

COPY

SANTA BARBARA COUNTY FLOOD CONTROL DISTRICT AGREEMENT FOR:

COUNTY PROJECT NO. 23STM1

Auditor-Controller Contract No. _____

THIS AGREEMENT, herein called Agreement, is made by and between the Santa Barbara County Flood Control and Water Conservation District, a political subdivision of the State of California, herein called District, and Dixon Marine Services, Inc., herein referred to as Contractor, for the completion of the work identified herein, on the following terms, conditions, and provisions:

1. CONTRACT

This Agreement includes and incorporates by reference all Contract Documents.

The Contract is comprised of all documents distributed to bidders as part of the Bid Package, including, but not limited to:

- A. Notice to Bidders and Special Provisions
- B. Project Plans
- C. State of California, Department of Transportation 2018 Standard Specifications as modified by Flood Control District Provisions
- D. State of California, Department of Transportation 2018 Standard Plans
- E. State of California, Department of Transportation 2018 Revised Standard Specifications
- F. County of Santa Barbara, Department of Public Works, Standard Details dated September 2011
- G. Santa Barbara County Code
- H. Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished
- I. The Bid Book/Proposal executed and submitted by the Contractor
- J. Notice to Bidders
- K. The Faithful Performance and Payment Bonds, and
- L. Any Addenda or Change Orders

The Contractor acknowledges receipt of all such documents as were not already in the Contractor's possession. Said incorporated documents are referred to herein as the "Contract" or "Contract Documents".

Copies of all said documents are on file in the District's Santa Barbara office and have been and will be made available to the Contractor during the term of this Agreement.

The Special Provisions for the work to be done are entitled:

**SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERAVATION DISTRICT;
NOTICE TO BIDDERS AND SPECIAL PROVISIONS FOR CARPINTERIA SALT MARSH
EMERGENCY DREDGING PROJECT**

The project plans for the work to be done are entitled:

**SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT;
CARPINTERIA SALT MARSH EMERGENCY DREDGING PROJECT as detailed in the special
provisions.**

2. WORK

Contractor agrees, at his own proper cost and expense, to do all the work and furnish all equipment and materials, except such as mentioned in the specifications to be furnished by the District, necessary to perform and complete the work described in the documents referred to above, in a good and workmanlike manner to the satisfaction of the Director of Public Works of said County, all in strict accordance with the Plans and the Contract Documents provided.

3. TERM

The Contractor shall complete work in **60** working days and in accordance with 8-1.04B.

4. PAYMENTS NOT ACCEPTANCE

No certificate given or payments made under this Contract shall be evidence of the performance of this Contract, either wholly or in part, against any claim upon Contractor. Final payment for the work performed under this Contract shall not be made until the lapse of thirty (30) days after the Notice of Completion of said work has been filed for record and no payment shall be construed to be acceptance of any defective work or improper materials. Contractor's acceptance of payment for final quantities due under this Contract and the payment of undisputed contract amounts due for any work in accordance with any amendments of this Contract, shall release the District from any and all claims or liabilities on account of work performed under this Contract or any amendments thereof related to those amounts. In addition to guarantees required elsewhere, Contractor shall and does hereby guarantee all workmanship and material to be free of defects for a period of one year from and after the recordation of the Notice of Completion by the District, and Contractor shall repair or replace any or all work and material, together with any other portions of the work which may be displaced in so doing, that in the opinion of the Engineer, is or becomes defective during the period of said guarantee without expense whatsoever to the District.

5. PAYMENT

As full compensation for furnishing all labor, supervision, overhead, materials, and equipment and for doing all the work completed and embraced in this Agreement and subject to adjustments and liquidated damages, if any, as provided in the Contract Documents, the base amount to be paid to the Contractor for satisfactory completion of all requirements of the Contractor under this Agreement is and shall be \$3,175,961 to be paid as provided in the Contract Documents.

The Engineer is authorized to order the performance of supplemental work itemized in the bid item list, to be paid as provided in the Contract Documents. In no event shall the District be liable for the cost of any supplemental work unless approved in advance and in writing by the Engineer.

The Engineer is authorized to order, as change order work, changes and additions to the work being performed under this contract in an amount not to exceed \$171,298.05 (Contingency) in accordance with California Public Contract Code Sections 20142 and 20395, as applicable, to be paid as provided in the Contract Documents.

6. CONFLICT OF INTEREST

Contractor covenants that Contractor presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. Contractor must promptly disclose to District, in writing, any potential conflict of interest. District retains the right to waive a conflict of interest disclosed by Contractor if District determines it to be immaterial, and such waiver is only effective if provided by District to Contractor in writing.

7. NO PUBLICITY OR ENDORSEMENT

Contractor shall not use District's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use District's name or logo in any manner that would give the appearance that the District is endorsing Contractor. Contractor shall not in any way contract on behalf of or in the name of District. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the District or its projects, without obtaining the prior written approval of District.

8. DISTRICT PROPERTY AND INFORMATION

All of District's property, documents, and information provided for Contractor's use in connection with the services shall remain District's property, and Contractor shall return any such items whenever requested by District and whenever required according to the Termination section of this Agreement. Contractor may use such items only in connection with providing the services. Contractor shall not disseminate any District property, documents, or information without District's prior written consent.

9. RECORDS, AUDIT, AND REVIEW

Contractor shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Contractor's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted

accounting principles. District shall have the right to audit and review all such documents and records at any time during Contractor's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), Contractor shall be subject to the examination and audit of the California State Auditor, at the request of the District or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Contractor shall participate in any audits and reviews, whether by District or the State, at no charge to District.

