



COUNTY OF SANTA BARBARA  
AGREEMENT FOR:  
General Services Project No. 23000-JOC  
County of Santa Barbara  
General Building Construction Job Order Contract 2023-2024  
BC: \_\_\_\_\_ - \_\_\_\_\_

THIS AGREEMENT (“Agreement”) is made by and between the County of Santa Barbara, a political subdivision of the State of California (“COUNTY”), and R. Burke Corporation (“CONTRACTOR” and together with COUNTY, collectively, the “Parties” and each individually a “Party”), for the completion of the Work (defined below), on the following terms, conditions, and provisions. All references in the General Terms to the “Agreement” shall have the meaning ascribed to the term “Agreement” in the immediately preceding sentence.

- 1. CONTRACT:** This Agreement incorporates by reference all of the General Conditions and Special Conditions, Specifications and Drawings provided by the COUNTY for the General Building Construction Job Order Contract 2023-2024 Project No. 23000-JOC, the Notice to Bidders as amended by Addenda Number 01-02, the Bid Bond, the Performance Bond, the Payment Bond, and the bid documents executed and submitted by the CONTRACTOR for the Project (“Proposal”), to the extent the Proposal is consistent with the provisions of this Agreement other than the Proposal (all of the foregoing documents, together with this Agreement, collectively, the “Contract” or “Contract Documents”). A copy of each of the General and Special Conditions, Specifications and Drawings provided by the COUNTY for the General Building Construction Job Order Contract 2023-2024, 23000-JOC, the Notice to Contractors, the Bid Bond, the Performance Bond, and the Payment Bond are attached hereto as EXHIBIT A, and a copy of the Proposal is attached hereto as EXHIBIT B. All capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Notice to Bidders. Copies of all Contract Documents are on file in the Department of General Services Office of the COUNTY, and have been and will be made available to the CONTRACTOR during the term of this Agreement. CONTRACTOR acknowledges receipt of all Contract Documents.
- 2. WORK:** CONTRACTOR, at CONTRACTOR’s own cost and expense, shall perform all the work described in the Contract Documents (“Work”), and shall furnish all equipment and materials necessary to perform and complete the Work, in a good and workmanlike manner and to the satisfaction of the Director of General Services of the COUNTY, all in strict accordance with the Plans and the Contract Documents.
- 3. EXCAVATIONS:** Before any pavement resurfacing, displacement, or excavation of the ground that may be required in connection with the Work under this Contract, the CONTRACTOR shall obtain an inquiry identification number by calling Underground Service Alert (USA) 1 (800) 422-4133 or by such other means as may be required; shall conform to all requirements of Sections 4215 through 4217 of the Government Code regarding any such pavement resurfacing, displacement or excavation, including the payment of any fees required; and shall facilitate performance by the COUNTY of any obligation required of the COUNTY under the Government Code. There shall be no performance under this Contract by either party hereto unless and until CONTRACTOR complies with all of the foregoing provisions of this Sections 3, and notifies the County Representative (defined below) in writing regarding such compliance.
- 4. COUNTY REPRESENTATIVE:** The “County Representative” referred to in the Contract Documents is Daniel Contreras.
- 5. PAYMENT:** As full compensation for furnishing all labor, supervision, overhead, materials, and equipment and for completing all of the Work contemplated by this Contract, 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 Contract is and shall ONE MILLION DOLLARS \$1,000,000.00. (“Base Contract Amount”), to be paid as provided in the Contract Documents. The CONTRACTOR assumes and will provide against any loss or damage arising out of the nature of the Work undertaken, or the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the performance of the Work until its acceptance by the COUNTY, and assumes any and all expenses incurred by or in consequence of suspension or discontinuance of the Work, for well and faithfully completing the Work and the whole thereof, in the manner and to the requirements of the Contract and directions of the County Representative.

