Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
- 7.6.3 The Contractor agrees that it can be adequately compensated by money damages for any breach of this contract which may be committed by the Owner and hereby agrees that no default, act or omission of the Owner, the Construction Manager or the Architect, shall constitute a material breach of the contract entitling the Contractor to cancel or rescind the provisions of the contract or to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which it might otherwise be or become entitled, saving only its right to money damages.

Unenforceability of any Clause.

If any clause or provision of the Contract Documents is held to be unenforceable or invalid, then that provision of the contract shall be stricken and the remaining portion shall remain in full force and effect.

## 7.7 TESTS AND INSPECTIONS

### 7.7.1 Materials Which May be Tested.

The Owner reserves the right to require the Contractor to provide samples, and to perform tests on any materials, articles, equipment, installations, or construction performed by the Contractor in addition to those specified in the Contract Documents. The Owner shall assume the cost of sampling and testing materials only when the Job Orders do not require the Contractor to do so.

### 7.7.2 Testing.

All tests shall be performed under the supervision of the testing laboratory or consultant employed by the Owner and at such times as are convenient to the Owner. The Contractor shall provide written notice to the Owner prior to the need for off-site tests or inspections, and the Owner will arrange such tests or inspections.

### 7.7.3 Selection of Samples.

All samples and specimens for testing shall be selected by the Inspector or by the testing laboratory, but not by the Contractor.

### 7.7.4 Delivery of Samples.

The Contractor shall, at its sole cost and expense, furnish, package, mark, and deliver all samples to be tested at locations other than the Job Order Site. Samples shall be delivered either to the Inspector or to the testing laboratory or such other address specified by the Owner.

Delivery of all samples to the testing laboratory shall be made in ample time to allow the test to be made without delaying construction. No extra time will be allowed for the completion of the Job Order by reason of delay in testing samples required by the Contract Documents or due to the Contractor's request for substitution.

The Contractor shall allow free access at all times to the representatives of the testing laboratory to the Job Order site, and shall point out the sources from which samples are taken.

All test reports shall be sent to all parties specified by the Owner.

### 7.7.5 Approval of Samples.

No materials or work of which samples and/or tests are required shall be used or covered until the Construction Manager informs the Contractor that such samples and/or tests have been approved. If the Contractor installs, uses, or covers any such material, article, or work prior to testing and approval, such shall be at the Contractor's sole risk and expense, and it shall bear all costs of uncovering, repair, and replacement thereof.

The approval of any samples shall be for the characteristics thereof, or for the uses named in such approval, and no other. No approval of any samples shall be deemed a change or modification in any requirement of the Contract Documents. Upon testing of any sample of material or work, no additional sample shall be considered. All material or work installed after the sampling and testing is performed and approved shall be equal to or better than the approved sample in all respects.

### 7.7.6 Damage Due to Testing.

The Contractor shall, at its sole cost and expense, repair all damage resulting from testing specified in the Contract Documents. The Owner shall issue an additional Job Order for repair of damage due to sampling or testing other than specified in the Contract Documents.

The Contractor shall not make any tests upon portions of the Job Order already completed, except with the prior written consent and under the direction and supervision of the Owner.

7.7.7 Retesting.

If as a result of any test, whether originally specified or not, any material or work is found to be unacceptable, it shall be rejected, and all further sampling and testing required by the Owner shall be at the Contractor's expense.

7.7.8 Effect of Sampling and Testing.

The Owner assumes no obligation, and the Contractor shall be relieved of no obligation undertaken pursuant to the Contract Documents by virtue of sampling and testing specified in this article.

The responsibility for incorporating satisfactory materials and workmanship which meet the Contract Documents in the work rest entirely with the Contractor, notwithstanding any prior samples or tests.

7.7.9 Inspection shall be provided as required under CCR Title 24, current edition. All inspection costs will be paid for by the Owner, including special inspection required by Title 24, except as noted otherwise below. A list of required inspections for the Job Order is included in the individual Job Order.

The Inspector shall be approved by the Owner. The Inspector will be employed by the Owner and will perform all inspections in accordance with Title 24, parts 1-5.

The designated Inspector shall be considered to be a representative of the Owner. It is the inspector's duty to inspect those portions of the Job Order which the Owner has designated.

The Inspector shall have the authority to order the work designated for inspection stopped if a determination is made that work is proceeding in violation of the Contract Documents or any orders issued by the Owner, Construction Manager, or Architect.

Upon issuing a stop work notice, the Inspector shall notify the Owner, who shall inspect the work in question and determine whether it does or does not comply with the Contract Documents. The decision of the Owner shall be final. The Contractor shall thereafter comply with the instructions of the Owner regarding corrections needed to cure the defect. The suspended work shall be resumed only when the instructions are fulfilled. The Contractor shall not be entitled to an extension of time in the event of such suspension of work.

Neither the final inspection and payment, nor any interim inspection or progress payment shall relieve the Contractor of its obligation to fulfill the contract as required by the Contract Documents.

Any work, materials or equipment not meeting the requirements and intent of the Contract Documents may be rejected, and unsuitable work or materials shall be made good, notwithstanding the fact that such work or materials may previously have been inspected and/or payment therefore may have been made.

Should the Owner, Construction Manager or the Architect determine that it is necessary or advisable to make an inspection of work already completed at any time before final inspection and acceptance of the Job Order, by removing or exposing any work, the Contractor shall, upon instruction of the Owner, promptly furnish all necessary facilities, labor, and materials to do so. If the work is found to be defective in any respect due to the fault of the Contractor or any subcontractor, the Contractor shall bear all expenses of such examination and satisfactory reconstruction. If, however, the work is found to meet the requirements of the Contract

Documents, the additional cost of labor and material necessarily involved in the examination and replacement shall be allowed the Contractor and an additional Job Order shall be issued for such cost and any time extension justified by delays to the critical path.

Where the Contract Documents, instructions by the Inspector, Construction Manager or the Architect, laws, ordinances, or any public authority having jurisdiction require work to be inspected, tested or approved before the Work proceeds, such work shall not proceed, nor shall it be covered up without inspection. If any part of the Work is covered prior to inspection, the Owner may order the work to be uncovered so that inspection may be accomplished. The Contractor shall bear all expenses of such examination and satisfactory reconstruction.

The Contractor shall provide written notice to the Inspector at least twenty-four (24) hours in advance of the readiness for inspection.

All work shall be available for inspection and the Inspector shall have full access to review all work during all working times. The Contractor shall provide all necessary means of access (e.g. ladders) for the Inspector to perform his duties. The Contractor shall furnish the Inspector with any information necessary to fully inform him of conditions. Inspection does not relieve the Contractor from fulfilling the requirements of the Contract Documents.

## **ARTICLE 8**

### **TIME**

#### **8.1 DEFINITIONS**

8.1.1 Unless otherwise provided, the Job Order Time is the period of time allotted in the Contract Documents for Substantial Completion of the Job Order as defined in Subparagraph 8.1.3, including authorized adjustments thereto. "Date of Completion" is the date certified by the Owner when construction of the Work is 100% complete including acceptance by the Owner of all punch list corrections for each Job Order.

8.1.2 The Date of Commencement of the Contract is the date established in a Contract Notice to Proceed. If there is no Notice to Proceed, it shall be such other date as may be established in the Owner-Contractor Agreement and receipt of all required preconstruction submittals, bonds and insurance, or as established elsewhere in the Contract Documents.

The Date of Commencement of the Job Order is the date established by the Job Order Notice to Proceed. Any Job Order awarded prior to expiration of the Contract, shall be completed with all articles of the Contract in full effect.

8.1.3 The Date of Substantial Completion of the Job Order or designated portion thereof is the Date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so that the Owner or separate contractors can occupy or utilize the Work or a designated portion thereof for the use for which it is intended.

8.1.5 The term Day as used in the Contract Documents shall mean calendar day of 24 hours, including each and every day of the year unless specifically designated otherwise.

8.1.6 Abnormal Weather Conditions as used in the Contract Documents shall be defined as weather conditions that the area does not encounter more than once, on an average of every ten or fifteen years.

8.1.7 Normal Weather Conditions are weather conditions which are normal for the location of the

Project, according to the U. S. Weather Bureau Records. The Contractor shall reasonably anticipate that normal weather conditions will be encountered, which based on the weather data from the Western Regional Climate Center, National Weather Service, for Visalia, California, average precipitation days per month are as follows:

January	5 days
February	5 days
March	4 days
April	2 days
May	1 day
June	0 days
July	0 days
August	0 days
September	0 days
October	1 day
November	3 days
December	4 days
Total:	25 days/year

Final determination of the final impact of adverse weather may be deferred to the conclusion of the Job Order. Extensions of time may be requested for any month of construction for days lost, which affect the critical path of construction, due to adverse weather in excess of the normal weather conditions, as defined above. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating days claimed and the impact on the critical path of construction.

The Contractor will not be granted time extensions for weather conditions which are normal for the Project location.

## 8.2 **PROGRESS AND COMPLETION**

- 8.2.1 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2.
- 8.2.2 The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion of the Work within the Job Order Time.

### 8.3 Extensions of Time; Unavoidable Delays.

The Contractor shall not be granted an extension of time except on the issuance of a Change Order or an additional Job Order by the Owner, upon a finding of good cause for such extension.

As used herein, the following terms shall have the following meanings:

- 8.3.1 "Excusable Delay" means any delay in completion of the Work beyond the expiration of the Job Order Time caused by conditions beyond the control and without the fault or negligence of the

Contractor. These events may include strikes, embargoes, fire, unavoidable casualties, national emergency, and stormy and inclement weather conditions in which the Owner and Inspector agree that work on the critical path cannot continue. The financial inability of the Contractor or any Subcontractor or supplier and any default of any Subcontractor, without limitation, shall not be deemed conditions beyond the Contractor's control. An Excusable Delay may entitle the Contractor to an extension of the Job Order Time, in accordance with this Section of the general conditions, but shall not entitle the Contractor to any adjustment of the Job Order Sum.

8.3.2 "Compensable Delay" means any delay in the completion of the Work beyond the expiration date of the Job Order Time caused solely by the wrongful acts of the Owner and which delay is unreasonable under the circumstances and not within the contemplation of the parties. A Compensable Delay may entitle the Contractor to an extension of the Job Order Time, in accordance with this Section of the General Conditions and/or an adjustment of the Job Order Sum by issuing an additional Job Order, in accordance with Article 12. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

8.3.2 "Inexcusable Delay" means any delay in completion of the Work beyond the expiration of the Job Order Time resulting from causes other than those listed in Subparagraphs 8.3.1 and 8.3.2, above. An Inexcusable Delay will not entitle the Contractor to an extension of the Job Order Time or an adjustment of the Job Order Sum.

The Contractor may make a claim for an extension of the Job Order Time, for an Excusable Delay or a Compensable Delay, subject to the following:

1. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Job Order Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. Any adjustment of the Job Order Sum, by issuing an additional Job Order, shall be in accordance with Article 12 and shall be based only on the non-concurrent portion of any Compensable Delay.
2. If an Inexcusable Delay occurs concurrently with either an Excusable Delay and/or a Compensable Delay, the maximum extension of the Job Order Time shall be the number of days, if any, by which the duration of the Excusable Delay and/or the Compensable Delay calculated in accordance with subparagraph 8.3.2.1, if applicable, exceeds the Inexcusable Delay. The duration of the concurrence is non-compensable.

Delays in the prosecution of parts or classes of the Work which do not prevent or delay the completion of the whole Work within the Job Order Time are not to be considered Excusable or Compensable.

8.3.3 Notice of Delays.

Whenever the Contractor foresees any delay in the prosecution of the Work, and in any event immediately upon the occurrence of any delay which the Contractor regards as good cause for an extension, the Contractor shall notify the Owner in writing of the delay. The notice shall specify with detail the cause asserted by the Contractor to constitute good cause for an extension together with a description of the effect of the delay on the Construction Schedule and a quantification of the length of the requested extension of Job Order time. Failure of the Contractor to submit such a notice within seven (7) days after the initial occurrence of the event giving rise to the delay shall constitute a waiver by the Contractor of any request for extension, and no extension shall be granted as a consequence of such delay. Any claim or extension of time shall be made in writing to the Owner not more than ten (10) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of



such delay on the progress of the Work.

The Owner shall have no obligation to consider any Job Order time extension request unless the requirements of the Contract Documents are complied with. The Owner shall not be responsible or liable to the Contractor for any constructive acceleration due to failure of the Owner to grant Job Order time extensions under the Contract Documents, should the Contractor fail to comply with the submission and justification requirements of the Contract Documents for Job Order time extension requests. The Contractor's failure to perform in accordance with the Construction Schedule shall not be excused because the Contractor has submitted Job Order time extension requests, unless and until such requests are approved by the Owner.