If federal, state, or District audit exceptions are made relating to this Agreement, Contractor shall reimburse all costs incurred by federal, state, and/or District governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments, and all other costs of whatever nature. Immediately upon notification from District, Contractor shall reimburse the amount of the audit exceptions and any other related costs directly to District as specified by District in the notification.

10. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11. ENTIRE AGREEMENT AND CHANGE ORDERS

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties, or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

12. COMPLIANCE WITH LAW

Contractor shall, at its sole cost and expense, comply with all County, State, and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Contractor in any action or proceeding against Contractor, whether District is a party thereto or not, that Contractor has violated any such ordinance or statute, shall be conclusive of that fact as between Contractor and District.

13. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County, if in state court, or in the federal district court nearest to the County, if in federal court.

14. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

15. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

16. SURVIVAL

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

17. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in Section 1, contract documents herein, these numbered sections shall prevail.

18. REMEDIES FOR NONCOMPLIANCE

In the event County determines, in its sole discretion, that Contractor is not in compliance with the terms and conditions set forth herein, County may:

- A. Require payments as reimbursements rather than advance payments;
- B. Withhold authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- C. Require additional, more detailed financial reports;
- D. Require additional project monitoring;
- E. Requiring Contractor to obtain technical or management assistance; or
- F. Establish additional prior approvals.

19. PROCUREMENT OF RECOVERED MATERIALS

Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

20. MANDATORY DISCLOSURE

Contractor must disclose, in a timely manner, in writing to the County all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award. Contractor is required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM) located at www.sam.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180 and 31 U.S.C. 3321).

21. CARGO PREFERENCE ACT CONTRACT CLAUSE

Use of United States –flag vessels: The contractor agrees –

- A. To utilize privately owned United State-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for Unites States-flag commercial vessels.
- B. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

22. REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS (FHWA-1273)

Contractor shall comply with all provisions of the Required Contract Provisions Federal-Aid Construction Contracts (FHWA-1273).

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

- A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all

contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 U.S.C. Section 140, the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 U.S.C. Section 140, the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

'It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training.'

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be

capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: 'An Equal Opportunity Employer.' All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants

may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of

this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's

control, where the facilities are segregated. The term 'facilities' includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 'Contract provisions and related matters' with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made

or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

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

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not

agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the

wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

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

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall

maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a 'Statement of Compliance,' signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the 'Statement of Compliance' required by paragraph 3.b.(2) of this section.

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

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the

provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements.

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6,

and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed

in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term 'perform work with its own organization' refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of

the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. 'Specialty Items' shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of

paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation

of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

'Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both.'

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this

Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms 'covered transaction,' 'debarred,' 'suspended,' 'ineligible,' 'participant,' 'person,' 'principal,' and 'voluntarily excluded,' as used in this clause, are defined in 2 CFR Parts 180 and 1200. 'First Tier Covered Transactions' refers to any covered

transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). 'Lower Tier Covered Transactions' refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). 'First Tier Participant' refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). 'Lower Tier Participant' refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled 'Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions,' provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (www.epls.gov), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a

covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the

prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms 'covered transaction,' 'debarred,' 'suspended,' 'ineligible,' 'participant,' 'person,' 'principal,' and 'voluntarily excluded,' as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. 'First Tier Covered Transactions' refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). 'Lower Tier Covered Transactions' refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). 'First Tier Participant' refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). 'Lower Tier Participant' refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled 'Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid

construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

23. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

Contractor agrees to provide County, the California Governor's Office of Emergency Services, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

24. USE OF U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) LOGO

Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

25. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance may be used to fund this Agreement. Contractor will only use FEMA funds as authorized herein. Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

26. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Agreement.

27. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

CONTRACTOR SIGNATURE PAGE

Agreement for services and work to be performed by CONTRACTOR between the DISTRICT and CONTRACTOR.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

CONTRACTOR:

Dixon Marine Services, Inc.

12786 Sir Francis Drake Blvd

Inverness, CA 94937

License No. 831300

Business Type: Corporation

By: _____
Authorized Representative

Date: _____

SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT SIGNATURE PAGE

Agreement for services and work to be performed by CONTRACTOR between the DISTRICT and CONTRACTOR. IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

By: _____ Date: _____
 Scott D. McGolpin
 Director of Public Works

APPROVED AS TO FORM:

Greg Milligan, ARM
 Risk Manager

By: _____

APPROVED AS TO FORM:

Rachel Van Mullem
 County Counsel

By: _____
 Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
 Auditor-Controller

By: _____

Fiscal Responsibility _____

Department	Program	Project	Fund	Account	Area
054	3005	23STM1	2610	7510	S44M

BID ITEM LIST

Item No.	F ¹	Description	Unit	Quantity	Unit Price	Item Total
1	F	Emergency Dredging	CY	69,200	\$34.34	\$2,376,328.00
2		Mobilization	LS	1	\$799,633.00	\$799,633.00
TOTAL BID						\$3,175,961.00

¹ "F" denotes Final Pay Item

CERTIFICATE OF COMPLIANCE

This is to certify that all requirements for insurance of subcontractors as specified for this project have been met.

Dixon Marine Services, Inc.
FIRM NAME

BY

Title

Date

CALIFORNIA LABOR CODE SECTION 1860 AND 1861 CERTIFICATION

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Dixon Marine Services, Inc.
FIRM NAME

BY

Title

Date

Submit completed form with your Agreement, Bonds, and Certificates of Insurance.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That the County of Santa Barbara of the State of California (hereinafter referred to as the County) and Dixon Marine Services, Inc. (hereinafter referred to as Principal) have by written agreement dated _____, entered into a Contract identified as:

Project Title: CARPINTERIA SALT MARSH EMERGENCY DREDGING PROJECT
County Project No. 23STM1

(Hereinafter referred to as the Contract) and

That, pursuant to law and to said Contract, and before entering upon the performance of said Contract, the principal is required to file with the County a good and sufficient bond to secure the payment of labor and materials claims.