6. **RIGHT TO AUDIT**: CONTRACTOR shall maintain and make available all books, papers, records, detail costs, estimates, claims, and accounts, including payment, property, payroll, personnel, subcontractors, and financial records related to or which arise in connection with the Contract (collectively, the "Records"). The form of record keeping with respect to the Records shall be subject to approval by COUNTY. The Records shall be made available during normal business hours for examination by COUNTY or the County Representative and shall be retained at CONTRACTOR'S principal place of business in California for audit during normal business hours at such place for four (4) years after the recording of the Notice of Completion for the Project. CONTRACTOR shall provide an office in which COUNTY and the County Representative may conduct such audit(s).

The COUNTY will have the right to audit CONTRACTOR'S Project records. Records must be made available in a form satisfactory to the Santa Barbara County Auditor-Controller.

7. **EXTRA WORK**: Extra work, materials, resolution of disputes, corrections, and/or changes to the specifications as are required for the proper completion of the Work contemplated in the Contract Documents may be effected or authorized in writing pursuant to Change Order(s) duly executed by the County Representative (each a "Change Order"), including agreement(s) providing for compensation in addition to the Base Contract Amount at the same rate per unit (or at a corresponding rate for work that is different from that provided for in the Contract Documents), to the extent that the authority for such Change Orders has been specifically delegated to the County Representative by the COUNTY Board of Supervisors ("Board") concurrently with the Board's approval of this Contract; provided, however, that the total amount of such additional compensation pursuant to Change Order(s) shall not exceed, in the aggregate, \$62,5000. In no event shall compensation be paid to CONTRACTOR hereunder in excess of the aggregate maximum contract amount of \$1,062,500 ("Maximum Contract Amount") unless first authorized by resolution or minute order of the Santa Barbara County Board of Supervisors. In no event shall CONTRACTOR be paid for any work performed after the expiration of the one-year Term of this Contract, which Term shall not be extended or amended.

8. **COMPLIANCE WITH LAW, AMENDMENTS**: CONTRACTOR shall keep fully informed of, and shall at all times during the Term ensure the performance of the Work is in compliance with, all applicable laws, statutes, ordinances, decrees, orders, and regulations which do or may affect the Project, performance of the Work, the materials used therein, or persons engaged in connection therewith, and all such orders of bodies and tribunals having any jurisdiction over same (collectively, "Applicable Laws"). If it be found that the Special Provisions or Standard Specifications for the Work conflict with any Applicable Law(s), the CONTRACTOR shall immediately report same to the County Representative in writing. CONTRACTOR shall at all times observe and comply with, and shall cause all agents, employees, and subcontractors to observe and comply with, all Applicable Laws. CONTRACTOR acknowledges and shall comply with the provisions of Sections 9364 and Sections 9550 and 9566, inclusive, of the Civil Code of California.

9. **PAYMENTS NOT ACCEPTANCE**: No certificate given or payments made under this Contract, except the final payment hereunder, 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 the Work has been filed for record and no payment shall be construed to be acceptance of any defective Work or improper materials. CONTRACTOR agrees that the payment for final quantities due under this Contract and the payment of amounts due for any Work in accordance with this Contract shall release the COUNTY from any claims or liabilities on account of Work performed under this Contract, as the same may be amended from time to time during the Term. In addition to guarantees required elsewhere, CONTRACTOR shall and does hereby guarantee all workmanship and material to be free of defects and fit for the purposes intended for a period of one year from and after both the date of acceptance of the work and the recordation of the Notice of Completion by the COUNTY and CONTRACTOR shall repair or replace all Work and materials, together with any other portions of the Work which may be displaced in so doing, that, in the opinion of the County Representative, is or becomes defective during the period of said guarantee, without expense whatsoever to the COUNTY.

10. **PREVAILING WAGE RATES**: Rates of wages, including overtime, holiday, and Sunday rates provided for the Work shall comply with and are subject to the California Labor Code, Sections 1770 et. seq., Executive Orders of the President of the United States No. 9240, dated September 9, 1942, and No. 9250, dated October 3, 1942, and to any modifications thereof, and to and any orders of the President or any authorized Federal Officer or agency, insofar as the same may apply to this Contract.