8.3.4 Investigation; Procedure.

Upon receipt of a request for Job Order time extension, the Owner shall conduct an investigation of the facts asserted by the Contractor to constitute good cause for an extension. The Owner shall report the results of this investigation, as well as the propriety of the Job Order time extension requested, to the Contractor in writing within 10 days of receipt of the request and shall indicate whether it will recommend for or against the extension.

Upon receiving the Owner's recommendation, the Contractor may either concur in the recommendation, or reject the recommendation and proceed with a claim as provided for in Article 7.4.

8.3.5 Discretionary Job Order Time Extensions for Best Interest of Owner.

The Owner reserves the right to extend the Job Order time for completion of the Work if the Owner determines that such extension is in the best interest of the Owner. In the event that a discretionary extension is granted at the request of the Contractor, the Owner shall have the right to charge to the Contractor all or any part, as the Owner may deem proper, of the actual cost of construction management, engineering, inspection, supervision, incidental and other overhead expenses that accrue during the period of the extension, and to deduct all or any portion of that amount from the final payment for the Work.

In the event a discretionary Job Order time extension is ordered over the objection of the Contractor, and the decision rests solely with the Owner and is not legally compelled for any cause, the Contractor shall be entitled to an additional Job Order adjusting the Job Order price paid to reflect the actual costs incurred by the Contractor as a direct result of the delay, upon its written application therefore, accompanied with such verification of costs as the Owner requires. The decision of the Owner on any discretionary Job Order time extension and the costs thereof shall be final and binding on the Owner and the Contractor.

8.3.6 Liquidated Damages.

If the Work is not completed by the Contractor in the Job Order time specified in, or within any period of Job Order time extension authorized pursuant to this Article, the Contractor acknowledges and admits that the Owner will suffer damage, and that it is impracticable and infeasible to fix the amount of actual damages. Therefore, it is agreed by and between the Contractor and the Owner that the Contractor shall pay to the Owner as fixed and liquidated damages, and not as a penalty, the sum specified in the Agreement for Construction for each calendar day of delay until the Date of Completion of the Job Order, and that both the Contractor and the Contractor's surety shall be liable for the total amount thereof, and that Owner may deduct Liquidated Damages from any monies due or that may become due to the Contractor. If it appears during the course of construction that the Contractor is behind schedule and the imposition of liquidated damages is likely, or if liquidated damages begin to accrue prior to the time for final payment, the amount accrued shall be withheld from any progress payment that would otherwise be due. This right to withhold funds is intended to complement the Owner's rights under Section 9.6.1.

This liquidated damages provision shall apply to all delays of any nature whatsoever, save and except only delays found to be excusable or compensable pursuant to Section 8.3, or Job Order time extensions granted by the Owner pursuant to Section 8.3.

Payment by the Owner of any progress payments after expiration of the Job Order Time shall not constitute a waiver by the Owner of its right to claim liquidated damages in accordance with this Section.

8.3.7 Extension of Time Not a Waiver.

Any extension of Job Order time granted the Contractor pursuant to this Article shall not constitute a waiver by the Owner of, nor a release of the Contractor from the Contractor's obligation to perform this Job Order in the time specified, as modified by the particular extension in question.

The Owner's decision to grant a Job Order time extension due to one circumstance set forth in one request, shall not be construed as a grant of an extension for any other circumstance or the same circumstance occurring at some other time, and shall not be viewed by the Contractor as a precedent for any other request for extension.

8.3.8 Suspensions Exceeding One Year.

Should the Work on an individual Job Order be suspended for a period exceeding one calendar year due to war conditions, labor conditions, legal actions, or for other conditions constituting the legal defense of impossibility of performance, the Contractor and Owner agree to enter into an agreement terminating the

## **ARTICLE 9** **PAYMENTS AND COMPLETION**

9.1 **JOB ORDER SUM**

9.1.1 The Job Order Sum is stated in the individual Job Orders and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the individual Job Order under the Contract Documents.

9.2 **Payments**

For Job Orders with a construction duration of 45 days or less there shall be a payment of 90% of the Job Order sum upon final completion of the Work. The final 10% of the Job Order sum will be paid 30 days later. For Job Orders with a construction duration greater than 45 days progress payments may be made monthly as established in the Job Order itself.

9.3 **APPLICATIONS FOR PAYMENT**

9.3.1 At least five days before the date for each progress payment established in the Job Order, the Contractor shall submit to the Owner an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner or the Construction Manager may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. AIA Documents G702, Application And Certificate For Payment and G703, Continuation Sheet, or other substitute form supplied and required by the Owner shall be used. Payment is expressly conditioned upon submission by the Contractor and all of its subcontractors and material suppliers warranting that title to all work, labor, materials and equipment covered by the application is free and clear of all liens, claims, security interests or encumbrances. Additionally the contractor and all of its subcontractors and material suppliers shall submit unconditional lien releases for all work through the prior progress payment. For final

payment, the Contractor shall submit a notarized unconditional lien release. Waiver and Release forms must be submitted on forms provided or approved by the County of Tulare. Copies of said forms shall comply with Civil Code §3262.

9.3.2 No progress payment will be made unless all general conditions items (as-built updates, schedule updates, certified payroll or other pay records, lien releases, etc.) have been received by the Construction Manager in acceptable form. The on site master set of drawings will be reviewed by the Construction Manager to verify that all changes have been noted and that the drawings are current prior to the processing of any pay application.

9.3.3 Unless otherwise provided in the Contract Documents, payments may be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the Job Order site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the Job Order site. Materials stored off-site, to be considered for payment, shall, in addition to the above requirements, be stored in a bonded warehouse, fully insured, and available to the Owner, Architect and Construction Manager for inspection. The Owner shall have complete discretion as to the amount of material and equipment that may be stored on the Job Order Site at any given time.

9.3.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, stop notices, claims, security interest or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the Job Order site or furnishing materials and equipment for the Job Order, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

The Contractor agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by this contract shall have any right to a lien upon the premises or any improvement or appurtenances thereon; provided, however, that nothing contained in this Section shall defeat or impair the rights of persons furnishing materials or labor under the payment bond given by the Contractor, nor any rights under any law permitting such persons to look to funds due to the Contractor but retained by Owner.

The Contractor shall cause the provisions of this Section to be inserted in all subcontracts and material contracts executed by the Contractor and notice of this provision shall be given to all persons furnishing materials for the Work.

This Section shall not disallow the Contractor's installing any devices or equipment of utility companies or of governmental agencies, the title to which is commonly retained by the utility company or the agency.

9.3.5 Progress Payments: The Contractor shall on or before the assigned billing date of each month make an estimate of the work performed during the preceding month and submit an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner or the Construction Manager may require, including appropriate updates to the Job Order Construction Schedule, and reflecting retainage, if any, as

provided elsewhere in the Contract Documents. The Contractor will assemble the Application and forward it to the Owner within five days for checking and approval.

At a meeting held on or before the assigned billing date of each month, the Owner, Construction Manager, Architect, Inspector and Contractor will review the Contractor's proposed percentages of completion and agree on a final percentage to be paid for that month.

On or about the 25th day following the assigned billing date of the month in which the work was performed, the Owner shall pay to the Contractor ninety (90%) percent of the value of said work in place, as checked and approved by the Construction Manager. The balance of ten (10%) percent of the estimate shall be retained by the Owner until the time of final acceptance of the Job Order.

- .1 If the Owner does not pay the Contractor within thirty days after receipt of an undisputed and properly submitted payment request for a progress payment, excluding that portion of the final payment designated by the contract as retention earnings, then the Owner shall pay interest to the Contractor as provided by Public Contract Code § 20104.50. Said interest penalty is the sole recourse of Contractor and Contractor shall have no right to stop the Work until payment of the amount owing has been received, nor shall the Job Order Time be extended, nor shall the Job Order Sum be increased in any way, including by reason of any costs incurred by Contractor, except to the extent of said interest payment.
- .2 Pursuant to Public Contract Code § 7107, in the event of a dispute between the Owner and Contractor, the Owner may withhold from the final Job Order payment an amount not to exceed 150 percent of the disputed amount. Except as so provided, the Owner shall release the retention withheld within 60 days after the date of completion of the Job Order improvement, as "completion" is defined in Public Contract Code § 7107. In the event that retention payments are not made within the time periods required by Public Contract Code § 7107, the Owner may be subject to the interest provisions of Public Contract Code § 7107.

- 9.3.6 Security Substitutions and Escrow for Moneys Withheld to Insure Contractor's Performance. Pursuant to Public Contract Code section 22300, the Contractor may deposit in an escrow, equivalent securities for any moneys withheld to insure performance and have said moneys paid directly to Contractor, or, in the alternative, have the Owner deposit such moneys directly into an escrow. Upon the closing of any such escrow, Contractor shall pay to each subcontractor, not later than 20 days after receipt of the closing payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of the Contractor. Any escrow established pursuant to this article shall be with a state or federally chartered bank, shall be at the sole expense of the Contractor, and shall be established using an escrow agreement in substantially the following form:

Either alternative under this Section may be exercised only if requested in writing by the Contractor within five (5) days after receipt of Notice of Intent to Award. The Contractor shall notify its subcontractors in writing within fifteen (15) days of exercising this option.

**ESCROW AGREEMENT FOR  
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between the County of Tulare, (hereinafter called "Owner"), \_\_\_\_\_  
(hereinafter called "Contractor"); and \_\_\_\_\_, a  
state or federally chartered bank in California, (hereinafter called "Escrow Agent").

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for \_\_\_\_\_ in the amount of \$\_\_\_\_\_, and dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the contractor, the owner shall make payments of the retention earnings directly to the escrow agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within ten (10) days of the deposit. The market value of the securities at the time of the substitution, as valued by the Owner, shall be at least equal to the cumulative total cash amount then required to be withheld as retention under the terms of the contract between Owner and Contractor. If the Owner determines that the securities are not adequate it will notify Contractor and Escrow Agent, and Contractor shall deposit additional security as further determined by the Owner. Securities shall be held in the name of the Owner and shall designate the Contractor as the beneficial owner.
2. Upon the deposit of adequate securities, Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions.
3. When the Owner, at Contractor's written request, makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.
7. The Owner shall have the right to draw upon the securities or any amount paid directly to Escrow Agent in the event of default by the Contractor. Upon seven (7) days written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash, including any amounts paid directly to Escrow Agent, as

instructed by the Owner. Escrow Agent shall not be concerned with the validity of any notice of default given by Owner pursuant to this paragraph, and shall promptly comply with Owner's instructions to pay over said escrowed assets. Escrow Agent further agrees to not interplead the escrowed assets in response to conflicting demands and hereby waives any present or future right of interpleader.

8. Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.
9. Escrow Agent shall rely on the written notifications from the Owner and Contractor pursuant to Sections (3), (5), (6), (7) and (8) of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
10. Securities eligible for investment under this Agreement, as provided by Public Contract Code § 22300, shall be those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and Owner.
11. The venue of any litigation concerning the rights and obligations of the parties to this agreement shall be the County of Tulare and the removal provisions of Code of Civil Procedure Section 394 shall not apply to any such litigation.
12. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

**On behalf of Owner:**

Title  
Name  
Signature  
Address

**On behalf of Contractor:**

Title  
Name  
Signature  
Address

**On behalf of Escrow Agent:**

Title  
Name  
Signature  
Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

**Owner:**

Title  
Name  
Signature  
Address

**Contractor:**

Title  
Name  
Signature  
Address

**Escrow Agent:**

Title  
Name  
Signature  
Address

9.3.7 Itemized Breakdown: The Contractor shall submit a financial breakdown of the work, itemized by the Job Order Proposal Summary. The Contractor's payment shall be based upon the monthly percentage of completion of these items.

9.3.8 Lien Waivers: The Owner or Construction Manager may require the Contractor to submit, along with the progress payment request, notarized lien waivers from each subcontractor, materials or equipment supplier. Lien waivers shall comply with Civil § Code 3262. The aggregate sum of which shall reflect previous progress payments.

## 9.5 **PROGRESS PAYMENTS**

9.5.1 The Owner shall make payment in the manner and within the time provided in the Contract Documents.

9.5.2 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Job Order on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to their Sub-subcontractors in similar manner.

9.5.3 The Construction Manager may on request, at the Construction Manager's discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Construction Manager on account of Work done by such Subcontractor.

9.5.4 Neither the Owner nor the Construction Manager shall have any obligation to pay or to see to the payment of any monies to any Subcontractor or Material Suppliers except as may otherwise be required by law.