NOW, THEREFORE, said Principal and _____

as corporate surety (hereinafter referred to as Surety), are held firmly bound unto the County in the amount of \$3,175,961.00 for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally. The payment bond must also contain provisions which automatically increase amounts thereof and/or time of completion or both for all change orders, extensions and additions to the work provided pursuant to this Agreement. Surety shall be and hereby warrants that it is currently listed as an insurer authorized and admitted by the California Insurance Commissioner to issue surety insurance in the State of California, in the list published by the California Department of Insurance.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named or referred to in Section 9100 of the California Civil Code, or amounts due under Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Contractor and his Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor as required by Division 3, Part 4, Title XV, Chapter 7 (commencing at Section 9550) of the California Civil Code, or this bond, then said Surety will pay for the same, in an amount not to exceed the amount hereinafter set forth.

This bond shall insure to the benefit of any and all persons, entities, companies and corporations named or referred to in Section 9100 of the California Civil Code, so as to give a right of action to them or their assign in any suit brought upon this bond.

And the said Surety, for value received, hereby agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Specifications.

PAYMENT BOND

In the event suit is brought upon this Bond by County and judgment is recovered, Surety shall pay all costs incurred by the County in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability, or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

Dixon Marine Services, Inc.

Principal

Surety

BY:

Signature of Attorney-in-fact

DATED:

Address

City, State, Zip

Surety's Agent for Service of Process (located within the State of California):

Name of Agent

Address

City, State, Zip

Fax Number

NOTE: Signature of those executing for Surety must be properly acknowledged.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That the County of Santa Barbara of the State of California (hereinafter referred to as the County) and Dixon Marine Services, Inc. (hereinafter referred to as Principal) have by written agreement dated _____, entered into a Contract identified as:

Project Title: CARPINTERIA SALT MARSH EMERGENCY DREDGING PROJECT
County Project No. 23STM1

(Hereinafter referred to as the Contract) and

That, the Principal is required under the terms and conditions of said Contract to furnish a bond for the faithful performance of Contract.

NOW, THEREFORE, said Principal and _____

_____ as corporate surety (hereinafter referred to as Surety), are held firmly bound unto the County in the amount of \$3,175,961.00 for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally. Surety shall be and hereby warrants that it is currently listed as an insurer authorized and admitted by the California Insurance Commissioner to issue surety insurance in the State of California, in the list published by the California Department of Insurance.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his heirs, executors, administrators, successors, or assigns, shall perform all of the covenants, conditions and agreements in said Contract and any alteration thereof made as herein provided, in his or their part, to be kept and performed at the time, and in the manner therein specified, and shall indemnify and save harmless County, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force, virtue and effect.

And the said Surety, for value received, hereby agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or additions to the terms of the Contract or to the work or to the specifications.

PERFORMANCE BOND

In the event suit is brought upon this Bond by County and judgment is recovered, Surety shall pay all costs incurred by the County in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability, or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

Dixon Marine Services, Inc.

Principal

Surety

BY:

Signature of Attorney-in-fact

DATED:

Address

City, State, Zip

Surety's Agent for Service of Process (located within the State of California):

Name of Agent

Address

City, State, Zip

Fax Number

NOTE: Signature of those executing for Surety must be properly acknowledged.

FLOOD CONTROL DISTRICT PROVISIONS

The work provided herein must be performed in accordance with the *Caltrans Standard Specifications*, 2018 edition (*Standard Specifications*). The *Standard Specifications* are incorporated herein by reference.

MODIFICATIONS TO STANDARD SPECIFICATIONS

DIVISION I GENERAL PROVISIONS

1 GENERAL

Replace or add the following terms to section 1-1.07B:

business day: Day on the calendar except Saturday, Sunday, and a holiday.

County: The County of Santa Barbara, a political subdivision of the State of California.

County Clerk: The County Clerk of the County of Santa Barbara.

Department: The County of Santa Barbara acting by and through its Department of Public Works; its authorized representatives.

Director: Director of Public Works of the County of Santa Barbara, or the Director's duly authorized representative.

Engineer: Any duly authorized representative of the Director of Public Works of the County of Santa Barbara.

holiday: Holidays are shown in the following table:

Holidays

Holiday	Date observed
Every Sunday	Every Sunday
New Year's Day	January 1st
Birthday of Martin Luther King, Jr.	3rd Monday in January
Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19th
Independence Day	July 4th
Labor Day	1st Monday in September
Veterans Day	November 11th
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving Day	Day after Thanksgiving Day
Christmas Day	December 25th

If January 1st, July 4th, November 11th, or December 25th falls on a Sunday, the Monday following is a holiday. If January 1st, July 4th, November 11th, or December 25th falls on a Saturday, the preceding Friday is a holiday.

State: The State of California and its political subdivisions, including the County of Santa Barbara.

Supplemental Work: Change Order Work.

Replace line “2.1” under item “2. working day” in section 1-1.07B with:

2.1. Saturday, Sunday, and a holiday

Add to section 1-1.11:

Websites, Addresses, and Telephone Numbers

Reference or agency or department unit	Website	Address	Telephone number
Department of Industrial Relations Prevailing Wage Rates	https://www.dir.ca.gov/Public-Works/Prevailing-Wage.html		
County Bidders' Exchange	https://www.planetbids.com/portal/portal.cfm?CompanyID=43874	PlanetBids COUNTY OF SANTA BARBARA PUBLIC WORKS DEPARTMENT TRANSPORTATION DIVISION	(805) 568-3094
County Municipal Code	https://www.municode.com/library/CA/Santa_Barbara_County		(805) 681-4200
County Construction Manager		TBD CONSTRUCTION MANAGER SANTA BARBARA, CA 93110	(805) 568-3440

Delete the row for Office Engineer in the table of section 1-1.11.