No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

11. **CONTRACT DOCUMENTS ACKNOWLEDGED**: CONTRACTOR hereby declares that CONTRACTOR has read the Contract Documents, has carefully examined the plans and detailed drawings of the Work to be performed, and fully understands the intent and meaning of the same.

12. **TERM; TIME FOR COMMENCEMENT, COMPLETION**: The term of this Contract shall commence effective as of the first date that this Contract is duly executed by all of the parties hereto ("Effective Date"), and shall terminate, and all Work to be performed under this Contract shall be completed by, the date that is 365 calendar days after the Effective Date, unless earlier terminated in accordance with the provisions of this Contract ("Term"). As soon as practicable after the Effective Date, a Notice to Proceed will be issued by the County Representative stating the starting date of Work performance hereunder. The CONTRACTOR shall begin work within fifteen (15) calendar days after receiving the Notice to Proceed, unless otherwise provided therein. The provisions of this Agreement pertaining to Liquidated Damages shall apply in the event of the CONTRACTOR's failure to complete the Work within the Term.

13. **WORKERS' COMPENSATION INSURANCE**: CONTRACTOR certifies that CONTRACTOR has knowledge of, is in compliance with, and warrants that CONTRACTOR at all times during the TERM shall remain in compliance with, the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance by the provisions of that Code. CONTRACTOR shall comply with such provisions before commencing the performance of the Work.

14. **PROGRESS PAYMENT; NO WAIVER FOR DELAY**: Any progress payment made after the scheduled completion date for the Work shall not constitute a waiver of any liquidated damages under this Contract.

15. **GUARANTEE BONDS**: Before any performance under this Contract, the CONTRACTOR shall provide the security required by statute for the payment of all workers and suppliers, and security for the faithful performance of all terms and conditions of this Contract, in an amount and form approved by the COUNTY. Both securities shall contain provisions that automatically increase amounts thereof and/or time of completion or both for all change orders, extensions, and additions to the Work provided under this Contract.

16. **NON-DISCRIMINATION**: The CONTRACTOR acknowledges that this Agreement is subject to the provisions of Article XIII of Chapter 2 of the Santa Barbara County Code, providing against discrimination in employment. The CONTRACTOR shall perform all requirements of a contractor under the provisions of said Article, and shall pay all costs incurred by the COUNTY in connection with any noncompliance by the CONTRACTOR.

17. **DISPUTES**: Should any dispute(s) arise respecting the construction or meaning of any of the plans or specifications affecting the Work or respecting the true value of any extra work or work omitted, such dispute(s) shall be resolved by the Project Engineer/Architect, whose decision shall be final and binding upon the parties hereto. If, after the decision of the Project Engineer/Architect as provided herein, claims (as defined in Public Contracts Code Section 20104) under this Contract are filed by CONTRACTOR against COUNTY, and those claims are in the aggregate amount of \$375,000 or less, such claims shall be resolved under Public Contracts Code Sections 20104 through 20104.8, inclusive.

18. **SUBSTITUTION OF MATERIALS**: The County Representative is authorized to act on behalf of the County in matters requiring consent, notice, or hearing to substitute materials or equipment specified, to the extent expressly authorized by the Board of Supervisors in approving this Contract and to extent not inconsistent with any of the numbered sections of this Agreement other than this Section 18, or Exhibit C, or any Federal provisions included in this Contract.

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

20. **INDEMNIFICATION AND INSURANCE**: CONTRACTOR shall, at all times during the Term, comply with the indemnification and insurance provisions set forth in EXHIBIT C, attached hereto and incorporated herein by reference.

