

County of Tulare

Mooney Grove Park Bridge Project

Visalia, California



Bid Documents And Specifications

County of Tulare
County Administrative Office
Capital Projects Division

2800 W. Burrel Ave.
Visalia, California 93291

Phone: 559-636-5005
Fax: 559-733-6318

3/31/2009

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END OF SECTION 00005

SECTION 00020 – ADVERTISEMENT FOR BIDS

ADVERTISEMENT FOR BIDS

Tulare County- Phase 1 - Mooney Grove Park Bike and Trail Project

NOTICE IS HEREBY GIVEN that individually sealed bids for the **Tulare County – Phase 1 - Mooney Grove Park Bike and Trail Project** 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 Thursday, May 28, 2009.**

Project Description: The scope of work for the Improvements are as follows; installation of an existing steel truss bridge approximately 20 feet wide by 40 feet long over Cameron Creek and related concrete site work; installation of fencing/gates as required to provide access control points for Museum and Park grounds.

A pre-bid conference will be held at the project site located at **27000 S. Mooney Blvd., Visalia Ca.** at **10:00 a.m. on Thursday, May 14, 2009.** Attendees will assemble at the Tulare County Museum located in Mooney Grove Park. All Bidders are encouraged to attend the pre-bid conference and sign the pre-bid conference attendance roster.

Bids shall be in accordance with the drawings and specifications which are on file with, and may be obtained from Purchasing, Courthouse Room #3, 221 S. Mooney Blvd., Visalia, California 93291, (559) 636-5245, Monday thru Friday between 8 a.m. and 5 p.m. A non-refundable fee of **\$00.00** will be charged for each set of Plans and Specifications. Each bid shall be submitted individually on Bid Forms provided by County Administrative Office along with accompanying documents and a Cashier's Check or Bid Bond for not less than ten percent (10%) of the total amount of the bid, sealed in an envelope marked with the project title and the time and date of the bid opening.

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 Conference Room of the Board of Supervisors in the Tulare County Administration Building, County Civic Center, 2800 W. Burrel Avenue, Visalia, California. The results of the Bidding shall be reported to the Board of Supervisors at their next regular meeting thereafter.

The contract will be awarded to the lowest base bid. The lowest base bid shall be the lowest bid price on the base bid without consideration of the prices for any alternate bids.

TIME OF COMPLETION: The Project is to be completed within **120** calendar days from the date to be established in the "NOTICE TO PROCEED". The Agreement includes provisions for Liquidated Damages if the Project is not timely completed.

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.

The successful Bidder will be entitled to establish an Escrow in lieu of withheld payments pursuant to California Public Contract Code Section 22300, and the General Conditions.

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 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.

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 in 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 _____
CAO

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 Plans and Specifications and related documents from Purchasing, Courthouse Room #3, 221 S. Mooney Blvd, Visalia, California 93291, (559) 636-5245, Monday thru Friday between 8 a.m. and 5 p.m. A non-refundable fee of **\$00.00** will be charged for each set of Plans and Specifications. A maximum of two sets will be available to each contractor until after the pre-bid conference, after that time a contractor may obtain additional sets.

EXAMINATION:

Before submitting a bid, bidders shall carefully examine the Plans and Specifications, and related documents, visit the site of the work 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 at 10:00 AM on Thursday, May 14, 2009 at the project site; 27000 S. Mooney Blvd., Visalia Ca. Attendees will assemble at the Tulare County Museum located in Mooney Grove Park. All Prime Bidders are encouraged to attend the pre-bid conference and sign the pre-bid conference attendance roster.

INTERPRETATIONS, ADDENDA:

- A. Should a bidder find discrepancies, inconsistencies or omissions from the Drawings, Specifications and Related Documents, or should a bidder be in doubt as to their meaning, they shall at once notify the Owner by fax at (559) 733-6318 or by mail at County Administration Office, 2800 W. Burrel Ave., Visalia, Ca. 93291. Any such item not brought to the Owner's attention by May 21, 2009 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. Neither Owner or Owner's Representative will be responsible for oral instructions or information. Questions received by May 21, 2009 will be answered by a written Addendum directed to all bidders.
- B. Any Addenda issued by the Owner or Owner's Representative 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 or Owner's Representative 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. All amounts must be in words as well as in figures. Any discrepancy between the words and figures shall be resolved using the amount stated in words. 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 and the name of the Project. 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 10% of the bid amount referring to the Bid Package bid upon.
2. A separate sealed envelope, placed inside the Bid envelope, bearing on the outside the words: "SUBCONTRACTOR LIST FORM". No bid will be valid without the complete listing of subcontractors performing more than one-half ($\frac{1}{2}$) of one (1%) of total contract **with the signature of the contractor submitting the bid in the space indicated.**
3. A completed, notarized Non-Collusion Affidavit referring to the Bid Package bid upon.

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 and of their proposed Subcontractors will be considered in making the award.

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

H. The contract will be awarded to the lowest base bid. The lowest base bid shall be the lowest bid price on the base bid without consideration of the prices for any alternate bids.

I. 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.

- J. Bids expressing exceptions or qualifications on Technical Specifications may be disregarded in the sole discretion of the Board of Supervisors.
- K. In accordance with the General Conditions, include in the Bid all costs for full performance of the work.
- L. The following failures are not waivable and will cause a bid to be considered nonresponsive:
 - Failure to sign the bid
 - Failure to furnish the required bid bond
 - Failure to include a total amount of the bid
 - Failure to submit a completed addenda certification statement
- M. The decision of the Owner regarding the amount of a bid, or existence or treatment of a discrepancy in a bid will be final.

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 10% of the Base Bid 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**" 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

Owners Representative: Brian Summers
County of Tulare
2800 W. Burrel Avenue
Visalia, Ca. 93291
559-636-5005 - Phone
559-733-6318 - Fax

Consultant: Todd Barnes, P.E.
Provost & Pritchard Engineering Group
559-636-1166 - Phone
559-636-1177 - Fax

Bid For: **Tulare County – Phase 1 - Mooney Grove Park Bike and Trail Project**

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 Drawings and Specifications and Addenda issued by the Owner or Owner's Representative, 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 Agreement, and a Labor and Material Payment Bond of 100% of the amount 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 not less than 10% of the total amount of the Base Bid. 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:

Lump Sum Base Bid for work included in this Contract necessary to complete the Tulare County – Mooney Grove Park Bridge Project, in VISALIA, COUNTY OF TULARE, CALIFORNIA as shown in the drawings and specifications. The Project shall be completed within **120** days from the date to be established in the Notice to Proceed. The Agreement includes provisions for Liquidated Damages if the Project is not completed within the agreed time of completion.