9.5.5 Neither certification of a progress payment, delivery of a progress payment, nor partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

## 9.6 **PAYMENTS WITHHELD**

9.6.1 The Construction Manager may decline to certify payment and may withhold the Certificate in whole or in part to the extent necessary to reasonably protect the Owner, if, in the Construction Manager's opinion, the Construction Manager is unable to make representations to the Owner as provided in Subparagraph 9.4.2. If the Construction Manager is unable to make representations to the Owner as provided in Subparagraph 9.4.2, and to certify payment in the amount of the Job Order Application, the Construction Manager will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and the Construction Manager cannot agree on a revised amount, the Construction Manager will promptly issue a Job Order Certificate for Payment for the amount for which the Construction Manager is able to make such representations to the Owner. The Construction Manager may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, the Construction Manager may nullify the whole or any part of any Job Order Certificate for Payment previously issued to such extent as may be necessary, in the Architect's opinion, to protect the Owner from loss because of:

- .1 defective Work not remedied;



- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, including claims by separate contractors;
- .3 failure of the Contractor to make payments properly to Subcontractors, or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Job Order Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be accomplished in compliance with the Job Order Time;
- .7 persistent failure to carry out the Work in accordance with the Contract Documents;
- .8 stop notice served upon the Owner.
- .9 Failure of the Contractor to comply with any lawful or proper direction concerning the Work given by any Owner representative authorized to have given such instruction;
- .10 Claims and/or penalties which state law assesses against the Contractor for violation of such law;
- .11 Any claim or penalty asserted against the Owner by virtue of the Contractor's failure to comply with the provisions of all governing laws, ordinances, regulations, rules, and orders;
- .12 Any liquidated damages which may accrue as a result of the Contractor's progress failing to meet the schedule milestones or failing to achieve completion within the Job Order Time.
- .13 Any reason specified elsewhere in the Contract Documents as grounds for a retention or that would legally entitle the Owner to a withhold.

9.6.2.1 When the grounds in Subparagraph 9.6.1 above are removed, payment shall be made for amounts withheld because of them.

In order to adequately protect the Owner, the Contractor agrees that the basic standard to determine the amount to be withheld pursuant to this Section shall be one hundred fifty percent (150%) of the amounts claimed or the value of the work not done or defectively done; provided, however, that Owner reserves the authority to retain greater sums should such sums be necessary in the Owner's discretion to adequately protect it.

Disbursement of Withheld Amounts.

The Owner, in its sole discretion, may apply any withheld amount or amounts to the payment of any claim resulting in a withhold. The Contractor agrees and hereby designates the Owner as its agent for such purposes, and any payment so made by the Owner shall be considered as a payment made under this contract by the Owner to the Contractor. The Owner shall not be liable to the Contractor for any payments made in good faith. Such payments may be made without a prior judicial determination of the claim or claims. The Owner shall render to the Contractor a proper accounting of any funds disbursed on behalf of the Contractor.

Prior to disbursing any amounts, Owner shall afford the Contractor an opportunity to present good cause, if any it has, why the claim or claims in issue are not valid or just claims against the Contractor. The Owner reserves the right then to take such further steps as are appropriate, in its sole discretion, including, but not limited to, seeking a judicial resolution of the controversy.

Correction of Statement and Withholding of Payment.

No inaccuracy or error in any statement provided by the Contractor shall operate to release the Contractor or any surety from the error, or from damages arising from such work, or from any

obligation imposed by the Contract Documents. The Owner shall retain the right subsequently to correct any error made in any previously issued claim for the Job Order progress payment, Job Order or progress payment issued, by adjustments to subsequent payments.

Effect of Progress Payments.

Neither the payment, the withholding, nor the retention of all or any portion of any progress payment claimed to be due and owing to the Contractor shall operate in any way to relieve the Contractor from its obligations under this agreement. The Contractor shall continue diligently to prosecute the Work without reference to the payment, withhold, or retention of any Job Order progress payment. The payment, withhold, or retention of any progress payment shall not be grounds for an extension of the Job Order Time.

## **9.7 SUBSTANTIAL COMPLETION, INSPECTION, AND OCCUPANCY BY OWNER**

### **9.7.1 Notice of Punch List Inspection.**

When the Contractor believes that a Job Order is complete, it shall request in writing a punch list inspection. Within five (5) days of the receipt of such request, the Construction Manager and the Architect shall make a punch list inspection or inform the Contractor that the work is not ready for punch list inspection; upon completion of the deficient work, the Contractor shall again request a punch list inspection. The Contractor or its representatives shall be present at the punch list inspection. The purpose of the punch list inspection is to determine whether the Work has been completed in accordance with the Contract Documents, including the Job Order, all interpretations and instructions previously issued.

Punch List.

The Construction Manager and the Architect shall notify the Contractor in writing of any deficiencies to be remedied prior to final acceptance, by preparing a written list, known in the industry as a punch list.

The Contractor shall remedy all items shown on the punch list prior to final acceptance by the Construction Manager and the Architect.

No one is authorized to amend the Contract Documents by use of the punch list; it is provided solely for the benefit of the Contractor to enable him to determine what items must be corrected before final acceptance will be recommended by the Construction Manager and the Architect. The Owner reserves the right to require compliance with the Contract Documents, notwithstanding the issuance of a punch list or the completion by the Contractor of all items on the punch list.

In the event that the Work still does not comply with the Contract Documents, the Owner reserves the right to issue such further punch lists as may be required, or to deduct from the final payment the cost of correcting any work not completed in accordance with the Contract Documents, but accepted by the Owner, without the issuance of further punch lists.

If punch list work needs to be performed after the Owner has taken occupancy of a phase, the work shall be conducted outside of normal operating hours at the direction of the Owner.

### **9.7.2 Use of Work Prior to Acceptance.**

Whenever, in the opinion of the Owner, the Work or any part thereof, is in a condition suitable for use, and the best interests of the Owner require such use, the Owner may take possession of, connect to, and open for public or Owner use that portion of the Work.

### **9.7.3 Repairs or Renewal in the Work.**

Prior to the Date of Completion, the Contractor shall make all repairs or renewals in the portion of the Work occupied made necessary due to defective material or workmanship, or the operations of the Contractor, ordinary wear and tear excepted.

9.7.4 Effect of Occupancy.

The Owner occupancy as contemplated in this Article shall not constitute acceptance by the Owner of the Work or any part thereof. Such use shall neither relieve the Contractor of any of its responsibilities under the Contract Documents, nor act as a waiver by the Owner of any of the terms or conditions of the Contract Documents. Any damage done by the Owner is the responsibility of the Owner.

9.7.5 Coordination with Other Activities.

The Contractor shall conduct its operations so as not to interfere unreasonably with the Owner's use of the occupied portions of the site. The Contractor shall submit periodic schedules to the Construction Manager proposing the times, areas, and types of work to be done within such areas.

If the work produces conditions rendering the occupied portions of building, the Site, or other areas uninhabitable, either because of noise, dust, vibration, smoke, fumes, or for any other cause whatsoever, the Construction Manager may suspend the Work or direct the Contractor to modify the Job Order Schedule, and the Contractor shall comply.

Except as provided by Change Order or an additional Job Order, the Contractor shall not be entitled to a Job Order time extension or increase in the Job Order Sum by virtue of conflicts between the Contractor's work and the Owner's occupancy.

9.7.4 Warranties required by the Contract Documents shall commence on the date of the recording of the Job Order Notice of Completion on the individual Job Order.

9.8 **FINAL COMPLETION, CONTRACT CLOSEOUT AND FINAL PAYMENT**

9.8.1 Contractor's Request for Final Payment.

When the Contractor determines that the Job Order is complete and all items on the punch list have been satisfied, or contends that such items are not required by the Contract Documents, the Contractor shall submit a request for final payment on the form provided.

9.8.2 Additional Submissions.

Simultaneously with the Contractor's request for final payment, the Contractor shall submit the following items when required by the Contract Documents :

- A. As-built drawing information pursuant to Section 4.11.3.
- B. Three (3) sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation, elevators, kitchen equipment, and all other equipment required by the technical specifications to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly and concisely detailed.

No payment will be processed unless accompanied by the listed documents in acceptable form.

Notice of Completion and Acceptance of Job Order.

Acceptance of the Work by the Owner and the recordation of a Job Order Notice of Completion

shall be in the manner prescribed by law, provided that the Work shall then be fully and satisfactorily completed and the provisions of the Contract Documents fully and satisfactorily performed in all respects.

Certificate of Final Payment.

Within ten (10) days after the recordation of the Job Order Notice of Completion, the Owner shall present a certificate of final payment stating the entire balance found to be due the Contractor. The amount set forth in that certificate shall then be due and payable, less retentions due to stop notices.

Approval of Final Payment.

Following receipt of the certificate of final payment by the Owner, the Owner shall authorize final payment to the Contractor in the sum specified on the certificate of final payment, subject to retentions for stop notices as provided in Article 14. Final payment shall be made no later than sixty (60) days after recordation of the Job Order Notice of Completion and in accordance with Public Contract Code Section 7107.

Withholding for Stop Notices.

The Owner may, in its sole discretion, and at any time, withhold from the Contractor any unpaid claims alleged in Stop Notices filed pursuant to Civil Code Section 3179 et seq. The Owner reserves all remedies it may have in the event of a stop notice dispute. The basic standard to determine a sufficient withholding in the event of a Job Order Stop Notice shall be one hundred fifty percent (150%) of the total of all stop notices filed on an individual Job Order; provided, however, the Owner reserves the right to withhold different or greater sums in its discretion.

Non-Waiver.

Neither acceptance of, nor payment for, the Work or any part thereof, nor any extension of Job Order time, nor any possession taken by Owner shall operate as a waiver of any of the provisions of this contract, nor shall a waiver of any breach of this contract be held to be a waiver of any other or subsequent breach. In addition, recordation of a Job Order Notice of Completion shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of this agreement.

- 9.8.3 If, after Substantial Completion of the Job Order, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of additional Job Order affecting final completion, and the Construction Manager so confirms, the Owner shall, upon application by the Contractor and certification by the Construction Manager and without terminating the Contract, make payment of the balance due for that portion of the Job Order fully completed and accepted. If the remaining balance for Job Order not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for that portion of the Job Order fully completed and accepted shall be submitted by the Contractor to the Construction Manager prior to certification of such payment. Such payment shall be made under the Terms and Conditions governing final payments, except that it shall not constitute a waiver of claims. AIA Documents G707, Consent of Surety Company to Final Payment or if appropriate G707-A, Consent of Surety to Reduction in or Partial Release of Retainage, shall be used.
- 9.8.4 The acceptance of final payment shall, after the Date of Job Order Substantial Completion of the Job Order, constitute a waiver of all claims by the Contractor.
- 9.8.5 All provisions of this Agreement, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment for the individual Job Order.

**ARTICLE 10**  
**PROTECTION OF PERSONS AND PROPERTY**

**10.1 SAFETY PRECAUTIONS AND PROGRAMS**

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the individual Job Order. The responsibility for maintaining a safe working site shall be the Contractor's, and the Owner undertakes no obligation to suspend the work or notify the Contractor of any hazardous condition or noncompliance with safety laws.

**10.2 SAFETY OF PERSONS AND PROPERTY**

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- .1 all employees on the individual Job Order and all other persons who may be affected thereby;
- .2 all the work and all materials and equipment to be incorporated therein, whether in storage or off the site, under the care, custody or control of the Contractor or any of the Contractor's Subcontractors or Sub-subcontractors;
- .3 other property at the Job Order site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 the work of the Owner or other separate contractors.

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

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent facilities. The Contractor shall enforce any instructions from the Owner regarding placement of signs, fires, danger signals, barricades, radios, noise and smoking.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of an individual Job Order, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy all damage or loss to any property referred to in Clauses 10.2.1.2. and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable solely to the acts or omissions of the Owner and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 4.17.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's

superintendent unless otherwise designated by the Contractor in writing to the Owner.

- 10.2.7 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.2.8 Traffic Signs and Traffic Control

Existing signs, lights, traffic signals, control boxes, hydrants, meters, and other similar items occurring within the street or sidewalk areas shall be kept free of obstructions and accessible at all times. All such items shall be protected from the Contractor's operations and shall not be obliterated or obscured by its equipment or materials.

Should it be necessary to cover up, move, or alter such items, this shall be done only with permission of the authorities having jurisdiction over the items involved.

Should it be necessary to block a street or sidewalk, the Contractor shall first notify the Owner and the police and fire departments and other agencies with jurisdiction, and shall comply with their instructions, including scheduling limitations.

10.2.9 Security of the Site.

The Contractor's attention is directed to the individual Job Order regarding requirements for fencing the Site, gates, screening, and the security requirements.

10.2.10 Removal of Barricades.

Upon completion of the work, the Contractor shall remove from the site all materials used for barricades, temporary scaffolding, or any other temporary uses.