Replace section 1-1.12 with:

1-1.12 MISCELLANY

Make checks and bonds payable to the County of Santa Barbara.

2 BIDDING

This Agreement is being procured under County emergency policy and procedures pursuant to, and consistent with, Federal, State, and local law.

3 CONTRACT AWARD AND EXECUTION

Delete section 3-1.02

Replace section 3-1.04 with:

3-1.04 CONTRACT AWARD

Submit any protest before 5:00 p.m. of the 10th business day following award of the contract. Include the

name, address, and telephone number of your designated representative with a complete statement for grounds of the protest. The protest must refer to the specific portion of the document that forms the basis for the protest.

Replace section 3-1.05 with:

3-1.05 CONTRACT BONDS (PUB CONT CODE § 20129(b) AND CIV CODE § 9554)

The Contractor must furnish 2 bonds:

1. Payment bond to secure the claim payments of laborers, workers, mechanics, or materialmen providing goods, labor, or services under the Contract. This bond must be equal to at least 100 percent of the total bid. The payment bond must also contain provisions which automatically increase amounts thereof and/or time of completion or both for all change orders, extensions and additions to the work provided pursuant to this Agreement.
2. Performance bond to guarantee the faithful performance of the Contract. This bond must be equal to at least 100 percent of the total bid.

You may provide alternative securities for monies withheld to ensure performance per the terms of Public Contract Code § 22300.

The County furnishes the bond forms.

Both the payment and performance bonds must be executed by one and only one surety. That Surety must be admitted and listed in the Insurance Organizations Authorized By The Insurance Commissioner To Transact Business Of Insurance In The State Of California for the current year, and must be further authorized by the commissioner to issue surety insurance.

Both the Payment and Performance bonds must be executed and submitted within one week of the execution of the contract.

Delete sections 3-1.08 to 3-1.17.

Replace section 3-1.18 with:

3-1.18 CONTRACT EXECUTION

The Contractor must sign the County Agreement (Emergency Contract) and deliver to the County the following documents:

1. Three (3) copies of the County Agreement (Contract) bearing your original signatures including Appendices.
2. Two (2) copies of the Performance and Payment Bonds. (Bonds do not need to be submitted in order to begin work)
3. Executed Certificate of Insurance Transmittal form.
4. Insurance Certificates.
5. Executed Taxpayer identification and certification (IRS Form W-9).
6. A copy of your Injury and Illness Prevention Program.
7. A copy of your policy on drugs and alcohol.

The County must receive these documents within 2 days of receiving notice of bid acceptance.

Add section 3-1.20:

3-1.20 INELIGIBILITY

Section 10285.1 of the Public Contract Code applies.

Add section 3-1.21:

3-1.21 CONTRACTOR REGISTRATION

Contractor and any subcontractors must be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.

Add section 3-1.22:

3-1.22 SUBCONTRACTOR LIST

On the Subcontractor List form, list each subcontractor that will perform work in an amount in excess of 1/2 of 1 percent of the total or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). For each subcontractor listed, the Subcontractor List form must show:

1. Business name and the location of its place of business.
2. California contractor license number for a non-federal-aid contract.
3. Public works contractor registration number.
4. Portion of work it will perform. Show the portion of the work by: (a) Percentage of the subcontracted work for each item; or (b) Describe the subcontracted work if the percentage of the item is less than 100 percent.

Add section 3-1.23:

3-1.23 DISADVANTAGED BUSINESS ENTERPRISES

Section 3-1.23 applies to a federal-aid contract.

Under 49 CFR 26.13(b):

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts.

Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. Include this assurance in each subcontract you sign with a subcontractor.

Section 3-1.23B applies if a DBE goal is shown here: No Goal. The Department shows a goal for DBEs to comply with the DBE program objectives provided in 49 CFR 26.1.

Submit all Emergency Contract forms to the Department.

3-1.24 OPT OUT OF PAYMENT ADJUSTMENTS FOR PRICE INDEX FLUCTUATIONS

You may opt out of the payment adjustments for price index fluctuations specified in section 9-1.07. To opt out, submit a completed Opt Out of Payment Adjustments for Price Index Fluctuations form under section 2-1.33.

5 CONTROL OF WORK

Replace last paragraph of section 5-1.01 with:

Contract administration forms are available at the State's website for your use.

Replace the 2nd paragraph of section 5-1.02 with:

If a discrepancy exists:

1. The governing ranking of Contract parts in descending order is:
 - 1.1 Emergency Work Task Order
 - 1.2 Emergency Contract, including Appendix A – Terms and Conditions and Appendix B – Required Contract Certifications
 - 1.3 Special Provisions and Project Plans
 - 1.4 Revised standard specifications
 - 1.5 Standard specifications
 - 1.6 Revised standard plans
 - 1.7 Standard plans
 - 1.8 Supplemental project information
2. Written numbers and notes on a drawing govern over graphics
3. A detail drawing governs over a general drawing
4. A detail specification governs over a general specification
5. A specification in a section governs over a specification referenced by that section

Add to section 5-1.09:

Section 5-1.09 applies if there is a bid item for *Partnering*.

Delete section 5-1.13C.

Delete section 5-1.13D.

Add to section 5-1.17:

You must implement a policy on drugs and alcohol conforming to 49 CFR Part 40.

Add to list under the 4th paragraph of section 5-1.23A:

4. Federal Project Number, if any

Replace "3" in the second paragraph of section 5-1.27B with "4"

Replace section 5-1.27C with:

Make your records available for inspection, copying, and auditing by County representatives for the same time frame specified under section 5-1.27B. The records of subcontractors and suppliers must be made available for inspection, copying, and auditing by County representatives for the same period. Before Contract acceptance, the County representative notifies the Contractor, subcontractor(s), or supplier(s) five (5) business days before inspection, copying, or auditing.