_____ \$ _____
 Amount in Words Numbers

In the event of discrepancy between the words and numbers of the Lump Sum Base Bid the words shall prevail.

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
- _____ Sub-contractor List
- _____ Non-Collusion Affidavit
- _____ Corporate Resolution authorizing
- _____ Signature of Document, if Corporation

Contractor License:

Class: _____

Numbers: _____

Expiration Dates: _____

END OF SECTION 00310

SECTION 00311 - SUBCONTRACTOR LIST FORM

This attachment to the Bid Form shall be submitted with the Bid Form, in a separate sealed envelope. If no subcontractors are to be involved and work is to be performed by the Contractor, so state.

Pursuant to the provision of Section 4100 to 4113, inclusive, of the Public Contract Code of the State of California, every Bidder shall set forth the name and location of the place of business of each subcontractor who will perform work or labor in or about the construction of the work or improvement in an amount in excess of one-half (1/2) of one percent (1%) of the Bidder's total bid. If the Bidder fails to specify a subcontractor for any portion of the work in excess of one-half (1/2) of one percent (1%) of the Bidder's total bid, he agrees to perform that portion himself. The following is the required list of subcontractors:

BIDDER'S LIST OF SUBCONTRACTORS

(Use other side & extra sheets if necessary)

<u>Type of Work</u>	<u>Name and Address of Subcontractors</u>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
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Date

Contractor's Signature

(Continue list on page 2)

SECTION 00501 - BID BOND

COUNTY OF TULARE
STATE OF CALIFORNIA

BIDDER'S BOND

KNOW ALL MEN BY THESE PRESENT:

That we, _____ as PRINCIPAL, and

_____ as SURETY, are held and firmly bound unto the County of Tulare, hereinafter called the Obligee, in the penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID of the Principal above named, submitted by said Principal to the Board of Supervisors, County of Tulare, for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the surety hereunder exceed the sum of \$_____.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas, the Principal has submitted the above-mentioned bid to the Board of Supervisors, County of Tulare, for certain construction specifically described as follows, for which bids are to be opened at Visalia, California, on _____, for construction on the Tulare County - Government Plaza Roofing Project in Visalia, Ca.

NOW, THEREFORE, if the aforesaid Principal is awarded the Contract, given the required notice of award and presented with the Owner-Contractor Agreement for signature, and, within the time and manner required under the Special Provisions, executes and files it with the Clerk of the Board of Supervisors in the prescribed form and in accordance with the bid, together with all insurance certificates, bonds, powers of attorney, certificates of authority and financial statements, proofs of licensing, and any other documents required by the Special Provisions to be filed with the executed Agreement, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

In the event suit is brought upon this bond by the Obligee and judgement is recovered, the surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____, 2009.

Principal

Surety

Note: Signature of those executing for the surety must be properly acknowledged or notarized.

END OF SECTION 00501

SECTION 00502 – STATUTORY PERFORMANCE BOND

STATUTORY PERFORMANCE BOND PURSUANT TO
California Public Contract Code
Section 20129

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (Hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the surety), as Surety, are held and firmly bound unto the **COUNTY OF TULARE**, (hereinafter called the Obligee) in the amount of _____ Dollars (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Agreement with the Obligee, dated the _____ day of _____, to _____, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, and conditions of said Agreement during the original term of the Agreement and any extension thereof, with or without notice to the Surety, and during the life of any guarantee required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized extensions or modifications of said contract that may hereafter be made, notice of said extensions or modifications to the Surety being hereby waived; then the above obligation shall be void. Otherwise, said obligation shall remain in full force and effect.

Witness our hands this _____ day of _____.

Principal Seal

By

Surety Seal

By

Agency of Record

Note: Bond surety must be admitted to transact surety insurance in the State of California

End of Section 00502

SECTION 00503 – STATUTORY PAYMENT BOND

STATUTORY PAYMENT BOND PURSUANT TO

California Civil Code
Sections 3247 through 3252

KNOW ALL THESE MEN BY THESE PRESENTS:

That, _____ (Hereinafter called the Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the **COUNTY OF TULARE** (hereinafter called the Obligee), in the amount of _____ Dollars (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, to _____ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond having been required of the said Principal in order to comply with the provisions of California Civil Code, Sections 3247 through 3252, all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Statutory Provisions to the same extent as if they were copied at length herein.

Witness our hands this _____ day of _____

Principal Seal

By

Surety Seal

By

Agency of Record

Agency Address

Note: Bond surety must be admitted to transact surety insurance in the State of California.

End of Section 00503

SECTION 00504 - CERTIFICATION CONCERNING WORKER'S COMPENSATION

STATE OF CALIFORNIA)
) SS.
COUNTY OF TULARE)

The undersigned is aware of the provisions of Section 3700 of the Labor Code of the State of California which require every employer to be insured against liability of worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and the undersigned will comply with such provisions, and will require all subcontractors to comply with such provisions, before commencing the performance of the work of this Contract.

Date

Contractor's Signature

END OF SECTION 00504

SECTION 00506 - AGREEMENT OWNER AND CONTRACTOR

**AGREEMENT
BETWEEN
OWNER AND CONTRACTOR**

AGREEMENT

made as of the ____ day of _____ in the year of Two Thousand and Nine

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

and the Contractor: _____

The Project: Tulare County – Mooney Grove Park Bridge Project

The Owners Representative: Brian Summers – County of Tulare

The Owner's Consultant: Todd Barnes – Provost & Pritchard Engineering Group

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 Tulare County – Government Plaza Roofing Project.

**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 is received by the Contractor and, subject to authorized adjustments, Substantial Completion of the Work Shall be achieved not later than ___ calendar days after the date the Notice to Proceed is received by the Contractor.

The Contractor shall be liable for liquidated damages of **\$500.00** for each and every calendar day beyond the time herein described.

**ARTICLE 4
CONTRACT SUM**

The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order or as otherwise provided in the Contract Documents, the Sum of _____.

**ARTICLE 5
PROGRESS PAYMENTS**

Based upon Applications for Payment submitted to the Owner by the Contractor and Project Certificates for Payment issued by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents as follows:

Progress Payments: 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's Representative 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 Owner's Representative. The balance of ten (10%) percent of the estimate shall be retained by the Owner until the time of final acceptance of said work.