10.2.11 Protection of Adjacent Property; Notices.

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 on the Site or adjacent to the Site which are in any way affected by the excavations or other operations connected with the completion of the Work.

Prior to excavation, the Contractor shall notify all public utilities and governmental agencies of the work proposed, and shall ascertain from them the exact location of their utilities.

Prior to commencing any work which in any way affects adjoining or adjacent land or buildings thereon, or public utilities, the Contractor shall notify the Owner specifying the type of work to be done, the schedule of the work, the impacts expected from the work and the protective measures being taken by the Contractor.

Whenever any notice is required to be given to any adjoining or adjacent landowner, utility, governmental agency or other party before commencement of any work, the notice shall be given by the Contractor at least seven days in advance of the work, or longer if required by law or regulation, with a copy delivered to the Owner.

The Contractor shall, at the written instruction of the Owner, meet with any recipient of such notice to explain and discuss the proposed work.

10.2.12 Fire Protection.

The Contractor shall take all steps necessary to protect all structures from fires and sparks originating from the individual Job Order, shall comply with all laws and regulations regarding fire protection, and shall comply with all instructions of the fire department with jurisdiction.

The Contractor shall notify the Owner and the fire department in writing at least 72 hours prior to

disconnection of either water or electrical service to the site, and shall comply with the fire department's instructions regarding fire safety.

10.2.13 Repairs or Replacement.

Any damage to existing conditions, or to any other improvement or property above or below the surface of the ground, whether private or public, arising from performance of this contract shall be repaired within 48 hours by the Contractor without expense to the Owner, unless disruption of existing facility operations or creation of a safety hazard has occurred, in which case damage will be corrected immediately.

If in the best interest of the Owner requires that repairs be made prior to the execution of any further work of an individual Job Order, the Owner will so notify the Contractor who shall delay or discontinue that part of the Job Order until the necessary repair has been made. Such delay shall not be considered unavoidable and no extension of the Job Order Time will be granted therefore.

Upon the failure of the Contractor to comply with any such order, or upon the Contractor's failure to make immediate emergency repairs which are necessary to protect the Work, the Owner shall do that work itself as is necessary to protect life and property, in its sole discretion, and deduct the total cost of such work from the next Job Order progress payment. No prior notice to the Contractor shall be necessary for the Owner to take this action.

10.3 **EMERGENCIES**

- 10.3.1 In any emergency affecting the safety of persons or property, including adjoining property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. The Contractor shall immediately notify the Owner of such actions. Any costs to the contractor for expenditures or time shall be borne by the contractor.

## **ARTICLE 11** **INSURANCE**

11.1 **CONTRACTOR'S INSURANCE.**

Bidders' attention is directed to the insurance requirements below. It is highly recommended that Bidders confer with their respective insurance carriers or brokers to determine in advance of bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low bidder fails to comply strictly with the insurance requirements, that Bidder may be disqualified from award of the Contract and forfeits its Bid Bond.

Contractor shall provide and maintain insurance for the duration of the warranty period against claims for injuries to persons and damage to property, which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees or subcontractors, if applicable.

11.1.1 MINIMUM SCOPE & LIMITS OF INSURANCE

- .1 Coverage at least as broad as Commercial General Liability Insurance of \$1,000,000 combined single limit per occurrence. If the annual aggregate applies it must be no less than \$2,000,000.
  - .2 Comprehensive Automobile Liability Insurance (if applicable) of \$1,000,000 per occurrence.
  - .3 Workers' Compensation and Employer's Liability insurance as required by law.
  - .4 Work and Materials Insurance (if applicable).
    - a. For up to \$25,000 for any loss on contracts for remodeling, renovation, alterations or maintenance of existing buildings.
    - b. For 100% of the contract value for all bridge construction and new construction up to \$250,000 (see Risk Manager for construction over \$250,000).
- 11.1.2 SPECIFIC PROVISIONS OF THE CERTIFICATE. The Certificate of Insurance for General Liability and Comprehensive Automobile Liability Insurance has to meet the following requirements:
- a. Name the COUNTY, its officers, agents, employees and volunteers, individually and collectively, as additional insureds.
  - b. State that such Insurance for additional insureds shall apply as primary insurance and any other insurance maintained by COUNTY shall be excess.
  - c. Provide that coverage shall not be suspended, voided, canceled, reduced in coverage, or otherwise materially changed except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.
- 11.1.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS. The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.
- 11.1.4 ACCEPTABILITY OF INSURANCE. Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A (-) from a company admitted to do business in California, any waiver of these standards are subject to approval by the County Risk Manager or County Risk Manager's designee.
- 11.1.5 VERIFICATION OF COVERAGE. Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.
- 11.1.6 ADDITIONAL CONSTRUCTION INSURANCE REQUIREMENTS:
- a. Payment Bond: For public works projects of more than \$25,000 a "payment bond" is required in the full amount of the Maximum Contract Value, and shall insure to the benefit of persons performing labor or furnishing materials in connection with the work of the Contract. This bond shall be maintained in full force and effect until all work under the Contract is completed and accepted by the COUNTY, or until all claims for materials and labor have been paid, which ever is longer.
  - b. Performance Bond: For public works projects of more than \$25,000 a "performance bond" is required in the full amount of the Maximum Contract Value and shall insure the faithful



performance by Contractor of all work under the Contract. It shall also insure the replacing of, or making acceptable, any defective materials or faulty workmanship.

- c. Acceptability of Surety: Only California admitted sureties with current AM Best Rating of no less than WVI.

## **ARTICLE 12**

### **CHANGES IN THE WORK**

#### **12.1 CHANGE ORDERS**

- 12.1.1 Definition: A Contract Change Order is a written order to the Contractor signed to show the agreement of the Owner and the Contractor issued after execution of the Contract, authorizing an adjustment in the Maximum Contract Value. The Maximum Contract Value shall be changed only by Change Order. A Change Order signed by the Contractor indicates the Contractor's agreement therewith.

- 12.1.2 Definition: A Job Order Change Order is a written order to the Contractor signed to show the agreement of the Owner and the Contractor issued after execution of the Job Order, authorizing a change in the Work or an adjustment in the Job Order Sum or the Job Order Time. The Job Order Sum and the Job Order Time shall be changed only by Change Order. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including the adjustment in the Job Order Sum or the Job Order Time, for full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

- 12.1.3 Changes to a Job Order Sum may be accomplished by issuing another Job Order. The Owner, without invalidating the original Job Order, may order changes in the Job Orders within the general scope of the Job Order consisting of additions, deletion or other revisions, the Job Order Sum and Job Order Time being adjusted accordingly. All such changes in the Job Order shall be authorized by additional Job Order, and shall be performed under the applicable conditions of the Contract Documents.

- 12.1.4 Subject to legal requirements relating to competitive bidding, The Owner, without invalidating the Contract, may order changes in the Job Orders within the general scope of the Contract consisting of additions, deletion or other revisions, the Job Order Sum and Job Order Time being adjusted accordingly. All such changes in the Job Order shall be authorized by additional Job Order, and shall be performed under the applicable conditions of the Contract Documents.

#### **12.2 CONCEALED CONDITIONS**

- 12.2.1 If an individual Job Order requires the digging of trenches or other excavations that extend deeper than four feet below the existing surface, the following provision shall apply to those trenches or excavations:

- 12.2.1.1 In the event that any of the following described conditions is suspected to exist in the trench or excavation, the Contractor shall promptly, and before the condition is disturbed, notify the Owner, in writing, of any:

1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of

existing law.

2. Subsurface or latent physical conditions at the site differing materially from those indicated.
3. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

12.2.1.2 Upon receipt of notice from the Contractor, the Owner shall promptly investigate the conditions, and if it is determined 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 new Job Order to change Job Order Sum or issue a Change Order to change the Job Order Time.

12.2.1.3 In the event that a dispute arises between the Owner and the Contractor as to 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 Job Order, but shall proceed with all work to be performed under the Job Order. The Contractor shall retain any and all rights provided either by the Contract Documents or by law which pertain to the resolution of disputes and protests between the contracting parties.

#### 12.4 **MINOR CHANGES IN THE WORK**

12.4.1 The Owner will have authority to order minor changes in the Work not involving an adjustment in the Job Order Sum or extension of the Job Order Time and not inconsistent with the intent of the Contract Documents. Such changes shall be enacted by written order issued by the Owner, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

### **ARTICLE 13** **UNCOVERING AND CORRECTION OF WORK**

#### 13.1 **UNCOVERING OF WORK**

13.1.1 If any portion of the Work should be covered contrary to the request of the Owner or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for their observation and shall be replaced at the contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Owner has not specifically requested to observe prior to being covered, the Owner may request to see such Work and it shall be uncovered by the contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate additional Job Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by the Owner or a separate contractor as provided in Article 6 in which event the Owner shall be responsible for the payment of such costs.

#### 13.2 **CORRECTION OF WORK**

The Owner shall have the right to reject materials and workmanship which are determined to be defective or fail to comply with the Contract Documents. Rejected workmanship shall be corrected satisfactorily, and rejected materials shall be removed from the premises and replaced, all without cost to the Owner.

- 13.2.1 The Contractor shall correct, within seven (7) days, all Work rejected as defective or as failing to conform to the Contract Documents whether observed before or after Job Order Substantial Completion of the Work and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work.
- 13.2.2 If, within one year after the recordation of the Job Order Notice of Completion of the Work or designated portion thereof, or within one year after acceptance by the Owner of designated equipment, or within such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the Work to be found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive both final payment for the Job Order or designated portion thereof and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.
- 13.2.3 The Contractor shall, at his sole expense, remove from the site all portions of the Work, which are defective or nonconforming and which have not been corrected under Subparagraphs 4.5.1, 13.2.1 and 13.2.2, unless removal is waived by the Owner.
- 13.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Subparagraphs 4.5.1, 13.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.
- 13.2.5 If the Contractor does not proceed with the correction of such defective or nonconforming Work within a reasonable time fixed by written notice from the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may, upon ten additional days' written notice, sell such Work at auction or at private sale and shall account for the proceeds thereof, after deducting all the costs that should have been borne by the Contractor. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate additional Job Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.
- 13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.
- 13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation, which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time periods noted in Subparagraph 13.2.2, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### 13.3 ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK

- 13.3.1 If the Owner prefers to accept defective or nonconforming Work, the Owner may do so instead of requiring its removal and correction, in which case an additional Job Order will be issued to reflect a reduction in the Job Order Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 14**

### **TERMINATION OF THE CONTRACT**

#### **14.1 TERMINATION BY THE CONTRACTOR**

- 14.1.1 If a Job Order is stopped for a period of sixty days under an order of any court or other public authority having jurisdiction, or as a result of an act of government such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or a Subcontractor or any agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty additional days' written notice to the Owner, terminate the Job Order and recover from the Owner payment for all work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery.

#### **14.2 TERMINATION BY THE Owner**

- 14.2.1 Termination by the Owner for Cause  
If the contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's insolvency, or stop notices are served upon the Owner, or if the Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or fails to make prompt payment to Subcontractors or for materials or labor, or the Contractor or a subcontractor persistently disregards laws, ordinances, rules, regulations or orders of having any public authority having jurisdiction, or persistently disregards instructions of the Owner, or otherwise is guilty or a subcontractor is guilty of a substantial violation of a provision of the Contract Documents, or the Contractor fails to provide and keep in full force and effect all insurance required by Article 11, or fails to cause all subcontractors to so comply, and fails after written notice to commence and continue correction of such default, neglect or violation with diligence and promptness, the Owner may, after an additional written notice and without prejudice to any other remedy the Owner may have, terminate the Contract.

##### Procedure for Termination for Cause.

Unless within seven (7) days of the delivery of such notice, the Contractor shall cease such violation and make satisfactory arrangements for a correction thereof, which arrangements are set forth in a written agreement signed by the Contractor and the Owner, the Contractor's right to complete the Work shall cease and terminate.

In the event of any such termination, the Owner shall, immediately give written notice thereof to the surety and to the Contractor and the surety shall have the rights and obligations set forth in the performance bond. If the Owner is forced to take over the Work, it may prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and its sureties shall be liable to the Owner for any excess costs, including management, supervision, and design support, occasioned thereby. In such event, the Owner may, without liability take possession of and utilize in completing the Work, the Contractor's materials, equipment, tools, construction equipment and machinery whether stored at the Site or elsewhere, thereon owned by the Contractor and may finish the Work by whatever methods the Owner may deem expedient. Whenever the Contractor's right to proceed is terminated, the Contractor shall not be entitled to receive any further payment until

the Work is finished.