**21. ARPA COMPLIANCE:** CONTRACTOR shall comply with the requirements of the Federal 2021 American Rescue Plan Act (“ARPA”), U.S. Treasury Coronavirus State and Local Fiscal Recovery Funds Compliance and Reporting Guidance, and federal regulations, including, but not limited to, Title 2 of the Code of Federal Regulations (CFR) Part 200, entitled, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” In addition, CONTRACTOR shall comply with the Federal Terms and Conditions attached hereto as EXHIBIT D and incorporated herein by reference. CONTRACTOR shall comply with grant agreements, assurances in applications, notices of award, and all other applicable federal, state, and local laws, regulations, ordinances, orders, rules, guidelines, directives, circulars, bulletins, notices, and policies governing the ARPA funds provided in connection with this Agreement. CONTRACTOR shall be responsible for providing services in a manner consistent with all federal and state requirements and standards required as a condition of receiving and expending ARPA funds provided in connection with this Agreement.

**22. FEDERAL PROVISIONS:** CONTRACTOR acknowledges that Federal financial assistance will be used to fund this Agreement. CONTRACTOR shall only use federal funds as authorized herein. CONTRACTOR will comply with all applicable federal law, regulations, executive orders, federal policies, procedures, and directives, including, but not limited to, Title 2 of the Code of Federal Regulations (CFR) Part 200, entitled, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” In addition, CONTRACTOR shall comply with the Federal Terms and Conditions attached hereto as EXHIBIT E and incorporated herein by reference. CONTRACTOR shall comply with grant agreements, assurances in applications, notices of award, and all other applicable federal, state, and local laws, regulations, ordinances, orders, rules, guidelines, directives, circulars, bulletins, notices, and policies governing the Federal funds provided in connection with this Agreement. CONTRACTOR shall be responsible for providing services in a manner consistent with all federal and state requirements and standards required as a condition of receiving and expending funds provided in connection with this Agreement.

**23. TAXES:** CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any Work under this Contract, and shall make any and all payroll deductions required by law. CONTRACTOR is responsible for all CONTRACTOR personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits. In no event shall COUNTY pay or be responsible for any taxes imposed on, or with respect to, CONTRACTOR's income, revenues, gross receipts, personnel, real or personal property, or other assets. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

**24. 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 Work required to be performed under this Contract. CONTRACTOR further covenants that in the performance of this Contract, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

**25. NONDISCRIMINATION:** COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Contract and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

**26. NON-ASSIGNMENT:** CONTRACTOR shall not assign, subcontract, delegate, or otherwise transfer, directly or indirectly, whether by operation of law or otherwise (“Transfer”) this Contract, in whole or in part, or any of CONTRACTOR's rights or obligations under this Contract, without the prior written consent of COUNTY in each instance. Any attempted or purported Transfer in violation of this Section 26, or in violation of Section 2.08 of the General Conditions, attached hereto as part of Exhibit A, shall be null and void and without legal effect and shall constitute grounds for termination by COUNTY. No Transfer shall relieve CONTRACTOR of any of its obligations hereunder.

27. **SEVERABILITY**: If any one or more of the provisions contained in the Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, 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 Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

28. **TIME IS OF THE ESSENCE**: Time is of the essence in this Contract, and each covenant and term is a condition herein.

29. **ENTIRE AGREEMENT AND AMENDMENT**: The Contract Documents, as may be modified from time to time during the Term by duly authorized and executed Change Orders in accordance with the provisions of this Agreement and the General Terms, contain the entire understanding and agreement of the Parties with respect to the subject matter hereof and thereof, 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 and therein. This Contract may be altered, amended or modified only by an instrument in writing, duly executed by each of the Parties, and by no other means, except as otherwise set forth in Section 33, below, to the extent such delegated authority is expressly authorized by the COUNTY Board of Supervisors in approving this Contract. Each Party waives its future right to claim, contest or assert that this Contract was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

30. **EXECUTION OF COUNTERPARTS**: This Contract 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.