The Contractor may make a request for the retention to be reduced to five (5%) percent, and the remaining retention would be held until 35 days after the Notice of Completion is filed if the following requirements have been met:

1. The Contractor shall be seventy-five (75%) percent complete with the Work, not including stored materials.
2. The Work shall be on schedule.
3. The Contractor shall be maintaining a good practice of schedule and quality control as determined by the Owner's Representative.

Upon consent of the Owner, the retainage rate shall be 5% for all subsequent payments. Any monies previously withheld for retainage shall be retained by the Owner until disbursed as set forth above.

**ARTICLE 6
FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor when the Work has been completed; the Contract fully performed, the Owner's Representative has issued a Project Certificate for Payment, 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

CONTRACTOR

Board of Supervisors
County of Tulare
County Civic Center
2800 W. Burrel Avenue
Visalia, CA 93291
(559) 636-5000

OWNERS REPRESENTATIVE

SURETY

Brian Summers – County of Tulare
County Civic Center
2800 W. Burrel Avenue
Visalia, CA 93291
(559) 636-5005 – Phone
(559) 733-6318 – Fax

- 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.
- 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.
- 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

Address

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

SECTION 00507 - STATE WAGE DETERMINATION

1.1 INSTRUCTIONS:

- 1.1.1 THE GENERAL CONTRACTOR IS REQUIRED TO POST THE ATTACHED STATE WAGE DETERMINATION ON THE JOB SITE FOR THE PROJECT IN CONSPICUOUS LOCATION AVAILABLE TO ALL WORKERS.**

**GENERAL CONTRACTOR
IS REQUIRED
TO POST
THIS
STATE WAGE DETERMINATION
ON THE JOB SITE
FOR THE PROJECT:
TULARE COUNTY- PHASE 1 - MOONEY GROVE PARK BIKE AND TRAIL PROJECT**

END OF SECTION 00507

SECTION 00508 - PAYROLL SUBMITTAL INFORMATION

1.1 INSTRUCTIONS FOR PAYROLL SUBMITTALS

1.1.1 UPON REQUEST, THE GENERAL CONTRACTOR WILL PROVIDE TO TULARE COUNTY ANY RECORDS REQUESTED FOR PAYROLL ON THIS PROJECT WITHIN 48 HOURS INCLUDING BUT NOT LIMITED TO:

- A. Name, Address, Social Security Number and Ethnic Code of Employee or Employees.
- B. Number of Withholding Exemptions.
- C. Work Classification.
- D. Day, Date and Hours Worked.
- E. Total Hours.
- F. Rate of Pay.
- G. Gross Pay.
- H. Deductions.
- I. Net Wages Paid.

END OF SECTION 00508

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned of a check from _____
(Maker of Check)

in the sum of \$ _____ payable to _____
(Amount of Check) (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of

County Of Tulare located at _____
(Owner) (Job Description)

to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to

_____ through _____
(Your Customer) (Date)

only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order, which has been fully executed by the parties prior to the release date, are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract right, including rights between parties to the contract based upon the rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of the document relies on it, said party should verify evidence of payment to the undersigned.

DATE: _____
(Company Name)

By: _____
(Signature) (Title)

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

The undersigned has been paid and has received a progress payment in the sum of \$ _____
for labor, services, equipment and/or material furnished to _____
(Your Customer)

on the job of County Of Tulare located at _____
(Owner) (Job Description)

and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment and/or materials furnished to

_____ through _____ only, and does not
(Your Customer) (Date)

cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

DATE: _____
(Company Name)

By: _____
(Signature) (Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Upon receipt by the undersigned of a check from _____
(Maker of Check)

in the sum of \$ _____ payable to _____
(Amount of Check) (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of

County Of Tulare located at _____
(Owner) (Job Description)

This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional work in the amount of \$ _____. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

DATE: _____
(Company Name)

By: _____
(Signature) (Title)

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

The under signed has been paid in full for all labor, services, equipment or material furnished to

_____ on the job of _____
(Your Customer) (Owner)

located at _____ and does
(Job Description)

hereby waive and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$_____.

DATE: _____
(Company Name)

By: _____
(Signature) (Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

END OF SECTION 00509

SECTION 00700 - GENERAL CONDITIONS

TABLE OF ARTICLES

1. CONTRACT DOCUMENTS
2. ADMINISTRATION OF THE CONTRACT
3. OWNER
4. CONTRACTOR
5. SUBCONTRACTORS
6. WORK BY OWNER OR BY SEPARATE CONTRACTORS
7. MISCELLANEOUS PROVISIONS
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE
12. CHANGES IN THE WORK
13. UNCOVERING AND CORRECTION OF WORK
14. TERMINATION OF THE CONTRACT
15. ADDITIONAL INSTRUCTIONS
16. GUARANTEE

ARTICLE 1
CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General and other Conditions), the Drawings, the Project Manual, and all Addenda issued prior to and all Modifications issued after execution of the Agreement. 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 Owner pursuant to Sub-paragraph 2.2.11, 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, Bid Bond, the Payment Bond, Performance Bond, Insurance Certificates, Notice to Proceed and all other documents in Division 0 Bidding and Contract Requirements.

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 the Consultant and the Contractor, but the Consultant 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, the Owner's Representative and any Subcontractor or Sub-subcontractor.

1.1.3 THE WORK

The Work comprises the completed construction required of the Contractor by the Contract Documents, 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.

1.1.4 THE PROJECT

The Project, as defined in the Owner-Contractor Agreement, is the total construction of which the Work performed under the Contract Documents is a part.

1.2 EXECUTION, CORRELATION AND INTENT

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 visited the site, become familiar with the local conditions under which the Work is to be performed, and has correlated personal observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 Subject to Article 15.10.1, in cases of discrepancy concerning dimension, quantity and location, the Specifications shall take precedence over the Drawings. Explanatory notes on the Drawings shall take precedence over conflicting drawn indications. Large Scale details shall take precedence over smaller

scale details and figured dimensions shall take precedence over scaled measurement. Where figures are not shown, scale measurements shall be followed but shall in all cases be verified by measuring actual conditions of Work already in place. In cases of discrepancy concerning quality and application of materials and non-technical requirements over materials, the specifications shall take precedence over Drawings. In the case of discrepancy between the General Conditions and the General Requirements, the General Requirements shall take precedence.