If an audit is to start more than 30 days after Contract acceptance, the County representative notifies the Contractor, subcontractor(s), or supplier(s) of the date when the audit is to start.

Replace the 2nd through 4th paragraphs of section 5-1.27E with:

Submit change order bills to Engineer.

Replace section 5-1.37B(1) with:

For areas within the project limits, which shall be subject to the Contractor providing protective measures and repairing related damage, construction equipment exceeding the size or weight limits in Vehicle Code Division 15 may move over:

1. Public roads within the highway
2. Treated base or pavement under construction or completed

3. Culverts and pipes
4. Structures whether open to traffic or not, that are designed for AASHTO HS20-44 live loading, except culverts and pipes. Before crossing one of these structures, submit a transportation permit including the dimensions and maximum axle loadings of the equipment; and unless a material hauling equipment lane on a bridge is shown on the drawings, comply with the following specifications:
 - 4.1. The maximum loading on a bridge due to pneumatic-tired truck and trailer combinations must not exceed:
 - 4.1.1. 28,000 lb for single axles
 - 4.1.2. 48,000 lb for tandem axles
 - 4.1.3. 60,000 lb total gross load for single vehicles
 - 4.1.4. 110,000 lb total gross load for truck and trailer or semi-trailer combinations
 - 4.2. The loading on a bridge due to 2- and 3-axle pneumatic-tired earthmovers must not exceed that shown in the following table:

Allowable Construction Loading on Bridges for 2- and 3-Axle Earthmovers

Bridge girder center-to-center spacing (feet)	Maximum axle loading (pounds)
4	28,000
5	29,000
6	30,000
7	32,000
8	34,000
9	37,000
10 and over	40,000

NOTE: Minimum axle spacing:

For 2-axle earthmovers:
Axles 1 to 2 = 20 feet

For 3-axle earthmovers:
Axles 1 to 2 = 8 feet
Axles 2 to 3 = 20 feet

- 4.3. All loads proposing to exceed the limits established for the structure in question shall require additional mitigation, in the form of structure avoidance, strengthening, or providing testing and/or calculations satisfying integrity and safety of the structure under the proposed loading, at the discretion of the Engineer. Established limits for structures may be found in the most recent Annual Permit Load Restriction List
5. Completed or existing base, pavement, and structures under the Department's Transportation Permits Manual, whether open to the public or not.

Loads imposed on existing, new, or partially completed structures must not exceed the load-carrying capacity of the structure or any portion of the structure as determined by AASHTO LRFD with interims and California Amendments, Design Strength Limit State II. The f_c to be used in computing the load-carrying capacity must be the smaller of the following:

1. Actual compressive strength at the time of loading
2. Value of f_c shown on the plans for that portion of the structure or 2.5 times the value of f_c shown on the plans for portions of the structure where no f_c is shown

Replace section 5-1.43 with:

You must follow Pub Contract Code § 9204 to pursue a potential claim.

6 CONTROL OF MATERIALS

Delete the 2nd sentence of the 3rd paragraph of section 6-1.02.

Replace the 2nd paragraph of section 6-1.05 with:

Submit a substitution request no later than the 4th business day following bid opening.

Replace section 6-2.01A with:

6-2.01A General

Section 6-2 includes provisions related to quality.

Quality assurance includes all activities used to (1) provide an overall level of quality for the project and (2) determine compliance with the Contract documents.

Quality control includes sampling, testing, and inspections performed under your QC program to (1) control material quality and (2) ensure the specified quality characteristics for the project are met.

Department acceptance includes sampling, testing, and inspections performed by the Department to verify compliance with the Contract.

The Department's independent assurance program is described in the County's Quality Assurance Program dated August 2019. For the manual go to:

<https://cosantabarbara.box.com/s/9amrlhz5z21pim1sb7wlvmyu6mvt8lv>

Schedule work to allow time for the QAP.

Replace the 7th paragraph of section 6-2.01A with:

For a material specified to comply with a property shown in the following table, the County tests under the corresponding test shown:

Property	Test
Relative compaction	ANSI/ASTM D 1557
Sand equivalent	California Test 217
Resistance (R-value)	California Test 301
Grading (sieve analysis)	California Test 202
Durability Index	California Test 229
Soil moisture content	ASTM D 3017
In place soil density	ASTM D 2922

7 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

Replace section 7-1.02I(1) with:

7-1.02I(1) Santa Barbara County Code, Chapter 2, Article XIII

Sec. 2-94. - Exceptions.

The provisions of this article shall not apply to contracts or agreements for the acquisition, exchange or disposition of real property or interests therein, nor to contracts or agreements with the State of California, or its political subdivisions, or with the United States of America.

Sec. 2-95. - Prohibition of unlawful discrimination in employment practices.

The County of Santa Barbara reserves the right to terminate forthwith each and every

written contract and agreement (except purchase orders) respecting real property, goods and/or services entered into by the County of Santa Barbara including but not limited to concessions, franchises, construction agreements, leases, whether now in effect or hereinafter made if the County finds that the Contractor is discriminating or has discriminated against any person in violation of any applicable state or federal laws, rules or regulations which may now or hereafter specifically prohibit such discrimination on such grounds as race, religion, sex, color, national origin, physical or mental disability, Vietnam era veteran/disabled, age, medical condition, marital status, ancestry, sexual orientation, or other legally protected status. This right of termination extends to contracts entered into by the County of Santa Barbara or by its joint powers, agencies or agents so long as the County obtains the consent of those parties.