31. **ORDER OF PRECEDENCE**: In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions contained in the numbered sections of this Agreement shall prevail over those in the Exhibits other than Exhibit C. CONTRACTOR agrees that in the event of any discrepancy, inconsistency, gap, ambiguity, or conflicting language between Exhibit B, on the one hand, and any other provision(s) of this Contract on the other, the provisions of this Contract (including the numbered sections of this Agreement, Exhibit A, and Exhibit C) other than Exhibit B shall take precedence and control and prevail over the provisions of Exhibit B.

32. **SUBCONTRACTORS**: CONTRACTOR is authorized to subcontract with only the subcontractor(s) identified in the Proposal as attached hereto and as set forth in Exhibit B ("Subcontractors"). Contractor shall be fully responsible for all services and Work performed by its Subcontractors. Contractor shall secure from each of its Subcontractors legally binding written agreements to comply with the provisions of this Agreement pertaining to CONTRACTOR's obligations as if such obligations pertained to such Subcontractor, including, but not limited to, audit obligations.

33. **CHANGE ORDERS**: No Change Order shall be valid or enforceable against the COUNTY unless duly authorized by the COUNTY in accordance with Article 6 of the General Conditions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date executed by the County.

COUNTY

County of Santa Barbara

By: *[Signature]*  
DAS WILLIAMS, CHAIR

BOARD OF SUPERVISORS

Dated: 12-12-23

ATTEST:  
MONA MIYASATO,

CONTRACTOR

R. Burke Corporation, a California corporation

COUNTY EXECUTIVE OFFICER

CLERK OF THE BOARD

By: *[Signature]*  
Deputy Clerk of the Board

By: *[Signature]*  
AUTHORIZED REPRESENTATIVE

Name: Robert E. Burke

Title: President

APPROVED AS TO FORM:  
RACHEL VAN MULLEM,  
COUNTY COUNSEL

By: *[Signature]*  
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:  
BETSY SCHAFFER, CPA, CPFO AUDITOR-  
CONTROLLER

By: *[Signature]*  
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Deputy Auditor-Controller

APPROVED AS TO FORM:  
GREG MILLIGAN, ARM  
RISK MANAGER

By: *[Signature]*  
Risk Management

RECOMMENDED FOR APPROVAL  
KIRK LAGERQUIST, DIRECTOR  
GENERAL SERVICES DEPARTMENT

By: *[Signature]*  
Department Head

Dept 063 Fund FD-0030 Program PG-0631930

Account SC-8200 Project 23000-JOC

# **EXHIBIT “A”**

- Notice to Bidders
- Bid Bond
- Performance Bond
- Payment Bond
- General Conditions
- Special Conditions

# NOTICE TO BIDDERS

Notice is hereby given that the General Services Department, County of Santa Barbara will receive bids for:

**COUNTY OF SANTA BARBARA**  
**General Building Construction Job Order Contract 2023-2024**  
**Project No. 23000-JOC**

MANDATORY VIRTUAL Pre-Bid Meeting:  
**TUESDAY NOVEMBER, 8<sup>th</sup>, at 10:00A.M.**

BID DUE DATE:  
**MONDAY NOVEMBER 13<sup>th</sup> at 10:00 A.M.**

**PROJECT DESCRIPTION:** A Job Order Contract is an indefinite quantity CONTRACT pursuant to which the CONTRACTOR may perform an ongoing series of individual Projects at different locations throughout the COUNTY. The bid documents include a Construction Task Catalog® containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.

The CONTRACTOR will bid Adjustment Factors as listed below to be applied to the Unit Prices. All Adjustment Factors shall apply to every Pre-priced Task in the Construction Task Catalog®.

The Contracts will be awarded to the lowest, responsive, responsible bidder(s).