1.2.5 If the Contractor observes any errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the Owner's Representative 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's Representative, shall be at the Contractor's risk and the settlement of any complications or disputes arising there from shall be at the Contractor's sole expense and Contractor shall indemnify, hold harmless and defend Owner and Owner's Representative from any liability or loss with respect to said adjustments.

1.2.6 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 Specifications and/or shown on the Drawings 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, Project Manual and copies thereof furnished by the Owner 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 Project is not to be construed as publication in derogation of the Owner's common law copyright or other reserved rights.

ARTICLE 2 ADMINISTRATION OF THE CONTRACT

2.1 THE CONSULTANT

2.1.1 The Consultant is the person lawfully licensed to practice professional engineering, or an entity lawfully practicing professional engineering, identified as such in the Owner-Contractor Agreement. The term Consultant means the Consultant or the Consultant's authorized representative.

2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The Owner will provide administration of the Contract as hereinafter described.

2.2.2 The Owner's Representative will represent the Owner during construction and until final payment to all contractors is due. The Owner's Representative will advise and consult with the Owner. All instructions to the Contractor shall be forwarded through the Owner's Representative. The Owner's Representative 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 Owner's Representative and Consultant 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 Owner's Representative and Consultant will visit the 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 Owner's Representative 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 Owner's Representative and Consultant will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

2.2.5 The Owner's Representative and Consultant 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 Owner's Representative and Consultant may perform their functions under the Contract Documents.

2.2.6 Based on the Owner's Representative and Consultant's observations, and an evaluation of the Contractor's Application for Payment, the Owner's Representative will determine the amount owing to the Contractor and will issue Certificates for Payment incorporating such amount, as provided in Paragraph 9.4.

2.2.7 The Owner's Representative 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 Owner's Representative will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with agreed upon time limits.

2.2.9 Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred to the Tulare County Administrative Officer (or his/her designee).

2.2.10 All interpretations and decisions of the Owner 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 Owner's decisions in matters relating to artistic effect will be final.

2.2.12 The Owner's Representative and Consultant will have the authority to reject or recommend to the County the rejection of Work which does not conform to the Contract Documents. Whenever, in the Owner's Representative's opinion, it is considered necessary, the Owner's Representative will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed.

2.2.13 The Owner's Representative will receive from the Contractor and review all Shop Drawings, Product Data and Samples.

2.2.14 The Owner's Representative and Consultant will review and approve 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 Work and the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Owner's Representative'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 Owner's Representative will take appropriate action on

Change Orders 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 Owner's Representative will conduct inspections to determine the date of Substantial Completion and final completion, 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 Owner's Representative will issue a final Project Certificate for Payment upon compliance with the requirements of Paragraph 9.8.

2.2.17 The duties, responsibilities and limitations of authority of the Consultant as the Owner's representative during construction as set forth in the Contract Documents, will not be modified or extended without written consent of the Owner, which consent shall not be unreasonably withheld.

2.2.18 In case of the termination of the employment of the Consultant, the Owner shall appoint a Consultant, whose status under the Contract Documents shall be that of the former Consultant, respectively.

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 project. 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

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 five (5) copies of the Drawings and Project Manual, free of charge. Additional copies over this number may be obtained by the Contractor, at the cost of reproduction.

3.2.4 The Owner or the Owner's Representative shall forward all instructions to the Contractor.

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 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 after 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. In such case an appropriate Change 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 Owner or other Professionals made necessary by such default, neglect or failure. 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 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 will 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 the Work.

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 RFIs in order of priority and include a brief statement of reason for priority. Owner initiated RFIs will not be listed on the contractor's RFI Priority Schedule. The Owner will endeavor to respect the order of priorities as requested by the Contractor for the overall benefit of the Project. 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 project site; and shall coordinate all portions of the Work under the Contract.

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 contract 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 Owner's Representative 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.

4.4 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 work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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 the Work 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 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 Contract.

4.4.5 Mechanics 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.

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. 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 Agreement against faulty materials or poor workmanship during the construction period and for three (3) years after the date of completion and acceptance of the work.

4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the work 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 bids are opened.

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 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 therefor and shall bear all costs attributable thereto.

4.7.5 Any reference in the Project Manual text to codes, standard specifications or manufacturer's instructions shall mean the latest printed edition of each in effect at the Contract date.

4.8 ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom the Contractor makes a reasonable objection.

4.8.2 Unless otherwise provided in the Contract Documents:

- .1 these allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance, delivered at the site, and all applicable taxes;
- .2 the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance;
- .3 whenever the cost is more or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. 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 Project shall remain on the Project until the Project 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

4.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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 site which shall be regularly updated to reflect current as-built conditions of the Work. The Contractor shall update the drawings as work progresses. The information to be recorded by the Contractor will be determined by the Owner's Representative, 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 changes authorized by Change Order. The updated drawings and specifications shall be available for review by the Owner and 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 shall prepare, review, approve and submit to the Owner, with reasonable promptness (not to exceed 10 days from pre-construction conference) and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product

Data and Samples required by the Contract Documents.

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 Project and the Contract Documents.

4.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's 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 by the Owner on previous submittals.

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 by the Owner as provided in Subparagraph 2.2.14. 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. 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 Contract 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.

4.12.12 Drawings: Following Contractor's review and approval, Contractor shall submit to the Owner five (5) copies of each drawing for approval. The Owner's Representative will check the submittal to see if it is complete. If complete, the Owner's Representative will check the drawings and affix a stamp to the prints, 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 prints. The Contractor shall then print and distribute the appropriate number of copies to his job personnel as required. If a print 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's Representative two samples of all materials in quantities and sizes as specified herein. Submittals shall be given to the Owner's Representative at a time determined by the Contractor, which allows for any necessary resubmittal and which will not cause any delay in the work. 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's Representative, 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 resubmitted for approval as per the original submittal.

4.12.15 Manufacturer's Instructions: Where any item or work is required by Project Manual 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 Owner has no information creating doubt as to the reliability of such certification, the Owner 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's Representative before using any portion of the site.

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 Work, match the surrounding similar surfaces.

4.15 CLEANING UP

4.15.1 The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by the Contractor's operations. At the completion of the Work, the Contractor shall remove all of the Contractor's waste materials and rubbish from and about the Project as well as all the Contractor's tools, construction equipment, machinery and surplus materials.

4.15.2 If the Contractor fails to clean up at the completion of the Work, the Owner may do so as provided in Paragraph 3.4 and the cost thereof shall be paid by the Contractor.

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 Owner. If the Contractor has reason to believe that the design, process or product selected is an infringement of a patent, that party shall be responsible for such loss unless such information is promptly given to the others.