- 14.2.2 If the unpaid balance of all Job Order Sums exceeds all direct and indirect costs of finishing the Work, Contractor will only be paid for his actual unpaid costs from such excess. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, in the manner provided in Paragraph 9.4 and this obligation for payment shall survive the termination of the Contract.
- 14.2.3 Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of Owner for which Contractor's services are to be performed, may immediately suspend performance by Contractor, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by Contractor to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

In connection with any termination for convenience, Contractor shall allow Owner or any authorized representative(s) to inspect, audit, or reproduce any records to the extent necessary for Owner to evaluate and verify the costs incurred by Contractor in performing the Work. Contractor will make this material available upon 48-hours' written notice from Owner. Owner may inspect and copy, from time to time and at reasonable times and places, any and all information, materials and data of every kind and character (hard copy, as well as computer readable data if it exists), including without limitation, books, papers, documents, subscriptions, recordings, estimates, price quotations, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, monthly, quarterly, yearly or other financial statements, and any and all other information or documentation that may, in the judgment of Owner, have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by the Contract Documents. Such records shall include but not be limited to, the following: accounting records, payroll records, job cost reports, job cost history, margin analysis, written policies and procedures, subcontract files (contracts, correspondence, change order files, including documentation covering negotiated settlements), backcharge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other documents customarily maintained by contractors performing work on public works projects or that Owner otherwise deem necessary to substantiate charges related to a Termination.

If this Contract is terminated for default under Article 14 and if it is later determined that the default was wrongful, such default termination automatically shall be converted to and treated as a termination for convenience under this Section. In such event, Contractor shall be entitled to receive only the amounts payable under this Section, and Contractor specifically waives any claim for any other amounts or damages, including any claim for consequential damages or lost profits.

## **ARTICLE 15**

### **ADDITIONAL INSTRUCTIONS**

#### **15.1 SUBSTITUTION OF MATERIALS**

- 15.1.1 When a specific manufacturer, trade name or material is specified, or indicated, it is to establish a standard of quality and shall not be construed as limiting competition. Materials, products, processes, or articles indicated or specified by the name brand of the manufacturer, or by patent or proprietary names, shall be deemed to be followed by the words "or equal". It is the intent of this article to comply with Public Contract Code Section 3400.

If the Contractor desires to use material other than that specified, he shall request approval of

such substitution, in writing, to the Owner. Such application constitutes a certification that the Contractor:

- A. Has investigated proposed product and determined that it meets or exceeds, in all respects, specified product.
- B. Will provide the same warranty for equal as for specified product.
- C. Will coordinate installation and make other changes which may be required for work to be complete in all respects.
- D. Waives claims for additional costs which may subsequently become apparent.

The Owner then will determine whether or not the proposed material is equal in quality and utility to the material specified, and its decision shall be final.

Requests for equal materials will only be considered when offered by the Contractor as required by this article.

Requests for substitutions shall be made at the time the Job Order Proposal is submitted.

15.1.2 Submittals for approval of substitute materials shall contain sufficient information, descriptive brochures, drawings, samples or other data as is necessary to provide direct comparison to the specified materials. Each submittal shall be well marked and identified as to types and kind of the items being submitted for approval, and will include the "Substitution Request" form exhibit attached to Section 01015, completely filled-out in accordance with the pertinent data found in Section 01015. It is the sole responsibility of the Contractor to submit complete descriptive and technical information so the Architect can make proper appraisal. Lack of proper information will be sufficient cause for rejection. Reference to catalogs that the Owner may or may not have will not be acceptable.

15.1.3 The Owner's review for approval is for quality of visual appearance. It is the Contractor's responsibility to confirm and correlate all quantities and dimensions and coordinate with all trades whose work may be affected by the requested substitution.

15.1.4 Substitutions.

The Contractor may make proposals for substitutions to materials and/or processes shown or specified only under one or more of the following conditions:

- A. Unavailability: If the specified product or an equal is no longer available in the marketplace.
- B. Delay: If obtaining the specified product or an equal will delay completion of the Job Order through no fault of the Contractor.
- C. Better material system or process: If a better material system or process is available at no additional cost.
- D. Savings: If a material which meets all of the performance requirements of the specified material is available at a savings to the Owner.

A proposal for substitution shall include all information required by the Owner to evaluate the substitute material or process. All substitutions shall be submitted with the Job Order Proposal. Such proposal constitutes a certification that the Contractor:

- A. Has investigated the proposed product and determined that it meets or exceeds the performance requirements of the specified product.
- B. Will provide the same or better warranty for substitution as for specified product.
- C. Will coordinate installation and make other changes, including work of other Contractors, which may be required for the work to be complete in all respects at no additional cost to the Owner.

Effect of Approval of Substitution.

If the substitution is approved, the Contractor shall be solely and directly responsible for setting approved substituted materials and/or equipment into the available space, and for the proper operation of the substituted equipment with all other equipment with which it may be associated, all in a manner acceptable to the Owner.

No Job Order Time extensions shall be granted on account of a substitution.

Time for Proposing Substitution; Decision.

Substitution proposals will not be considered prior to bidding. All requests for substitutions shall be made within the same time requirement for initial submittals. Failure to timely submit a substitution request shall constitute a waiver by the Contractor and an acceptance of the specified materials. Late submittals may be considered only when the Owner consents in writing, and the Owner's best interests so require.

The Owner shall evaluate a timely substitution request, and shall approve, deny, approve with conditions, or initiate the procedure for a change order in response to the Contractor's request. This decision shall be final. If the proposed substitution is rejected, the Contractor shall provide the material originally specified. No Job Order time extensions will be granted in connection with substitution requests.

Failure by the Contractor to identify all deviations from the Contract Documents in its Job Order request for substitution shall render any Owner action taken thereon null and void. The Contractor shall bear all costs resulting from any error in the request for substitution.

Only one request for substitution will be considered for each product. When substitution is not accepted, specified product shall be provided.

Samples and Testing of Proposed Substitutions; Costs of Adapting to Work.

When the Owner determines that samples and testing are required to evaluate a request for a substitution, the Owner shall so advise the Contractor, and specify the materials or work to be sampled. The Contractor shall, at no cost to the Owner, provide samples as required by Article 7 dealing with samples and testing, or the Technical Specifications.

The Contractor shall bear all costs of sampling and testing required to decide a request for substitution, and if a substitution is accepted, the Contractor shall bear all costs associated therewith, including the cost of the Construction Manager's, Architect's and/or engineer's services required to adapt the substitution to the design to the complete satisfaction of the Owner, and all costs of mechanical, electrical, structural, or other changes needed to adapt the substitution to the Work.

**15.2 REFERENCE TO STANDARDS**

15.2.1 Reference to known standards shall mean and intend the latest edition or amendment, in

effect on the date of the Bid, unless specifically indicated otherwise, and to such portions of it that relate and apply directly to the material or installation called for on the individual Job Orders.

- 15.2.2 Where material is specified solely by reference to standard specifications, the Contractor shall, if requested by the Owner, submit to the Owner for his approval, data on all such material proposed to be incorporated into the Work of the Contractor listing the name and address of the vendor, the manufacturer or producer, and the trade or brand names of such materials.

The standard referred to, except as modified in the specifications, shall have full force and effect as though printed in these specifications. These standards are not furnished to the bidder for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements.

1. Where Federal Specifications are referred to as a measure of quality and standard, they refer to Federal Specifications established by the Procurement Division of the United States Government and are available from the Superintendent of Documents, U.S. Government Printing Office.
2. Where Federal Specification numbers are used, they refer to the latest edition including amendments thereto.
3. Where Commercial Standards (CS) or Product Standards (PS) are referred to as a measure of quality, standard, and method of fabrication, they refer to Commercial Standards and Product Standards issued by the U.S. Department of Commerce.
4. Where ASTM serial numbers are used, they refer to the latest tentative specifications, standard specifications, standard method or standard methods of testing, issued by the American Society for Testing Materials, unless specifically noted.

### 15.3 **SPECIFICATIONS**

- 15.3.1 The Specifications are organized into Divisions, Sections, and Trade headings based on the Construction Specifications Institute's 16-Division format and the Master format numbering system. This organization shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade. The Contractor shall be responsible for examining all sections of the Specifications for inter-related items of the individual Job Orders, and for furnishing each item identified or specified.

- 15.3.2 No responsibility will be assumed by the Owner for omissions or duplications by the Contractor in the completion of the Job Orders due to any alleged error in the arrangement of the material in these Specifications nor shall any such segregation of work and materials operate to make the Owner an arbiter in defining the limits to the agreements between the Contractor and his subcontractors or suppliers.

- 15.3.3 The misplacement, addition or omission of any letter, word or punctuation mark shall in no way damage the true spirit, intent or meaning of these Specifications.

- 15.3.4 The words "shown", "indicated", "noted", "scheduled" or words of that effect shall be understood to mean that reference is made to any Drawings accompanying an individual Job Order.

- 15.3.5 Where reference herein is made to colors or finishes "as selected", the reference is to the Owner.

### 15.4 **APPROVED APPLICATORS**



- 15.4.1 Where specific instruction in these Specifications or an individual Job Order require that a particular product and/or materials be installed and/or applied by an "approved applicator" of the manufacturer, it shall be the Contractor's responsibility to insure that any subcontractors used for such work be approved applicators.

**15.5 DELIVERY AND STORAGE OF MATERIALS**

- 15.5.1 Deliver all manufactured materials in the original packages, containers or bundles (with the seals intact) bearing the name or identification mark of all manufacturers.
- 15.5.2 Deliver fabrications in as large assemblies as practicable and where specified to be shop-primed or shop-finished; they shall be packaged or crated as require to preserve such priming or finish intact and free from abrasion.
- 15.5.3 Store all materials in such manner as necessary to properly protect same from damage, as materials or equipment damage by handling, weather, dirt or from any other cause will not be acceptable.
- 15.5.4 Store materials off sidewalks, roadways, and underground services to cause no obstructions. The Contractor shall be responsible for protecting all material and equipment furnished under the Contract.

**15.6 WORKMANSHIP**

- 15.6.1 Where not more specifically described in any of the various Sections of these Specifications, workmanship shall conform to all of the methods and operations of best standards and accepted practices of the trade or trades involved, and shall include all items of fabrication, construction, or installation regularly furnished or required for completion (including any finish), and for successful operation as intended.
- 15.6.2 All work shall be executed by mechanics skilled in their respective lines of work.
- 15.6.3 When completed, all parts shall have been durably and substantially built and shall present a neat, workmanlike appearance.

**15.7 FINAL GUARANTEE**

- 15.7.1 The Contractor shall be held responsible for, and must make good any defects through faulty, improper, or inferior workmanship or materials, arising or discovered in any part of his work or structure, piping and appurtenances, within one (1) year after the filing of the Job Order Notice of Completion. The Performance Bond, furnished by the Contractor, shall cover such defects and protect the Owner against them.

**15.8 HOURS OF WORK**

- 15.8.1 Eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and it is expressly stipulated that no worker employed at any time by the Contractor, or by a subcontractor under this Contract, upon the work, shall be required or permitted to work thereon more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week, except as provided in Section 1810-1815 inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein as if fully set out; and it is further expressly stipulated that for each and every violation of said last named stipulation, said contractor shall forfeit, as a penalty to the Owner, twenty-five dollars (\$25.00) for

each worker employed by the Contractor in the execution of this Contract, for each calendar day during which said worker is required or permitted to labor more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of the provisions of said section of the Labor Code.

- 15.8.2 The Contractor and each subcontractor shall also keep or cause to be kept, an accurate record showing the names and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work contemplated by this Agreement, which record shall be open at all reasonable hours to the inspection of the Owner or its officer or agents, and to the Division of Labor Law Enforcement of the Department of Industrial Relations, its deputies and agents.
- 15.8.3 Notwithstanding the above stipulations, pursuant to Section 1815 of the Labor Code, work performed by employees of contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon the project upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1 1/2) times the basic rate of pay.
- 15.8.4 Whenever the Contractor arranges to work at night or any time when work is conducted other than the normal 40-hour week, or to vary the period during which work is carried on each day, it shall give the Owner a minimum of 48-hours notice so that inspection may be provided. Additional inspection costs incurred because of overtime or shift work shall be paid by the Owner. If this overtime work is necessitated by the Contractor's error or failure to perform, the cost of inspection will be borne by the Contractor.