Thereafter, as projects are identified, the CONTRACTOR will jointly scope the work with the COUNTY. The COUNTY will prepare a Detailed Scope of Work and issue a Request for Proposal to the CONTRACTOR for each project ("Project"). The CONTRACTOR will then prepare a Job Order Proposal for each Project, including a Job Order Price Proposal, drawings and sketches, a list of subcontractors and materialmen, construction schedule, and other requested documentation. The Job Order Price shall equal the value of the approved Job Order Price Proposal. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non-Pre-priced Tasks.

If the Job Order Proposal is found to be complete and reasonable, a Job Order may be issued.

A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, and the Job Order Price. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate Job Order will be issued for each Project. Extra work, credits, and deletions will be contained in a Supplemental Job Order.

The COUNTY selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and Gordian Cloud JOC Applications, construction cost data, and Construction Task Catalog®, which shall be used by the CONTRACTOR solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the COUNTY. The CONTRACTOR shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution.



**CONTRACTS:** The COUNTY may award up to **FOUR (4)** contracts (each a “Contract”) to the lowest responsive and responsible Bidder(s) for the General Building Construction Contract Type. Each Bidder shall submit only **ONE (1)** Bid; any Bidder submitting more than one bid shall be deemed non-responsive, and their bids will be returned unopened.

**CONTRACTOR'S LICENSE:** The CONTRACTOR shall possess a Class B license.

**MANDATORY PRE-BID MEETING:** There will be a **MANDATORY** Pre-bid Meeting conducted via Microsoft Teams (or other virtual/digital system to be determined). Only those prime contractors attending the Pre-bid Meeting shall be qualified to submit a bid in response to this Notice to Bidders. There will be a check-in period until 9:55 a.m. and attendance will be recorded. Note that persons entering the meeting after 10:00 a.m. will not be considered as attending the meeting and will be considered non-responsive for bidding. The purpose of the Pre-bid Meeting is to discuss the JOC concept and documents, answer questions and discuss JOC from the contractor’s perspective. Bids submitted by firms not represented at the Mandatory Pre-Bid Meeting will not be considered. If you plan to attend, please download the Zoom application prior to the date of the Pre-bid Meeting. Bidders must register for the Pre-bid Meeting in advance.

**CONTRACT TERM:** The term of each Contract shall be for ONE (1) year (“Term”). All Job Orders issued during the term of each Contract must be performed, during such one-year Term. All terms and conditions of each Contract apply to each Job Order duly issued pursuant to such Contract.

**CONTRACT VALUE:** Due to the volume of available work within the County’s CIP Program there will be no minimum contract values. It is the intent of the County to award a project(s) to all selected lowest bidders. The Maximum amount of compensation payable by the COUNTY under each Contract shall be \$1,000,000 (“Maximum Contract Value”). The COUNTY reserves the right to increase the Maximum Contract Value up to \$5,402,865.80 in accordance with the California Public Contract Code upon approval of the Board of Supervisors, and provided that additional bonds are provided by such contractor.