4.17 INDEMNIFICATION

4.17.1 CONTRACTOR shall hold harmless, defend and indemnify OWNER, 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 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 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.

4.17.2 In any and all claims against the Owner 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 Owner, 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 Owner, their agents or employees, provided such giving or failure to give directions is the primary cause of the injury or damage.

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 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-subcontractor 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 sealed bid 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 Project.

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 and the Architect. Said agreement shall preserve and protect the rights of the Owner and the Architect 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.

5.3.3 Nothing contained in this Contract shall create any contractual relationship between any Subcontractor and the Owner nor create any contractual relationship between any Subcontractor and the Owner's Representative.

5.3.4 Jurisdictional disputes between Subcontractors or between Contractor and Subcontractor shall not be mediated or decided by the Owner. The Contractor shall be responsible for the resolution of all such disputes based upon his contractual relationship with his Subcontractors.

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 Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project 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 Project 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 construction schedule deemed necessary after a joint review and mutual agreement. The construction 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 Project 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 contractors 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's Representative 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 therefor.

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 therefor shall pay Owner such portions of the cost thereof as the Owner's Representative 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 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the person and address shown in Article 7 of the Agreement.

7.4 CLAIMS AND DISPUTES RESOLUTION

7.4.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, arising out of or relating to the Contract or a request for equitable adjustment or Change Order which can not be resolved per provisions of Article 12. **Any Claim shall be reduced to writing and filed with the Tulare County Administrative Officer (or his/her designee), within twenty calendar days after the Contractor has notice of the condition giving rise to the Claim, and final action per Article 12 procedures has taken place or has been declared as such in writing, by either party.** Such twenty day notice of an asserted claim is in addition to the requirement for prompt notice required per Paragraph 12.3.

7.4.2 Except as provided by Public Contract Code Section 7102, the Contractor shall not claim or recover any overhead cost administrative or otherwise, particularly 'Home Office' expenses, 'Extended site overhead', or any other overhead cost on the basis of any 'Home Office' damages formula, 'Eichleay' formula, 'Total Cost' recovery formula or any other such formula.

7.4.3 Except as provided by Public Contract Code Section 7102, the Contractor shall have no claim for damages or compensation for any delay or hindrance. Contractor shall make any claims in writing within the time set forth above, for any unreasonable delay or hindrance caused by Owner, and specifying the cause thereof as required in **7.4.4 below**.

7.4.4 REQUIREMENTS FOR FILING A CLAIM, Claims must be filed within the time specified in 7.4.1 above, but in no event later than the date of final payment. Claims shall be submitted to the Tulare County Administrative Officer (or his/her designee). The claim shall be in writing and shall be sum certain if known. If unknown, Contractor shall specify the basis for establishing the sum certain. Claim shall include a statement of the reasons for the asserted entitlement, and include the documents necessary to substantiate the claim. Such documents may include but are not limited to payroll records, purchase orders, quotations, invoices, estimates, subcontracts, daily logs, supplier contracts, subcontract billings, bid takeoffs, equipment rental invoices, ledgers, journals, daily reports, job diaries, and any documentation related to the requirements of Article 12. In the case of a continuing delay, only one claim is necessary. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the critical activities on the construction schedule. The Contractor shall certify, at the time of submission of a claim, as follows:

"I certify under penalty of perjury under the laws of the State of California, that the foregoing claim is made in good faith, that the supporting data are accurate, and in my opinion, justify the contract adjustments requested.

By: _____
(Contractor's signature)

Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims. For any claim subject to this Article 7.4, the following requirements apply:

- 1 For claims of less than fifty thousand dollars (\$50,000), the Tulare County Administrative Officer (CAO), shall review the facts pertinent to the claim, obtain additional information deemed necessary for a decision (if any), review recommendations of the Owner's Representative, coordinate with the contract administrator (if any) and secure assistance from legal and other advisors, and render a written decision on the claim within 45 days of receipt of the claim. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the County Administrative Officer and claimant. The CAO'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.
- .2 For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the CAO shall review the facts pertinent to the claim, obtain additional information deemed necessary for a decision (if any), review recommendations of the Owner's Representative, coordinate with the contract administrator (if any) and secure assistance from legal and other advisors, and render a written decision on the claim 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 or claims the Owner may have against the claimant. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the CAO and the claimant. The CAO's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documents, or a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
 - .3 If the claimant disputes the written response of the CAO or the CAO fails to respond within the time prescribed, the claimant may so notify the CAO, in writing, either within 15 days of receipt of the CAO's response or within 15 days of the CAO'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 CAO (or his/her designee) shall schedule a meet and confer conference within 30 days for settlement of the dispute.
 - .4 If following the meet and confer conference the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. 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 the claim is denied, including any period of time utilized by the meet and confer conference.

7.4.5 CLAIMS AND DISPUTES EXEMPT FROM FILING REQUIREMENTS. The procedures and remedies provided in this Article 7.4 do not apply to:

- .1 Any claims by the Owner;
- .2 Any claim for or respecting personal injury or death or reimbursement or other compensation arising out of or resulting from liability for personal injury or death;
- .3 Any claim or dispute relating to stop payment requests or stop notices; and
- .4 Any claim related to the approval, refusal to approve, or substitution of subcontractors, regardless of tier, and suppliers.

7.4.6 PAYMENT OF UNDISPUTED PORTION OF CLAIM. Owner shall pay claimant such portion of a claim which is undisputed except as otherwise provided in the contract.

7.4.7 CONTINUE WORK DURING DISPUTE. In the event of any dispute between the Owner and the Contractor, the Contractor will not stop work but will prosecute the work diligently to completion in his manner directed by the Owner, and the dispute shall be resolved by a court of law after completion of the Work. However, all disputes must be submitted by Contractor in accordance with the provisions of Article 7.4.

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 Contract amount and Payment Bond in the amount of 100% of the Contract amount.

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.**

7.5.3 All costs for applicable bid bonds, payment bonds and performance bonds shall be included in the bid.

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 Owner's Representative 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.

7.7 TESTS

7.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Owner's Representative timely notice of its readiness so the Owner's Representative may observe such inspection, testing or approval. The Owner shall bear all costs of such inspections, tests or approvals conducted by public authorities.

7.7.2 If the Owner's Representative determines that any Work requires special inspection, testing or approval which Subparagraph 7.7.1 does not include, the Owner's Representative will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Owner's additional services made necessary by such failure; otherwise the

Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.7.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and the Contractor shall promptly deliver them to the Owner's Representative.