Such finding may only be made after Contractor has had a full and fair hearing on notice of thirty days before an impartial hearing officer at which hearing Contractor may introduce evidence, produce witnesses and have the opportunity to cross-examine witnesses produced by the County. Further, any finding of discrimination must be fully supported by the facts developed at such hearing and set forth in a written opinion; and in addition, Contractor may move in the appropriate court of law for damages and/or to compel specific performance of a Contractor or agreement if any of the above procedures are not afforded to the Contractor. If Contractor is not found to have engaged in unlawful discriminatory practices, County shall pay all costs and expenses of such hearing, including reasonable attorneys' fees, to Contractor in accordance with current Santa Barbara County Superior Court schedule of attorneys' fees for civil trials. If Contractor is found to have engaged in such unlawful discriminatory employment practices, Contractor shall pay all such costs, expenses and attorneys' fees.

Whether or not a contract or agreement is still in existence at the time of final determination of such unlawful discrimination, the Contractor shall forthwith reimburse the County for all damages directly stemming from such discrimination; however, those damages shall not exceed and are not reimbursable in an amount which exceeds amounts paid to Contractor under the terms of the contract or agreement.

Nothing in this section 2-95 shall directly or by interpretation give a private cause of action to any third party (not a signatory to the contract or agreement) including employees past or present, or applicants for employment to Contractor, it being the sole purpose of this clause to administratively assure compliance with the nondiscrimination clauses contained herein.

With respect to employment discrimination, employment practices shall include, but are not limited to, employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rate of pay, employee benefits and all other forms of compensation or selection for training and apprenticeship and probationary periods.

Contractor shall permit access at all reasonable times and places to all of its records of employment, advertising, application forms, tests and all other pertinent employment data and records, to the County of Santa Barbara, its officers, employees and agents for the purpose of investigation to ascertain if any unlawful discrimination as described herein has occurred or is being practiced, provided that such records are relevant to a complaint of an unlawful discriminatory practice which has been forwarded to Contractor reasonably prior to the time Contractor is asked to make such records available. In addition, all such records shall be deemed "Confidential" by the officers, employees and agents of the County. No records or copies of such records may be removed from the premises of Contractor, and no disclosure, oral or written, of such record may be made to third parties except as provided within the agreement. Provided, however, that in the event of a hearing to determine whether or not Contractor is engaging in unlawful discrimination in employment practices as defined herein, the Board of Supervisors of Santa Barbara County may issue subpoenas to

require that certified copies of such records be made available to the hearing.

Failure to fully comply with any of the foregoing provisions shall be deemed to be a material breach of any contract or agreement with the County of Santa Barbara. All persons contracting with or who have contracts for goods or services with the County shall be notified that this chapter applies to their contract or agreement with the County of Santa Barbara.

Sec. 2-95.5. - Exceptions.

Notwithstanding any other provisions in this article, any party contracting with the County of Santa Barbara having an affirmative action program which has been approved within twelve months from the date of the contract by an agency of the federal government shall be deemed to be in compliance with the provisions of this article upon furnishing documentary evidence of such approval satisfactory to the County Affirmative Action Officer. Loss of such approval shall be immediately reported by such party to the County Affirmative Action Officer.

Sec. 2-96. - Purchase orders.

Purchase orders shall contain the following clause as grounds for termination of such purchase order.

"If complaint is made that seller is engaging in discriminatory employment practices made unlawful by applicable state and federal laws, rules or regulations, and the State Fair Employment Practice Commission or the Federal Equal Employment Opportunities Commission determines that such unlawful discrimination exists, then the County of Santa Barbara may forthwith terminate this order."

Sec. 2-97. - Affirmative Action Officer.

At the discretion of the County Affirmative Action Officer, he or she shall promptly and thoroughly investigate, or cause to be investigated reports and complaints from whatever source, that any party contracting with the County of Santa Barbara is engaging, or during the term of a contract or agreement with the County of Santa Barbara has engaged, in any unlawful discriminatory employment practices as described in section 2-95 of this Code. If the investigation discloses reason to believe such unlawful discrimination does exist or has existed and the conditions giving rise thereto have not been changed so as to prevent further such unlawful discrimination, and the said party shall not forthwith terminate such unlawful discrimination, take all appropriate steps to prevent a recurrence of such or other unlawful practices, and compensate the person or persons unlawfully discriminated against for any and all loss incurred by reason of such unlawful discrimination, all to the satisfaction of the Affirmative Action Officer, then the Affirmative Action Officer shall cause the matter to be presented for action to the State Fair Employment Practices Commission or the Federal Equal Employment Opportunities Commission, or both, and to any other concerned state or federal agencies or officers.

If and when it has been finally determined by the Affirmative Action Officer, County Counsel, or state or federal regulatory agencies that such unlawful discriminatory employment practice has in fact so occurred or are being carried on, then the Affirmative Action Officer shall forthwith present the entire matter to the Board of Supervisors of the County, together with all damages, costs and expenses related thereto and incurred by County, for appropriate action by the Board of Supervisors in accord with the intent and purposes of this article and of the affirmative action program of the County of Santa Barbara.

Sec. 2-98. - Youth group anti-discrimination.

- (a) Neither the County of Santa Barbara, nor any of its agencies, departments, affiliates, or political subdivisions over which it exercises jurisdiction, shall:
 - (1) Deny any youth group equal access to, or fair opportunity to conduct meetings

- or other events at, or otherwise utilize any public facility;
- (2) Deny any youth group use permits or licenses regarding, or otherwise withhold from any youth group permission to use, any public facility; or
 - (3) Otherwise discriminate against any youth group; on the basis of the membership or leadership criteria of such youth group.
- (b) For purposes of this section, a public facility shall include any public forum, limited public forum, public property, or public area including any public building, park, beach, campground, or any other area controlled or operated by the County of Santa Barbara.
- (c) For purposes of this section, a youth group means any group or organization intended to serve young people under the age of twenty-one.