#### 15.9 **WAGE RATES**

- 15.9.1 Pursuant to Section 1770-1780 of the Labor Code of the State of California, the Department of Industrial Relations has determined the general prevailing rate of per diem wages and rates for legal holidays and overtime in the locality in which this work is to be performed, for each craft or type of worker or mechanic needed to execute this contract. Said wage rates pursuant to Section 1773.2 of the Labor Code are on file with the Clerk of the Board of Supervisors, Administration Building, County Civic Center, 2800 W. Burrel Avenue, Visalia, CA and will be made available to any interested person upon request. They may also be obtained on the internet at [www.dir.ca.gov/DLSR/pwd.html](http://www.dir.ca.gov/DLSR/pwd.html). Those prevailing wage rates hereby are incorporated in this agreement and made a part hereof. The prevailing wages to be paid will be the wages in effect at the time the Job Order Notice to Proceed is issued.
- 15.9.2 It shall be mandatory upon the Contractor to whom the Contract is awarded, and upon any subcontractor under him to pay not less than the said specified rates to all laborers, worker, and mechanics employed by them in the execution of the Contract, and to pay all laborers, workers and mechanics not less often than once weekly. The Contractor to whom the Contract is awarded shall post a copy of the determination of prevailing wages at the job site. The Contractor shall require all subcontractors to comply with Sections 1770-1780 of the Labor Code of the State of California and shall insert into every subcontract the requirements contained therein. The Contractor shall be responsible for compliance by each subcontractor with Labor Code Section 1776.
- 15.9.3 It is hereby further agreed that the Contractor shall forfeit to the Owner, as a penalty, fifty dollars (\$50.00) for each laborer, worker, or mechanic employed for each calendar day or portion thereof, who is paid less than the said stipulated rates for any work done under the Contract, by him or by any subcontractor under him. The difference between said stipulated rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than said stipulated rate shall be paid to each worker by the Contractor. The

Contractor, and each subcontractor, shall keep or cause to be kept an accurate record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the public work. The records shall be open at all reasonable hours to the inspection of the Owner, to its officers and agents, and to the Division of Labor Law Enforcement of the State Department of Industrial Relations, its deputies and agents.

- 15.9.4 In case it becomes necessary for the Contractor or any subcontractor to employ on the work under this Contract any person in a trade or occupation (except executive, supervisory, administrative, clerical or other non-manual workers as such) for which no minimum wage rate is specified, the Contractor shall immediately notify the owner who will promptly, after consultation with the DIR, determine the prevailing rate for such additional trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment. The contractor and all subcontractors shall pay each worker engaged in the specified work not less than those rates. Pending such determination, the wages may be assumed to be those in the applicable collective bargaining agreement, but no adjustment in the Contract Price shall be made if such assumption is incorrect.

#### 15.10 **APPLICATION OF HIGHEST STANDARDS AND REQUIREMENTS**

- 15.10.1 Whenever two or more standards or requirements appear in these General Conditions or in any other part of the Contract Documents that form the Contract, the highest standard or requirement shall be applied and followed in the performance under this Contract.

#### 15.11 **NONDISCRIMINATION IN EMPLOYMENT**

- 15.11.1 Federal and State Laws prohibit discrimination in employment. The California Fair Employment Practices Act (Labor Code Section 1410 to 1433) prohibits discrimination in employment on the basis of race, religion, color, sex, physical handicap, medical condition, marital status, age, national origin or ancestry, and applies to all employers, employment agencies and labor organizations.
- 15.11.2 Title VII of the Federal 1964 Civil Rights Act (42 U.S.C. Section 2000e - 2000e - 17) prohibits employment discrimination on the basis of race, color, sex, religion, or national origin, and applies to all employers that employ at least 15 workers during each working day in each of 20 or more calendars weeks in the current or preceding year.
- 15.11.3 In addition to these two laws of general application, there are other Federal and State laws that prohibit employment discrimination in particular cases.
- 15.11.4 The County of Tulare is an Affirmative Action Employer and expects all of its contractors and suppliers to familiarize themselves with, and comply with, all applicable laws relating to employment discrimination.
- 15.11.5 To the extent required by law, the Contractor shall meet all requirements of law relating to the participation of minority, women, and disabled veteran business enterprise contracting goals, and shall comply with Public Contract Code § 10115 et seq. and all applicable regulations. Contractor further agrees that, when required, Contractor will ensure compliance by all subcontractors and will complete all forms required by all agencies exercising jurisdiction over the project.

#### 15.12 **APPRENTICES**

- 15.12.1 Pursuant to Sections 1770-1780 of the Labor Code of the State of California, the Department of Industrial Relations has determined the general prevailing rate of per diem wages in the locality for each craft or type of worker needed to execute the work. Said wage rates pursuant to Section 1773.2 of the Labor Code are on file with the Clerk of the Board of Supervisors, Administration Building, County Civic Center, Visalia, California, and will be made available to any interested person on request. They may also be obtained on the internet at [www.dir.ca.gov/DLSR/pwd.html](http://www.dir.ca.gov/DLSR/pwd.html).
- 15.12.2 Pursuant to Section 1775 of the Labor Code of the State of California, nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.
- 15.12.3 Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is registered.
- 15.12.4 Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3, of the Labor Code, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he is training.
- 15.13 **PROVISIONS REQUIRED BY LAW DEEMED INSERTED**
- 15.13.1 Every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted, and this contract shall be read and enforced as though it were included, and if through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either party the contract shall be amended to make the insertion or correction.
- 15.14 Conflict of Interest.  
No official of the Owner who is authorized on behalf of the Owner to negotiate, make, accept, or approve, any architectural, engineering, inspection, construction, or materials supply contract, or any subcontract in connection with the construction of the Project, or any land acquisition in connection with the Project, shall become directly or indirectly interested personally in this contract or in any part thereof.
- No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized on behalf of the Owner to exercise any executive, supervisory, or other similar function in connection with the construction of the Project shall become directly or indirectly interested personally in this contract or any part thereof.
- 15.15 No Verbal Agreements.  
No verbal agreement or conversation with any officer, agent, or employee of the Owner, either before, during, or after the execution of the Contract Documents shall affect or modify any term or condition contained in the Contract Documents, nor shall such verbal agreement or conversation entitle the Contractor to any additional payment or time to perform whatsoever under the terms of this agreement.
- 15.16 Anti-Trust Assignment.  
By execution of the Contract Documents, or any subcontract awarded by the Contractor, the Contractor or any subcontractor offers and agrees to assign and hereby does assign to the Owner all rights, title, and interest in and to all causes of action the Contractor or subcontractor may have under Section 4 of the Clayton Act (15 USC Section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code, commencing with Section 16700), arising from purchases of goods, services, or materials pursuant to this public works contract or

subcontract. This assignment shall be made and shall become effective upon execution of the contract.

15.17 Contractor Not Agent, Nor Employee.

Neither the Contractor nor any subcontractor, or any officer, agent, or employee of either, is, nor shall they represent themselves to be, an officer, agent, or employee of the Owner for any purpose whatsoever.

No person employed by the Contractor, or by any subcontractors, are, nor shall they be construed to be in any manner or for any purpose whatsoever, employees of the Owner.

**ARTICLE 16**  
**GUARANTEE**

- 16.1 Contractor guarantees that all materials and workmanship shall conform to the Contract Documents and agrees to replace, at his sole cost and expense, and in conformity with the Contract Documents, any defective material and any and all work defectively or improperly performed or installed within a period of one (1) year after final acceptance in accordance with paragraph 9.8 of the General Conditions. The Contractor shall, in no case longer than fifteen (15) days after receipt of written notice thereof, commence to repair and/or replace any defect in materials or workmanship which may develop during said one-year period, and any damage to adjacent materials resulting from the repairing or replacing of such defects, at its own expense and without cost to Owner. In the event Contractor fails to remedy any such defect within 15 days after receipt of such written notice (unless Contractor has commenced the repair and is diligently pursuing the repair to completion), Owner may proceed to have such defects remedied at Contractor's expense and Contractor shall pay the costs and charges incurred thereby. Emergency repairs, including but not limited to power, water, sewer, fire and life safety, shall have a 48-hour response time. The cost and repair of any supplementary damage caused by construction defects will be the sole responsibility of the contractor. Neither acceptance nor payment nor any provision in these documents shall be deemed to be a waiver by Owner to relieve Contractor of any responsibility under this Contract. The contractor shall submit a written guarantee on the form attached as Exhibit \_\_\_\_.

**ARTICLE 17**  
**ORDERING PROCEDURES**

17.1. Procedures:

17.1.1 As the need exists for performance under the terms of this contract, the Owner will notify the Contractor of an existing requirement.

Upon receipt of this notification, the Contractor shall respond to the needs of the Owner within two working days by:

17.1.2 Establishing verbal contact with the Owner to further define the scope of the requirement, and

.1 Visiting the proposed work site in the company of an Owner's representative, and participating in the conduct of a scope validation site visit and conference which will include discussion and establishment of the following:

- .1 Project number and title
- .2 Existing site conditions

- .3 Methods and alter-natives for accomplishing work
  - .4 Definition and refinement of requirements
  - .5 Detailed scope of work
  - .6 Requirements for plans, sketches, shop drawing etc.
  - .7 Tentative work schedule
  - .8 Preliminary quantity estimates
- .2 Upon completion of the scope validation meeting, the Owner Representative will issue a Request for Proposal which requires that the Contractor prepare a proposal for the work under consideration.

- .3 The Contractor will prepare the Proposal in accordance with the following:

The proposal shall include but not be limited to the following: firm fixed price proposal, schedule in a form as required by the Owner, subcontractor list including the price to be paid to each subcontractor, any shop drawings or other information required for the Owner to be able to review the price proposal.

- .4 Prepriced Work Requirements. Prepriced work requirements will identify the type and number of work units required from the Construction Task Catalog. The price per unit set forth in the Construction Task Catalog shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the work units proposed are reasonable for the tasks to be performed. Documentation to be submitted with the Proposal shall include, but not be limited to, drawings, calculations, catalog cuts, specifications, and architectural renderings.

- .5 Non-Prepriced Work Requirements. Units of work not included in the Construction Task Catalog but within the general scope and intent of this contract may be negotiated into this contract as needs arise. Such work requirements shall be incorporated into and made a part of this contract for the Work Order to which they pertain, and may be incorporated into the Construction Task Catalog if determined appropriate by the Owner at the base price determined in this article. Non-prepriced work requirements shall be separately identified and submitted in the Work Order proposal. Information submitted in support of non-prepriced work shall include, but not be limited to, the following:

- .1 Complete specifications and technical data, including work unit content, work unit costs data, quality control and inspection requirements.
- .2 Work schedule, this will include an update for other projects con-currently under construction and how these projects will affect the new project.
- .3 Pricing data submitted in support of non-prepriced work units shall include a cost or price analysis report, establishing; the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the Owner, costing data will be submitted demonstration that the Contractor sought and received three quotes.

The Contractor shall provide an installed unit price (or demolition price if appropriate) which shall include all costs required to accomplish the Non-Prepriced Task.

- .4 The final price submitted for Non Prepriced Tasks shall be according to the following formula:

**Contractor Performed Duties**

A= Direct Labor Costs and Fringe Benefits per Prevailing Wage Rates.

B= Direct Material Costs (supported by quotes)  
C= Direct Equipment Costs (supported by equipment amortization data)

D= Allowable Overhead Costs = A x 55%  
(This includes Workers Compensation insurance).

E= Allowable Profit = (A+B+C) x 10%

Subcontractor Performed Duties

F= Cost of Subcontractors to Contractor (supported by quotes)

G= Contractor's Allowance for Subcontractor Cost =F x 5%

H= Contractor's Overhead for Subcontractors Costs in accordance with the following schedule:

F x 0% for Non-Prepriced (NPP) Tasks < 10% of total Work Order Value

F x 7% for NPP Tasks 10-20% of total Work Order Value

F x 10% for NPP Tasks > 20% of total Work Order Value

The final value of the NPP Task will be:

A+B+C+D+E+F+G+H

Following approval by the Owner of a Non-Pre-Priced Task and unit price, the Non-Pre-priced Task unit price will be entered into the computer data base.

.5 The total extended price for the Non-Pre-Priced Task will be determined by multiplying the unit price by the quantity required. The price offered in the Proposal will be determined by multiplying the total extended price by an adjustment factor of 1.0000.

.6 After using a Non-prepriced item on three separate Job Orders, the unit price for the work item will be negotiated and fixed as a permanent pre-price item which will no longer require price justification.

.7 The Owner will evaluate the proposed work unit and compare them with the independent Owner estimate of the same tasks to determine the reasonableness of approach, including the nature and number of work units proposed. The Owner will determine whether the Contractor's Work Order proposal is in line with its own estimate.

.8 Following agreement on non-prepriced work unit content and price, the work unit price will be adjusted to a work unit base price equivalent to the price of work units contained in the Construction Task Catalog. This base price shall be developed by dividing the agreed-upon unit price by the Contractor's adjustment factor currently in effect for requirements to be accomplished during normal working hours.