**BIDDING ADJUSTMENT FACTORS:**

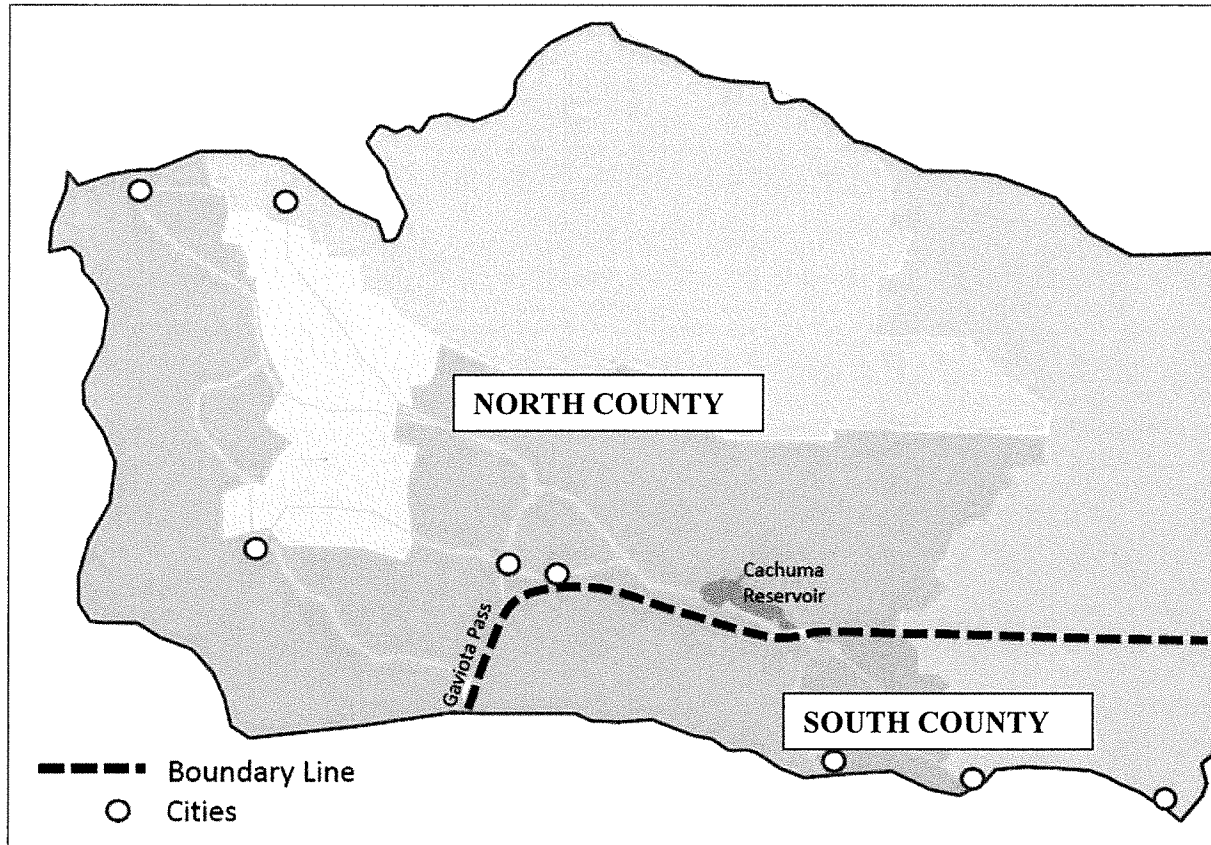
The Adjustment Factors are as follows:

1. Normal Working Hours for **GENERAL OR COURTS FACILITY** Projects located in North County: Mon-Fri, 7:00am-4:00pm except County holidays.
2. Other Than Normal Working Hours for **GENERAL OR COURTS FACILITY** Projects located in North County: Mon-Fri 4:00pm-7:00 am and all-day Sat, Sun and County holidays.
3. Normal Working Hours for **GENERAL OR COURTS FACILITY** Projects located in South County: Mon-Fri 7:00am to 4:00pm except County holidays.
4. Other Than Normal Working Hours for **GENERAL OR COURTS FACILITY** Projects located in South County: Mon-Fri 4:00pm-7:00am and all-day Sat, Sun and County holidays.
5. Normal Working Hours for **DETENTION FACILITY** Projects located in North County: Mon-Fri, 7:00am-4:00pm except County holidays.
6. Other Than Normal Working Hours for **DETENTION FACILITY** Projects located in North County: Mon-Fri 4:00pm-7:00 am and all-day Sat, Sun and County holidays.
7. Normal Working Hours for **DETENTION FACILITY** Projects located in South County: Mon-Fri 7:00am to 4:00pm except County holidays.
8. Other Than Normal Working Hours for **DETENTION FACILITY** Projects located in South County: Mon-Fri 4:00pm-7:00am and all-day Sat, Sun and County holidays.