Add to section 7-1.02K(1):

7-1.02K(1)(a) Joint Labor Compliance Monitoring Program

The Joint Labor Compliance Monitoring Program monitors labor compliance by conducting interviews with construction workers at the job site. You, and all subcontractors, must cooperate in allowing approved Compliance Group Representatives along with a County employee access to the project employees and work site for the purpose of conducting worker interview to ensure compliance with the requirement to pay prevailing wages on County projects. This will be done in order to comply with the Board of Supervisors July 10, 2012 adoption of a Joint Labor Compliance Monitoring Program.

Each Compliance Group Representative will always be accompanied with a County employee for a joint contractor worker interview. The Compliance Group Representative will be issued an identification card by the County at the job site. Compliance Group Representatives must restrict their actions to interviewing workers employed on the project. A copy of the Joint Labor Compliance Monitoring Program and Board Letter adoption from July 10, 2012 is available on request.

7-1.02K(1)(b) Compliance Monitoring by the Department of Industrial Relations

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (Labor Code § 1771.4).

Replace the 2nd paragraph of section 7-1.02K(2) with:

The general prevailing wage rates and any applicable changes to these wage rates are available at California Department of Industrial Relations website at <https://www.dir.ca.gov/>.

Replace the 6th through 10th paragraphs of section 7-1.02K(3) with:

Submit certified payroll by mail to the Department.

Each submission must:

1. Include a signed Statement of Compliance form with each weekly record.
2. Be received by the Department by close of business on the 15th day of the month for the prior month's work.

Add to section 7-1.02K(5):

Working hours will normally be between the hours of 7:30 a.m. and 4:30 p.m., excluding Saturdays, Sundays, and holidays. If the Contractor desires to work during periods other than above, the Contractor must make a request to the Engineer three working days in advance. If County inspection forces are reasonably available, the Engineer may authorize the Contractor to perform work during periods other than normal working hours/days; however, if County inspectors are required to perform in excess of their normal working hours/days solely for the benefit of the Contractor, the actual cost of inspection at overtime rates will be charged to the Contractor. These adjustments to the Contract price may be made periodically as authorized. If certain operations require extended or non-standard working hours, those

operations and hours will be specified in the 'Technical Provisions' of the Contract.

Add to section 7-1.02K(6)(a):

Your Injury and Illness Prevention Program must include:

1. Safety manual
2. Jobsite checklist
3. Equipment safety checklist
4. Tailgate safety meetings
5. Permit application and job notification form (Construction, Demolition, Trenches, Excavation, Building, Structures, Falsework, Scaffolding) Form Cal/OSHA S-691, latest edition

Replace section 7-1.02M(4) Reserved with:

7-1.02M(4) American Medical Response, Santa Barbara County

For all temporary road closure activities, contact the nearest emergency medical response company for the area, American Medical Response, and provide the project location(s) and road closure schedule. Please see contact information below:

American Medical Response, Santa Barbara County Contact Information

	Name	Phone	Email
AMR Main Office	Santa Barbara County	(805) 688-6550	amr.santa.barbara@amr.net

Replace section 7-1.02M(5) Reserved with:

7-1.02M(5) Sheriff, Santa Barbara County

For all temporary road closure activities, contact the County of Santa Barbara Sheriff's office at dispatchstaff@sbsheriff.org and provide the project location(s) and road closure schedule.

Replace section 7-1.02P with:

7-1.02P County Ordinance

7-1.02P(1) General

Comply with County Ordinances.

County Ordinances are available at the County Municipal Code website

(https://library.municode.com/ca/santa_barbara_county/codes/code_of_ordinances?nodeld=ADCO) and at County offices located at 123 East Anapamu Street, Santa Barbara, CA 93101 or 620 W. Foster Road Santa Maria, CA 93455.

7-1.02P(2) Grading

Comply with section 13, 17, and 19.

Santa Barbara County Ordinance No. 4766 and Ordinance No. 691 prohibits the dumping of debris or other materials in a watercourse so as to obstruct or impede normal flow of water therein.

7-1.02P(3) Preservation of Monuments

Comply with Ordinance 1491, Sec. 28-49.

Add to section 7-1.05:

7-1.05 INDEMNIFICATION

7-1.05A General

You must indemnify, defend (with counsel reasonably approved by County) and hold harmless County

and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by County on account of any claim except where such indemnification is caused by the active negligence, sole negligence, or willful misconduct of the County.

7-1.05B Notification of Accidents and Survival of Indemnification Provisions

You must notify County immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions must survive any expiration or termination of this Agreement.

7-1.05C Responsibility to Other Entities

You are responsible for any liability imposed by law and for injuries to or death of any person, including workers and the public, or damage to property. Indemnify and save harmless any county, city or district and its officers and employees connected with the work, within the limits of which county, city, or district the work is being performed, all in the same manner and to the same extent specified for the protection of the County.

Replace section 7-1.06 with:

7-1.06 INSURANCE

7-1.06A General

You must procure and maintain for the duration of this Agreement 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 and the results of your work, your agents, representatives, employees or subcontractors.

7-1.06B Minimum Scope and Limit of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), with limit no less than \$2,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Contractors' Pollution Legal Liability and/or Asbestos Legal Liability:** (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If you maintain higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits you maintain. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

7-1.06C Other Insurance Provisions

The insurance policies must contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – The District and County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by you or on your behalf including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to your insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, your insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents and volunteers.

Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's your insurance and shall not contribute with it.