7.7.4 If the Owner's Representative wishes to observe the inspections, tests or approvals required by the Contract Documents, they will do so promptly and, where practicable, at the source of supply.

ARTICLE 8 **TIME**

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the Work is the date established in a 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 or elsewhere in the Contract Documents.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Owner's Representative 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.

8.1.4 The Date of Substantial Completion of the Project (if more than one phase or contractor) or designated portion thereof is the Date certified by the Owner's Representative when construction is sufficiently complete so the Owner can occupy or utilize the Project or designated portion thereof for the use for which it was intended.

8.1.5 The term day as used in the Contract Documents shall mean calendar day unless specifically designated otherwise.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2.

8.2.3 The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion of the Work within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner, any of their employees, any separate contractor employed by the Owner, or by changes ordered in the Work, labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, any causes beyond the Contractor's control, or by any other cause which the Owner's Representative determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner's Representative may determine.

8.3.2 Any claim for extension of time shall be made in writing to the Owner's Representative not more than ten 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.

8.3.3 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.2.8 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 Extensions of time are the sole remedy for delay claims. Except as provided in Public Contract Code Section 7102, the Contractor shall have no claim for damages or compensation for any delay or hindrance.

8.3.5 Liquidated Damages

If the work is not completed by the Contractor in the time specified in Article 3 of Section 00506, or within any period of 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, and that both the Contractor and the Contractor's Surety shall be liable for the total amount thereof, and that the 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 compliment 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 time extensions granted by the Owner pursuant to Section 8.3.

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

8.3.6 Extension of Time Not a Waiver

Any extension of 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 contract in the time specified by the agreement, as modified by the particular extension in question.

The Owner's decision to grant a 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.

ARTICLE 9 **PAYMENTS AND COMPLETION**

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner's Representative a Schedule of Values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner's Representative may require. This schedule, unless objected to by the Owner, shall be used only as a basis for the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least fifteen days before the date for each progress payment established in the Owner-Contractor Agreement, the Contractor shall submit to the Owner's Representative an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner 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 of conditional waivers and release of lien rights upon progress payment as the Owner may require. 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 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 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 site.

9.3.3 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 site or furnishing materials and equipment for the Project, 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.

9.3.4 Progress Payments: 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 an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner may require, including appropriate updates to the CPM 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's Representative within seven days for checking and approval. On or about the 25th 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 Owner. The balance of ten (10%) percent of the estimate shall be retained by the Owner until the time of final acceptance of said work. In lieu of the ten (10%) percent retainage, the Contractor may substitute securities as provided in Article 9.3.5 below. The Contractor may apply to reduce said rate of retainage as set forth in Article 5 of the Owner-Contractor Agreement.

- .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 Contract Time be extended, nor shall the

Contract 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 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 work of 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.

9.3.5 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:

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

This Escrow Agreement is made and entered into by and between _____ Tulare County whose address is _____ (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. Thereafter, Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

3. Pursuant to Public Contract Code Section 22300, as an alternative to the deposit of securities followed by payment of all amounts required to be withheld from progress payments directly to Contractor, Contractor may elect to instruct Owner, upon written request, to pay retention amounts directly to Escrow Agent. When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that 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 pursuant to Section 3, above, 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 opportunity of interpleader.

8. Notwithstanding any provisions of this Escrow Agreement to the contrary, for a period of 35 days following the recordation of a Notice of Completion, Owner shall have unlimited access to the securities to respond to stop notice claims and punch list and warranty items. Pursuant to this paragraph, Owner may withdraw from the escrow sufficient cash to cover 125 percent of the principal amount claimed in any stop notice, and 150 percent of the estimated amount necessary to remedy any punch list and/or warranty item. To withdraw funds, Owner shall present to the Escrow Agent copies of any and all stop notices, and/or a letter from its architect concerning the punch list and/or warranty items, together with written notification from the Owner making demand for the funds. In response to Owner's demand, upon seven days written notice, Escrow Agent shall immediately convert sufficient securities to cash and distribute the cash to Owner. In no event will Escrow Agent have any obligation to pay to Owner more than the amount Escrow Agent is holding. Owner's rights under this paragraph are in addition to and do not supplant any other rights or remedies contained in this Section or the remainder of this Escrow Agreement.

9. 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.

10. Escrow Agent shall rely on the written notifications from the Owner and Contractor pursuant to Sections (4), to (9), inclusive, 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.

11. Pursuant to Public Contract Code § 22300, Contractor shall pay to each subcontractor, not later than 20 days after receipt of the 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.

12. 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.

13. The Contractor shall indemnify and hold harmless the Owner, and the Owner's agents and employees, from and against all liability, claims, actions, costs, damages or losses of any kind, including but not limited to attorney's fees, arising out of or resulting from any loss due to reduction of interest earnings or value of securities, or by reason of any delinquency, negligence, or default of escrow

agent.

14. This Contract shall be interpreted and governed under the laws of the State of California without reference to California conflict of law principles. The parties agree that this Contract is made and is to be performed in the County of Tulare, California. Contractor waives the removal provisions of Code of Civil Procedure Section 394.

15. 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:

On behalf of Contractor:

Title

Title

Name

Name

Signature

Signature

Address

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:

Contractor:

Title

Title

Name

Name

Signature

Signature

Address

Address

Escrow Agent:

Title

Name

Signature

Address

9.3.6 Itemized Breakdown: The Contractor shall submit a financial breakdown of the work, itemized by crafts or sections as designated by the Architect. The Contractor's payment shall be based upon the monthly percentage of completion of these items.

9.3.7 Lien Waivers: The Owner or Architect 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.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Owner's Representative will, within seven days after the receipt of the Project Application for Payment, review the Project Application for Payment and either issue a Project Certificate for Payment for such amounts as the Owner's Representative determines are properly due, or notify the Contractor in writing of the reasons for withholding a Certificate as provided in Subparagraph 9.6.1. The application for payment shall be made on AIA Documents G702 and G703 of the latest edition, in triplicate.

9.4.2 The issuance of a Project Certificate for Payment will constitute a representation by the Owner that, based on the Owner's Representative's observations at the site as provided in Subparagraph 2.2.4 and the data comprising the Project Application for Payment, the Work has progressed to the point indicated; that, to the best of the Owner's Representative's knowledge, information and belief, the quality and timeliness of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion of the Work, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Project Certificate for Payment, the Owner shall not thereby be deemed to represent that the Owner's

Representative has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, has reviewed the construction means, methods, techniques, sequences or procedures, or has made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

9.5.1 After the Owner's Representative has issued a Project Certificate for Payment, 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 Contractor 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 Owner may on request, at the Owner'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 Owner on account of Work done by such Subcontractor.