.9 The base prices determined will be multiplied by the number of work units required to determine the extended base unit price, which will be converted to the Work Order firm fixed-price by multiplying the extended base unit price by the appropriate current Contractor's adjustment factor.

.6 Each Work Order shall state the agreed upon requirements and fixed price of performance, the schedule for the work, and shall cite the funds allotted for payment of the work ordered and the item number, description, quantity, unit price and extended price (i.e. unit price times number of units) separated between prepriced and non-prepriced units and separated between regular and overtime efforts; applicable

adjustment factors, and totaled to include the firm-fixed price for the order. All clauses of this contract shall be applicable to any Work Orders issued under this clause. Work Orders will be accomplished on an appropriate form which the Contractor shall sign a copy of evidencing acceptance of the order.

.7 The Owner reserves the right to reject a Contractor proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing sketches, drawings or plans as necessary. The Owner also reserves the right to not award an order if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Owner may pursue continuing valid requirements where agreement was not reached with the Contractor by other means.

.8 By submitting a signed Proposal to the Project Coordinator, the Contractor is agreeing to accomplish the work outlined in the RFP for that particular Work Order. It is the Contractor's responsibility to include the necessary scope items in the Proposal prior to issuing it to the Project Coordinator. Errors and omissions in the proposal shall be the responsibility of the contractor. The Contractor's Proposal shall be valid for the entire term of the Contract.

17.2 Measurements To Be Verified Before ordering any material or doing any work, the Contractor shall verify all measurements at the site of a specific Work Order, and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated in the RFP. Any difference which may be found shall be submitted to the Project Coordinator for consideration before proceeding with the work.

17.3 Caution To Contractors The Contractor is cautioned in regard to proposals for Work Orders to be issued hereunder that when the word approximate is used in conjunction with measurements, quantities, dimensions, etc., it is the Contractors' responsibility to verify any and all such items prior to submission of the proposal. Contractors are also cautioned that any Work Order awarded is for all services or work, as necessary, to repair, and remodel the facilities covered by the contract in accordance with all contract terms and conditions. It shall also be the duty and responsibility of the Contractor to manage, and conduct the required work in the most effective and efficient manner possible and meet or exceed minimum critical rates or standards. In addition the Contractor is cautioned that no claims for additional moneys will be entertained when such claim is based upon a contention the contract fails to mention a specific item or component of facility covered by contract and the work is required in the normal course of operations. For example, surfaced area repair statements may not mention culverts. However, culverts are a normal component of roads, streets, or erosion controls and are shown on plots or maps provided. As culverts are a normal component of the system, the Contractor shall be responsible for providing all necessary repair, or replacement work or service.

#### 17.4 PROCESSING TIME LIMITS

17.4.1 Request for Proposal Submittal. Contractor shall submit the proposal for the Project on or before the due date stated in the Request for Proposal (RFP) (14 days maximum unless otherwise specified).

17.4.2 Request for Information Submittal. Contractor shall make a thorough analysis of each Work Order and submit all Requests For Information (RFI's) within 7 days after issuance of any RFP. Submission of RFI's shall in no way extend the proposal due date unless deemed necessary by the Owner's project manager.

17.4.3 Proposal Review. Contractor's project manager or agent shall be available for proposal review meetings within 24 hours of being notified by the Owner (via fax, e-mail, telephone, etc.).



After review of the proposal, Contractor shall remove all inappropriate line items and adjust quantities as directed by the Owner's project manager.

17.4.4 Proposal Modification. Only on the Contractor's second proposal shall he be granted the opportunity to add new valid line items that may have been omitted from the first proposal. Contractor shall submit a revised proposal within 24 hours of proposal review meeting (unless otherwise specified). Upon review of revised proposal, the Contractor shall remove all line items or adjust quantities deemed inappropriate by the Owner's project manager and re-submit the proposal within 24 hours. No new line items may be added to the proposal. No quantities increases or added modifiers will be accepted unless agreed to by the Owner during the second proposal review meeting.

17.4.5 Enforcement. Section 6.4 will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive and could result in cancellation of the Contract. The Owner may also deem the Contractor to be non-responsive in regard to any future JOC Contracts.

**END OF SECTION 00700**

## **SECTION 00020 – ADVERTISEMENT FOR BIDS**

### **ADVERTISEMENT FOR BIDS Job Order Contract 001**

NOTICE IS HEREBY GIVEN that individually sealed bids for **Job Order Contract** will be accepted by the Clerk of the Board of Supervisors, County of Tulare, Administration Building, 2800 W. Burrel Avenue, Visalia, California until **2:00 p.m.** on **December 7, 2007**.

A pre-bid conference will be held at 5961 S. Mooney Blvd., Visalia, CA 93277. at **10:00 a.m.** on **November 14, 2007**. All Bidders are encouraged to attend the pre-bid conference.

Bids shall be in accordance with the Bid Documents which are on file with, and may be obtained from Purchasing, Courthouse Room #3, 221 S. Mooney Blvd., Visalia, California 93291, (559) 733-6286, Monday thru Friday between 8 a.m. and 5 p.m. A non-refundable fee of **\$10.00** will be charged for each set of Bid Documents which include an electronic version of the Technical Specifications and Construction Task Catalog. A non-refundable fee of **\$310.00** will be charged for each set of Bid Documents which include a hardcopy version of the Technical Specifications and Construction Task Catalog. Each bid shall be submitted individually on Bid Forms provided along with accompanying documents and a Cashier's Check or Bid Bond for twenty five thousand dollars (\$25,000.00), sealed in an envelope marked with the project title and the time and date of the bid opening.

A Job Order Contract (hereinafter called JOC) is a competitively bid, firm fixed priced indefinite quantity contract. It includes a collection of detailed repair and remodel tasks and specifications that have established unit prices. It is placed with a Contractor for the accomplishment of repair, alteration, modernization, maintenance, rehabilitation, etc., of buildings, structures, or other real property. Ordering is accomplished by means of issuance of a Job Order against the Contract.

The Contractor, under the JOC contract, furnishes all management, labor, materials and equipment needed to perform the work.

The bids will be opened, examined and declared by a Deputy Clerk of the Board of Supervisors at the time and on the date above written. The bid opening will be open to the public and held in the Chambers of the Board of Supervisors in the Tulare County Administration Building, County Civic Center, Visalia, California. The results of the Bidding shall be reported to the Board of Supervisors at their next regular meeting thereafter.

CONTRACT TERM: The Term of the contract is **365** calendar days from the date to be established in the "NOTICE TO PROCEED".

TIME OF COMPLETION: The time for completion of the individual Job Order will be determined prior to issuance of the Job Order. The Agreement includes provisions for Liquidated Damages if the individual Job Order is not timely completed. Liquidated Damages may be applied on a Job Order by Job Order basis at the sole discretion of the County.

The guaranteed minimum value of the Contract is twenty five thousand dollars (\$25,000). The potential maximum value of the contract is five hundred thousand dollars (\$500,000). The term of the Contract is one year or the expenditure of the maximum value of the Contract, which ever occurs first. Upon mutual consent the maximum value may be increased any amount up to the maximum legal value at any time.

The successful Bidder shall possess a Class "B" California Contractor's License at the time the bid is submitted.

The successful Bidder shall furnish the bonds, insurance policies and certificates, specified in the Instructions to Bidders and General Conditions within 7 days following the Notice of Intent to Award.

Any Contractor to whom a contract is awarded and any subcontractor under him shall pay all workers employed on the work not less than the prevailing wage rates determined by the Director of the Department of Industrial Relations at the time the Job Order is issued and shall comply with all laws and regulations relating to the employment of apprentices. Said wage rates pursuant to Section 1773.2 of the Labor Code are on file with the Clerk of the Board of Supervisors, Administration Building, 2800 W. Burrel Avenue, Visalia, California and will be made available to any interested person on request. They may also be obtained on the internet at [www.dir.ca.gov/DLSR/pwd.html](http://www.dir.ca.gov/DLSR/pwd.html).

Contractor shall comply with Title VI of the Civil Rights Act of 1964, and in accordance with said Act, no person on the grounds of race, color, sex or national origin, shall be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any service or activity in connection with the project.

Contractor shall comply with Title VII of the Civil Rights Act of 1964, which prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin.

After the time set for opening of bids, no bid may be withdrawn for a period of sixty (60) days.

The Board of Supervisors reserves the right to reject any or all bids, and/or waive any informality in any bid, and/or determine at its discretion the responsibility of any bidder.

The Board of Supervisors further reserves all rights to use County Forces, or to negotiate contracts, or both, to the extent authorized by the Public Contract Code.

Date\_\_\_\_\_

By Order of the Board of  
Supervisors of the County of  
Tulare, State of California

Jean Rousseau  
County Administrative Officer/Clerk  
Board of Supervisors  
County of Tulare

By\_\_\_\_\_

Deputy Clerk

**END OF SECTION 00020**

## **SECTION 00100 - INSTRUCTIONS TO BIDDERS**

To be considered, Bids must comply with these Instructions to Bidders.

### **DOCUMENTS:**

Bidders may obtain copies of the Bid Documents from Purchasing, Courthouse Room #3, 221 S. Mooney Blvd, Visalia, California 93291, (559) 733-6286, Monday thru Friday between 8 a.m. and 5 p.m. A non-refundable fee of **\$10.00** will be charged for each set of Bid Documents which include an electronic version of the Technical Specifications and Construction Task Catalog. A non-refundable fee of **\$310.00** will be charged for each set of Bid Documents which include a hardcopy version of the Technical Specifications and Construction Task Catalog. A maximum of two sets will be available to each contractor until after the pre-bid conference, after that time a contractor may purchase additional sets.

### **EXAMINATION:**

Before submitting a bid, bidders shall carefully examine the Bid Documents and fully inform themselves as to all existing conditions and limitations, and shall include in the bid a sum to cover the cost of all items included in the work.

A pre-bid conference will be held on November 14, 2007. All Prime Bidders are encouraged to attend the pre-bid.

### **INTERPRETATIONS, ADDENDA:**

- A. Should a bidder find discrepancies, inconsistencies or omissions from the Bidding Documents, or should a bidder be in doubt as to their meaning, they shall at once notify the Owner by fax at (559) 735-9529 or by mail at P. O. Box 6237, Visalia, CA 93290. Any such item not brought to the Owner's attention by December 3, 2007 shall be done in accordance with the Owner's interpretation for the good of the work in accordance with the intent and meaning of the Contract Documents. Owner will not be responsible for oral instructions or information. Questions received by November 30, 2007 will be answered by a written Addendum directed to all bidders.
- B. Any Addenda issued by the Owner during the time of bidding are to be considered in the Bid, and will become a part of the Agreement between Contractor and Owner. Bidders shall acknowledge receipt of all Addenda on the Bid Form in the space provided.

### **SUBSTITUTION OF MATERIALS:**

Materials, other than those specified, must be approved by Addenda issued by the Owner prior to bid opening, otherwise the bidder assumes the risk that the Owner may not approve the desired substitution. See Article 15.1 of GENERAL CONDITIONS for detailed requirements.

### **BIDS:**

- A. Bids must be made on the "Bid Form" included in these Specifications, or a copy thereof, all blank spaces filled, the signature shall be in longhand, and the completed form shall be without alterations or erasures. The "Bid Form" must be filled out in ink or be typewritten. Where the bidder is a corporation, the "Bid Form" must be signed using the name of the corporation followed by the name of state of incorporation and the signatures of an officer authorized to bind the corporation to a Contract. A bid, which is incomplete, incorrect or non-conforming, may be disregarded, in the sole discretion of the Board of Supervisors.

B. Bids shall be addressed and delivered to:

Clerk of the Board of Supervisors  
County of Tulare  
Administration Building  
2800 W. Burrel Avenue  
Visalia, CA 93291

C. Each bid shall be delivered in separate opaque sealed envelope bearing on the outside, the name of the bidder, his address, the name of the Project and the date of the bid opening. Bids will be accepted until the date and time stated in the Advertisement for Bid. Also, to be included in each envelope shall be:

1. A certified Bid Bond or cashier's check for twenty five thousand dollars (\$25,000.00) referring to the Bid Package bid upon.
2. **Do not** submit subcontractors with the bid. Subcontractors performing more than one-half (1/2) of one percent (1%) of any individual Job Order will be listed with that Job Order on a form provided by the Owner.
3. A completed, notarized Non-Collusion Affidavit referring to the Bid Package bid upon.
4. Corporate Resolution authorizing the signature of the person signing the bid (if bidder is a corporation).

D. All bids shall remain firm for a period of sixty (60) calendar days after the date of bid opening.

E. Bids may not be modified after the designated time for bid opening. Upon presentation of satisfactory identification, bidders may withdraw and resubmit bids at any time prior to bid opening. No bid may be withdrawn until 60 days after the bid opening.