3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.
4. **Waiver of Subrogation Rights** –You agree to waive rights of subrogation which any of your insurer may acquire from you by virtue of the payment of any loss. You agree to obtain any endorsement that may be necessary to effect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the County for all work performed by you, your employees, agents and subcontractors. This provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the County. At County's option, either: cause the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, agents and volunteers; or provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** –You must furnish proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements must be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive your obligation to provide them. You must furnish evidence of renewal of coverage throughout the term of the Agreement. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by County as a material breach of contract.
9. **Subcontractors** –You must require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and you must ensure that County is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, you must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. You agree to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of County.

7-1.06D Enforcement

The Department may assure your compliance with your insurance obligations. Ten days before an insurance policy lapses or is canceled during the Contract period you must submit to the Department evidence of renewal or replacement of the policy.

If you fail to maintain any required insurance coverage, the Department may maintain this coverage and withhold or charge the expense to you or terminate your control of the work.

You are not relieved of your duties and responsibilities to indemnify, defend, and hold harmless the County, its officers, agents, and employees by the Department's acceptance of insurance policies and certificates.

The minimum insurance coverage amounts do not relieve you for liability in excess of such coverage, nor do they preclude the County from taking other actions available to it, including the withholding of funds under this Contract.

7-1.06E Self-Insurance

Self-insurance programs and self-insured retentions in insurance policies are subject to separate annual review and approval by the County.

If you use a self-insurance program or self-insured retention, you must provide the County with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Execution of the Contract is your acknowledgment that you will be bound by all laws as if you were an insurer as defined under Ins Code § 23 and that the self-insurance program or self-insured retention shall operate as insurance as defined under Ins Code § 22.

8 PROSECUTION AND PROGRESS

Replace the 1st paragraph of section 8-1.04B with:

The District will issue you a Notice to Proceed after the Contract has been awarded. The Notice to Proceed will list the first Contract Working Day, which must be no later than 3 days after execution of the contract by the District. Failure to start job site activities on the first Working Day listed on the Notice to Proceed may be considered as failure by you to supply an adequate workforce.

9 PAYMENT

Add to section 9-1.16A:

Submit support data with application for progress payment. Support data must include:

1. Data required by Engineer
2. Copies of requisitions from Subcontractors and material suppliers

Include the County of Santa Barbara Auditor-Controller contract number as shown on executed Agreement.

Submit the following certification with each application for progress payment:

I, the undersigned, declare under penalty of perjury under the laws of the State of California that this Application for Payment is made in good faith, that the documents substantiating this application are accurate and complete and that the foregoing is true and correct.

BY: _____ Date: _____

(TYPE OR PRINT NAME AND TITLE OF
PERSON SIGNING APPLICATION)

Replace section 9-1.16C of the RSS with:

9-1.16C Materials On Hand

A material on hand but not incorporated into the work is eligible for a progress payment if:

1. Compliant with other Contract parts
2. Material cost exceeds either of the following:
 - 2.1. \$50,000
 - 2.2. \$25,000 if the requestor is certified as one or more of the following:
 - 2.2.1. DVBE
 - 2.2.2. DBE
 - 2.2.3. Small business as certified by Department of General Services, Office of Small Business and Disabled Veteran Business Enterprise Services
3. Purchased
4. Invoice is submitted
5. Stored within the State and you submit evidence that the stored material is subject to the Department's control
6. Protected from weather and contamination
6. Water pollution control measures are established and maintained
7. Requested on the Department-furnished form

Add to section 9-1.17C:

Submit all outstanding extra work billing no later than 15 days after acceptance by the Department.

Replace section 9-1.16F with:

9-1.16F Prompt Payment of Funds Withheld to Subcontractors

The County shall hold five (5) percent retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the County, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

Add to section 9-1.17C:

Submit all outstanding extra work billing no later than 15 days after acceptance by the Department.

Replace section 9-1.17D(3) with:

9-1.17D(3) Determination of Claims

The Department reviews and resolves claims pursuant to Public Contract Code § 9204, which is summarized within this section.

The Contractor shall furnish reasonable documentation to support the claim.

The Department's costs in reviewing or auditing a claim not supported by the Contractor's accounting or other records are damages incurred by the Department within the meaning of the California False Claims Act.

The Department will review the claim and provide a written statement of findings identifying what portions are disputed and undisputed within 45 days from receipt of claim when action by the Department Board of Supervisors is not required. This may be extended by mutual agreement.

For claims requiring action by the Department Board of Supervisors, a written statement will be provided within three days following the next duly publicly noticed meeting of the Board, or 45 days from receipt of claim, whichever is later.

The Contractor may request in writing by registered or certified mail, return receipt requested, a meet and confer conference if the Contractor disputes the Department's written response, or if the Department fails to respond to a claim within the time prescribed. The Department shall schedule a meet and confer conference within 30 days of receipt of the request for settlement of the dispute. Within 10 days following the meet and confer conference, the Department shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed.

Any disputed portion of the claim shall be submitted to nonbinding mediation, with the Department and the Contractor sharing the associated costs equally. The Department and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select and pay the cost for a mediator and those mediators shall select a qualified neutral third party to mediate. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

The Department will make payment of undisputed portion of claim within 60 days of written statement of findings. After 60 days of written statement of findings, the Department pays 7 percent annual interest for unpaid and undisputed portions of claims.

If a subcontractor lacks legal standing to assert a claim due to lack of privity, the Contractor may present a claim on behalf of the subcontractor, and the subcontractor may request in writing that the Contractor present the claim on its behalf, provided that the subcontractor furnishes reasonable document supporting the claim to the Department. Within 45 days of the subcontractor's request, the Contractor shall notify the subcontractor in writing of whether the claim was submitted and state the reasons why it was not submitted if the claim was not submitted.

Delete section 9-1.22.