9.5.4 The Owner shall have no 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 Owner's Representative 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 Owner's Representative's opinion, the Owner's Representative is unable to make representations to the Owner as provided in Subparagraph 9.4.2. If the Owner's Representative is unable to make representations to the Owner as provided in Subparagraph 9.4.2, and to certify payment in the amount of the Project Application, the Owner will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and the Owner's Representative cannot agree on a revised amount, the Owner's Representative will promptly issue a Project Certificate for Payment for the amount for which the Owner's Representative is able to make such representations to the Owner. The Owner may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, the Owner may nullify the whole or any part of any Project Certificate for Payment previously issued to such extent as may be necessary, in the Owner's Representative'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 Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be accomplished in compliance with the Contract Time;
- .7 persistent failure to carry out the Work in accordance with the Contract Documents; or

.8 stop notice served upon the Owner.

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

9.7 SUBSTANTIAL COMPLETION

9.7.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for the Owner a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Owner's Representative, on the basis of inspection, determines that the Work or designated portion thereof is substantially complete, the Owner's Representative will then prepare a Certificate of Substantial Completion of the Work, said time to be within the Contract time unless extended pursuant to paragraph 8.3 of the Work, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. AIA Document G704, Certificate of Substantial Completion, or other substitute form supplied and required by the Owner shall be used. The Certificate of Substantial Completion of the Work shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.7.2 Upon Substantial Completion of the work or designated portion thereof, and upon application by the Contractor and certification by the Owner's Representative, the Owner shall make payment, reflecting adjustments in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.7.3 When the Owner's Representative, on the basis of inspections, determines that the Project or designated portion thereof is substantially complete, the Owner's Representative will then prepare a Certificate of Substantial Completion of the Project which shall establish the Date of Substantial Completion of the Project and fix the time within which the Contractor shall complete any uncompleted items of the Certificate of Substantial Completion of the Work.

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

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Following the Owner's Representative's issuance of the Certificate of Substantial Completion of the Work or designated portion thereof, and the Contractor's completion of the Work, the Contractor shall forward to the Owner's Representative a written notice that the Work is ready for final inspection and acceptance, and shall also forward to the Owner's Representative a final Application for Payment. Upon receipt, the Owner's Representative will promptly make such inspection. When the Owner's Representative finds the Work acceptable under the Contract documents and the Contract fully performed, the Owner's Representative will issue a Project Certificate for Payment which will approve the final payment due the Contractor. This approval will constitute a representation that, to the best of the Owner's knowledge, information and belief, and on the basis of observations and inspections, the Work has been completed in accordance with the Terms and Conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said Certificate, is due and payable. The Owner's approval of said Project Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.8.2 have been fulfilled.

9.8.2 Neither the final payment nor the remaining retainage shall become due until the Contractor submits to the Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might in any way be responsible,

have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, and (3) other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. AIA Documents G706, Contractor's Affidavit of Payment of Debts and Claims, and G706-a, Contractor's Affidavit of Liens Release of Liens, or other substitute form supplied and required by Owner, shall be used. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien.

9.8.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Owner so confirms, the Owner shall, upon application by the Contractor and certification by the Owner's Representative and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work 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 Work fully completed and accepted shall be submitted by the Contractor to the Owner 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, or other substitute form supplied and required by Owner, shall be used.

9.8.4 The making of final payment shall not constitute a waiver of any claims by the Owner.

9.8.5 The acceptance of final payment shall, after the Date of Substantial Completion of the Project, constitute a waiver of all claims by the Contractor.

9.8.6 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.

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 Work.

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 Work 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 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.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, 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, or anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable, 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.

10.3 **EMERGENCIES**

10.3.1 In any emergency affecting the safety of persons or property the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

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 procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

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 Employers 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.

- .1 The Certificate of Insurance for General Liability and Comprehensive Automobile Liability Insurance have to meet the following requirements:
 - a. Name the COUNTY, it's officers, agents, employees and volunteers, individually and collectively as additional insureds (excepting workers compensation and professional errors and omissions insurance).
 - b. State that such Insurance for additional insureds shall apply as primary insurance and any other insurance maintained by the 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.
- .2 The Certificate of Insurance for Workers Compensation should include the following:
 - a. Waiver of Subrogation. Contractor waives all rights against the COUNTY and it's agents, officers and employees for recovery of damages to the extent these damages are covered by the Workers Compensation and Employer's Liability.

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 INSURERS. 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.

11.1.6 VERIFICATION OF COVERAGE. Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with the original endorsements effecting coverage in a form acceptable to the COUNTY. The COUNTY reserves the right to require certified copies of all insurance policies at any time.

11.1.7 SUBCONTRACTORS. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

**ARTICLE 12
CHANGES IN THE WORK**

12.1 CHANGE ORDERS

12.1.1 Definition: A Change Order is a written order to the Contractor signed to show the approval of the Owner and the authorization of the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the contract Sum or the Contract Time. The Contract Sum and the Contract 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 Contract Sum or the Contract Time, for

full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

12.1.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletion or other revisions, the Contract Sum and Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 Costs mean an itemized breakdown of all labor (by crafts), materials, sales taxes, equipment rentals, etc., for each portion of the Work which comprises the change order including any subcontractors itemized breakdown, plus not more than 15 percent to cover all profits and administration. The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided in Subparagraph 12.1.4.1 and 12.1.4.2.

12.1.4.1 If none of the methods set forth in Clauses 12.1.3.1, 12.1.3.2, or 12.1.3.3 is agreed upon, the Contractor, provided that a written order signed by the Owner is received, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Owner, on the basis of reasonable expenditures or savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 12.1.3.3 above, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting of actual cost together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor including social security, old age and unemployment insurance and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field personnel directly attributable to the change. Upon determination of cost by the Owner's Representative, payments to the Contractor may be made based on the Owner's approval of a Project Certificate for Payment. If the Contractor disputes the Owner's cost determination, the Contractor may initiate a claim per the claims and disputes resolution provisions of Paragraph 7.4.