F. The responsibility of bidders will be considered in making the award.

G. Owner will determine, at its own discretion, whether a bidder is responsible.

H. Owner reserves the sole discretion to reject any or all bids or to waive informalities and irregularities in the Bid Form or the Bid process.

I. Bids expressing exceptions or qualifications on Technical Specifications may be disregarded at the sole discretion of the Board of Supervisors.

J. In accordance with the General Conditions, include in the Bid all costs for full performance of the work.

#### BID SECURITY:

Each bidder shall submit, with their bid, a cashier's check upon a solvent bank or a Bid Bond in an amount equal to twenty five thousand dollars (\$25,000.00) made payable to Owner. This bid security shall be given as a guarantee that the bidder will enter into the Agreement if awarded to him and will produce the required bonds, certificates and insurance coverage, and **shall be retained as liquidated damages if he refuses to enter into said Agreement** upon request to do so by Owner. Bid security will be returned to all unsuccessful bidders, and to each successful bidder upon the County's receipt of a satisfactory Performance Bond, Payment Bond, Policy of Insurance, Worker's Compensation Insurance Certificate, executed Agreement and any other

document required by the Contract Documents prior to the execution of the Agreement by the County. Bid Bonds shall be executed on the form included in these specifications or a facsimile thereof.

NON-COLLUSION AFFIDAVIT:

Each bidder shall submit to Owner, with their bid, a Non-Collusion Affidavit covering the bidder and all sub-contractors. The Non-Collusion Affidavit shall be executed on the form included in these Specifications or a facsimile thereof.

FORM OF AGREEMENT:

The form of Agreement, which the successful bidder, as Contractor, will be required to execute in 3 (three) original counterparts is the Agreement between Owner and Contractor shown in these Specifications.

PERFORMANCE BOND AND PAYMENT BOND:

The successful bidder shall file, with Owner, a Performance Bond and a Payment Bond. **The Payment and Performance Bonds required by these specifications will neither be accepted nor approved by the County unless the bonds are underwritten by a California admitted surety, and the requirements of California Code of Civil Procedure Section 995.630 are met.** Bonds shall be executed in 3 (three) original counterparts on the forms included in these Specifications or facsimile thereof.

CONTRACTOR'S LICENSE:

At the time the bid is submitted, the bidder shall possess a valid and current Contractor's License, classification **"B" General Contractor**, issued by the State of California in order to perform the work described in the Contract Documents.

CONTRACTOR'S INSURANCE:

Coverage: Contractor shall maintain, for the duration of the work and warranty period required under the Agreement, all Insurance in the minimum amounts required by the "GENERAL CONDITIONS."

**END OF SECTION 00100**

## **SECTION 00310 - BID FORM**

Owner: Board of Supervisors  
County of Tulare  
Administration Building  
2800 W. Burrel Avenue  
Visalia, CA 93291

Bid For: **Job Order Contract 001**

1. We, the undersigned, having familiarized ourselves with the local conditions, the Advertisement for Bids, Instructions to Bidders, General Conditions, Bid Form, Supplement to Bid Form, Agreement between Owner and Contractor, the Bid Documents and Addenda issued by the Owner, do hereby propose to furnish all labor, materials, necessary tools, expendables, equipment, utility and transportation services necessary to complete the Work required for the above Bid Package in strict accordance with the contract documents, including all Addenda.
2. Undersigned declares that the cost of a Performance Bond in the full amount of the Maximum Value of the Agreement, and a Labor and Material Payment Bond of 100% of the Maximum Value of the Agreement is included in this bid.
3. Undersigned agrees to enter into and execute an Agreement, if awarded on the basis of this Bid, and to furnish Bonds and Insurance in accordance with Contract Documents within seven calendar (7) days after date of receipt of Notice of Intent to Award.

4. **Liquidated Damages for Failure to Enter into the Agreement:**

Enclosed herewith is Cashiers Check or Bid Bond, made payable to the Owner, which is twenty five thousand dollars (\$25,000.00). Should Contractor's bid be accepted and Contractor thereafter fail to enter into the Agreement on the basis of this bid, IT IS HEREBY UNDERSTOOD AND AGREED that it is, and will be, difficult or impossible to determine the actual damage which Owner will sustain in the event of, and by reason of, such failure to enter into the Agreement. Undersigned further agrees that said check or Bid Bond shall be forfeited as liquidated damages (not as a penalty), if undersigned fails to enter into an Agreement on the basis of this bid.

5. Undersigned acknowledges receipt of the following Addenda:

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_ Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_ Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

6. This Bid is valid for sixty (60) calendar days following the date for receiving Bids.
7. Undersigned proposes to enter into a contract for the following amounts:

**BID ITEMS**

A. Adjustment Factors. The Contractor bids two adjustment factors that will be applied against the prices set forth in the Construction Task Catalog. These adjustment factors will be used to price out fixed price work orders by multiplying the adjustment factor by the unit prices and quantities.

B. Base Period (12 months from Notice of contract award or expenditure of the \$1,000,000 maximum value of the contract, whichever occurs first)

Factor 1 - Unit work requirements to be performed during normal work hours, an eight hours shift weekday 7am to 5pm, for Projects as ordered by the OWNER in individual job orders against the contract.

1.                              

Utilize four decimal places

Factor 2- Unit work requirements to be performed during other than normal work hours, weekdays 5pm to 7am, weekends and holidays, for Projects as ordered by the OWNER in individual work orders against the contract.

2.                              

Utilize four decimal places

C. Factor 2 may not be less than Factor 1.

8. BASIS OF AWARD OF CONTRACT:

A. The basis for award is 0.8 times Factor 1 added to 0.2 times Factor 2.

Type of Organization \_\_\_\_\_  
(Individual, Partnership, Corporation, Etc.)

Company's Name \_\_\_\_\_  
(Type or Print)

Partner's Names \_\_\_\_\_  
(If Partnership) \_\_\_\_\_

Seal (If Corporation)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Contractor)

\_\_\_\_\_  
(Type Name of Contractor)

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_



Attachments:

- \_\_\_\_\_ Bid Security
- \_\_\_\_\_ Non-Collusion Affidavit
- \_\_\_\_\_ Corporate Resolution authorizing  
Signature of Document, if Corporation

**Contractor License:**

Class:\_\_\_\_\_

Number:\_\_\_\_\_

Expiration Date:\_\_\_\_\_

**END OF SECTION 00310**

**SECTION 00506 - AGREEMENT OWNER AND CONTRACTOR**

**A G R E E M E N T  
B E T W E E N  
O W N E R   A N D   C O N T R A C T O R**

**AGREEMENT**

made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_

**BETWEEN** the Owner:                    **COUNTY OF TULARE, STATE OF CALIFORNIA**

and the Contractor: \_\_\_\_\_

The Project:                                **Job Order Contract 001**

The Owner and the Contractor agree as set forth below.

**ARTICLE 1  
THE CONTRACT DOCUMENTS**

The Contract documents consist of this Agreement, the General Conditions and those documents enumerated in Sub-paragraph 1.1.1 of the General Conditions, which documents are hereby incorporated into this Agreement and made a part hereof.

**ARTICLE 2  
THE WORK**

The Contractor shall perform all the Work required by the Contract Documents for the **Job Order Contract 001**

**ARTICLE 3  
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

The Work to be performed under this Contract shall be commenced within ten (10) calendar days after the date the Notice to Proceed and the Contract will expire **365** calendar days after the date the Notice to Proceed is received by the Contractor or award of Job Orders totaling the Maximum Contract Value.

The Contractor shall be liable for liquidated damages of as set forth on the schedule below for each and every calendar day beyond the Job Order time:

Job Order Size	Liquidated Damages
\$0 to \$50,000	\$100
\$50,001 to \$100,000	\$250
Over \$100,001	\$500

**ARTICLE 4  
CONTRACT SUM**

The Owner shall pay the Contractor in current funds for the performance of the Work the amount of each individual Job Order, , at least the Minimum Contract Value of twenty five thousand Dollars (**\$ 25,000**). The Maximum Contract Value is five hundred thousand dollars (**\$500,000**). The Maximum Contract Value may be increased to any value up to the maximum allowed by law upon mutual consent of the Owner and the Contractor.

**ARTICLE 5  
PROGRESS PAYMENTS**

The Owner shall make progress payments on account of the individual Job Order Sums to the Contractor as provided in the Contract Documents as follows:

Progress Payments: For Job Orders with a construction schedule of greater than 45 days the Contractor shall, on or before the first day of each month, make an estimate of the work performed during the preceding month and submit same to the Owner for checking and approval. On or about the 20th day of the month, following the month in which the work was performed, the Owner shall pay to the Contractor ninety (90%) percent of the value of said work in place, as checked and approved by the Project Manager. The balance of ten (10%) percent of the estimate shall be retained by the Owner until the time of final acceptance of said work.

For Job Orders with a construction schedule of 45 days or less there shall be one payment for 90% for the Job Order Value and the remaining 10% paid 30 days later.

**ARTICLE 6  
FINAL PAYMENT**

Final payment for Job Orders, constituting the entire unpaid balance of the Job Order Sum, shall be paid by the Owner to the Contractor when the Work has been completed; the Job Order fully performed, which approves the final payment due the Contractor and the Board of Supervisors of Tulare County has formally accepted the project as complete by Resolution.

**ARTICLE 7  
MISCELLANEOUS PROVISIONS**

7.1 Terms used in this Agreement, which are defined in the "GENERAL CONDITIONS" of the contract, shall have the meanings designated in those Conditions.

7.2 Notices shall be addressed as follow:

**OWNER**

**Board of Supervisors**  
County of Tulare  
County Civic Center  
2800 W. Burrel Avenue  
Visalia, CA 93291  
(559) 733-6531

**CONTRACTOR**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARCHITECT**


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**SURETY**


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**PROJECT MANAGER**


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- 7.3 **PREVAILING WAGES.** The Contractor agrees that State Prevailing Wages apply to this Project, and that the Contractor will pay the rates for each trade or craft and shall require the subcontractors on the project to pay the rates for each trade and craft. The State Wage Determinations are on file with the Clerk of the Board of Supervisors, Administration Building, County Civic Center, Visalia, California, and will be made available to any interested person on request; and the Payroll Submittal Information attached hereto as Section 00508 are incorporated herein as if set forth in full and are a part of this Contract. The Contractor agrees to repay the Owner any and all amounts paid to any subcontractor in violation of Public Contract Code Section 6109. The Contractor shall pay the prevailing wages in effect at the time the Job Order Notice to Proceed is issued.
- 7.4 **COMPLIANCE WITH LAW:** CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.
- 7.5 **RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.
- 7.6 **INDEPENDENT CONTRACTOR STATUS:**
- a. This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

b. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- i. Withhold FICA (Social Security) from CONTRACTOR'S payments.
- ii. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- iii. Withhold state or federal income tax from payments to CONTRACTOR.
- iv. Make disability insurance contributions on behalf of CONTRACTOR.
- v. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

c. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

7.7 **INDEMNIFICATION:** CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CONTRACTOR or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONTRACTORS failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

7.8 **CONFLICT OF INTEREST:**

a. CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interests or appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from the making of any decision on behalf of COUNTY in which such officer, employee or consultant has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

b. CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests' laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

- 7.9 **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.
- 7.10 **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.
- 7.11 **CONSTRUCTION:** This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.
- 7.12 **NO THIRD PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
- 7.13 **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County California. CONTRACTOR waives the removal provisions of California Code of Civil Procedure section 394.
- 7.14 **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.
- 7.15 **EXHIBITS AND RECITALS:** The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 7.16 **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.
- 7.17 **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts which may be reasonably required to effect the purposes of this Agreement.
- 7.18 **ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

- 7.19 **ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.
- 7.20 **DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.
- 7.21 **UNEMPLOYMENT INSURANCE COMPLIANCE:** CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR'S full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete DE Form 542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

- 7.22 **REDUCTION IN FUNDING:** Contractor expressly understands and agrees that COUNTY is dependent upon certain Federal and/or State and/or local funding to pay the services provided in this contract. If such Federal and/or State and/or local funding is discontinued or reduced, County shall have the right to terminate the contract. In either event County shall provide CONTRACTOR with at least 30 days prior written notice of such termination.

This Agreement entered into as of the day and year first written above.

**OWNER**

**CONTRACTOR**

\_\_\_\_\_  
CHAIRMAN, BOARD OF SUPERVISORS

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

**COUNTY OF TULARE**  
**Civic Center**  
**Visalia, CA 93291**

ATTEST: Jean Rousseau  
County Administrative Officer/Clerk of  
The Board of Supervisors of the  
County of Tulare

BY: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
County Counsel

**END OF SECTION 00506**