12.1.4.2 The amount or credit to be allowed by the Contractor to the Owner, as confirmed by the Owner's Representative, for any deletion or change that results in a decrease in the Contract Sum will be the amount of the actual cost including reasonable profit. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured in the basis of the new increase, if any, with respect to that change.

12.1.5 Variation in Estimated Quantities: If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated as so changed in a proposed Change Order, that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions or differing site conditions be encountered in performance of the Work which differ materially from conditions indicated in the Contract Documents or those ordinarily encountered and generally recognized as inherent in the type work provided for in this Contract; the

Contract Sum shall be equitably adjusted by Change Order upon notification per provisions of Paragraph 12.3.

12.3 REQUEST FOR EQUITABLE ADJUSTMENT

12.3.1 If the Contractor considers a Request for Equitable Adjustment is justified for an increase in the Contract Sum or Time, the Contractor shall promptly, upon first observance of the condition giving rise to the request, provide the Owner's Representative written notice of such condition and circumstance. This notice shall be given by the Contractor before proceeding to execute the Work, except in emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such request shall be valid unless so made. Any change in the Contract Sum or Time resulting from such request for equitable adjustment shall be authorized by Change Order.

12.3.2 If the Contractor requests that additional cost or time is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.2.8, (2) any order by the Owner to stop the Work pursuant to Paragraph 3.3 where the Contractor was not at fault, or any such order by the Owner's Representative as the Owner's agent, (3) any written order for a minor change in the Work issued pursuant to Paragraph 12.4, the Contractor shall make such request for equitable adjustment as provided in Subparagraph 12.3.1.

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 Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be enacted by written order issued through the Owner's Representative, and shall be binding on the Owner and the Contractor. AIA Document G710, Architect's Supplemental Instructions, or other substitute form supplied and required by the Owner shall be used. 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 its being covered, either 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 Change Order, be charges to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be 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

13.2.1 The Contractor shall promptly correct all Work rejected by the Owner's Representative as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion of the Work and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Owner's additional services made necessary thereby.

13.2.2 If, within one year after the recordation of the 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 Work 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, 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, including compensation for other Professional's additional services made necessary thereby. 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 Change 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 a Change Order will be issued to reflect a reduction in the Contract 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 the Work 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 Contract and recover from the Owner payment for all work executed.

14.2 TERMINATION BY THE OWNER

14.2.1 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 persistently disregards laws, ordinances, rules, regulations or orders of having any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, and fails after written notice to commence and continue correction of such default, neglect or violation with diligence and promptness, the Owner upon certification by the Owner's Representative that sufficient cause exists to justify such action, may, after an additional written notice and without prejudice to any other remedy the Owner may have, terminate the Contract and take possession of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

14.2.2 If the unpaid balance of the Contract Sum exceeds all direct and indirect costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

14.2.3 Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of the 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.

14.2.4 Termination by the Owner for Convenience: Owner shall have the right to terminate this Agreement without cause by giving 30 days prior written notice of intension to terminate pursuant to this provision, specifying the date of termination. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue Contractor's work and the placing of orders for materials, facilities and supplies in connection therewith, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to the Owner, or at the option of the Owner, give the Owner the right to assume those obligations directly, including all benefits to be derived therefrom. Contractor shall thereafter do only such work as may be necessary to preserve and protect portions of its work already in progress and to protect materials and equipment on or in transit to the Project

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the direct, actual costs of Contractor's Work completed in conformity with the Contract; plus (2) actual costs incurred by Contractor directly as a result of termination for convenience; plus (3) an allowance of ten percent (10%) of the foregoing costs for the Contractor's overhead. The costs referred to in this Section shall be calculated and documented as required for a change order under Article 12 of the General Conditions. There shall be deducted from such sums the amount of any payments made to Contractor prior to the date of the termination of this Contract. Contractor shall not be entitled to any claim or claim of lien against the Owner for any additional compensation or damages in the event of such termination and

payment beyond that provided for in this Section.

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 the Owner to evaluate and verify the costs incurred by Contractor in performing the Work, including direct and indirect costs such as overhead allocations. 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, purchasing 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 the 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), back charge 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 the 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 latter 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 the 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. If the Contractor desires to use material other than that specified, he shall request approval of such substitution, in writing, to the Owner's Representative. Requests for substitutions shall be in the hands of the Owner's Representative no later than fourteen (14) calendar days prior to the date on which a decision is needed. Data substantiating the request may be submitted up to 35 days following the Notice of Award. Materials found acceptable will be approved by a duly authorized Addendum or Change Order.

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 Owner's Representative can make proper appraisal. Lack of proper information will be sufficient cause for rejection. Reference to catalogs that the Owner's Representative 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.

15.2 REFERENCE TO STANDARDS:

15.2.1 Reference to known standards shall mean and intend the latest edition or amendment published prior to date of these Project Manual, unless specifically indicated otherwise, and to such portions of it that relate and apply directly to the material or installation called for on the project.

15.2.2 Where material is specified solely by reference to standard specifications, the Contractor shall, if requested by the Owner's Representative, submit to the Owner's Representative 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.

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 Work, 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 Contract 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 the Drawings accompanying these Specifications.

15.3.5 Where reference herein is made to colors or finishes "as selected", the reference is to the Owner's Representative with concurrence by the Owner.

15.4 APPROVED APPLICATORS:

15.4.1 Where specific instruction in these Specifications 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 so as to cause no obstructions. Stored off sidewalks, roadways, and underground

services. 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 three (3) years after the filing of the 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.

15.9 WAGE RATES:

15.9.1 Pursuant to Section 1770-1780 of the Labor Code of the State of California, the Director of 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.

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, twenty-five dollars (\$25.00) 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. **In addition, the Contractor shall submit a certified copy of the payroll records of the Contractor and each subcontractor to the awarding body within seven (7) days after the payroll week ending date.**

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 thereafter 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.

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 Director of 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.

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.

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

specifications, and that the work as installed will fulfill the requirements included in the specifications. The undersigned agrees to repair or replace any or all so such work, together with any other adjacent work which may be displaced in connection with such replacement, that may prove to be defective in workmanship or material within a period of _____ by the County of Tulare, ordinary wear and tear and unusual abuse or neglect expected.

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

Countersigned

(Proper name)
Date of signature: _____

(Proper name)
Date of signature: _____

(Printed name)

(Printed name)

By: _____

By: _____

(Signature of Subcontractor or
General Contractor)

(Signature of General Contractor if for
Subcontractor)

Representatives to be contacted for services:

Name: _____

Address: _____

Telephone Number: _____

END OF SECTION 00700