**The Other Than Normal Working Hours Adjustment Factors must be equal to or greater than the**

corresponding Normal Working Hours Adjustment Factors.

### Santa Barbara County North/South Boundary



All Unit Prices listed in the Construction Task Catalog® are priced at a new value of 1.0000. The Adjustment Factors shall be an increase or decrease to all the Unit Prices listed in the Construction Task Catalog® For example, 1.1000 would be a 10% increase to the Unit Prices and 0.9500 would be a 5% decrease to the Unit Prices. Bidders who submit separate Adjustment Factors for separate Unit Prices will be considered non-responsive, and their bid will be rejected.

**QUESTIONS:** All questions MUST be submitted electronically through the Public Purchase Portal ([www.publicpurchase.com](http://www.publicpurchase.com)) on or before **5:00PM on Wednesday November 8, 2023**. Any changes or additional information needed for bidding will be provided in an Addendum posted on the Public Purchase site. All bids must include all such addendums in order to be responsive.

**BID SUBMITTAL INSTRUCTIONS:** Each bid must be in accordance with Contract Documents approved by the General Services Department, and each bid constitutes an agreement by the party submitting such bid to be bound by the provisions of each of the Contract Documents with respect to each Project. Attempts to materially negotiate the terms of any of the Contract Documents shall result in such Bidder's bid being deemed nonresponsive. The bid MUST be submitted electronically through the Public Purchase website ([www.publicpurchase.com](http://www.publicpurchase.com)) on or before **Monday, November 13, 2023, at 10:00 A.M.**

**SUBSTITUTION OF SECURITIES:** Pursuant to Section 22300 of the Public Contract Code and the Project specifications, the CONTRACTOR may substitute securities or request that the County make payment of retentions to an escrow agent for any money held by the COUNTY to ensure Contract performance.

**PREVAILING WAGES:** Each Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Pursuant to the provisions of Section 1770 et seq. of the California Labor Code, the CONTRACTOR shall pay not less than the prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations. A copy of the prevailing rate of per diem wages is on file at the General Services Department.

**REGISTRATION:** No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5, and each Project shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations.

**QUALIFYING CONTRACTOR OR SUBCONTRACTOR:** Pursuant to the provisions of Section 4104 of the California Public Contracting Code, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or engage in the performance of any contract for public work, as defined in Section 4104, unless currently registered with the Department of Industrial Relations and qualified to perform public work pursuant to Section 1725.5 of the California Labor Code.

**WITHDRAWAL OF BIDS:** The COUNTY reserves the right to reject any and or all bids or waive any nonmaterial informality in a bid. No bidder may withdraw such bidder's bid for a period of sixty (60) days after the date set for the opening thereof.

**BID SELECTION:** The COUNTY reserves the right to select any one or any combination of bids, whichever is in the best interest of the COUNTY.

For bid evaluation purposes only, the following work distributions shall be used to determine the Award Criteria Figure:

<b>Adjustment Factor</b>	<b>% Weight (For Bid Evaluation Only)</b>
Normal Working Hours – <b>General or Courts Facilities</b> - North County Projects	25%
Other than Normal Working Hours – <b>General or Courts Facilities</b> - North County Projects	10%
Normal Working Hours – <b>General or Courts Facilities</b> - South County Projects	25%
Other than Normal Working Hours – <b>General or Courts Facilities</b> - South County Projects	10%
Normal Working Hours – <b>Detention Facilities</b> - North County Projects	5%
Other than Normal Working Hours – <b>Detention Facilities</b> - North County Projects	5%
Normal Working Hours – <b>Detention Facilities</b> - South County Projects	15%
Other than Normal Working Hours – <b>Detention Facilities</b> - South County Projects	5%

**BID PROTEST:** The County of Santa Barbara Bid Protest Procedures are described in Item 10 of the BID FORM, which is included in the bid documents.

**LIQUIDATED DAMAGES:** Liquidated damages may apply to each individual Job Order, and will be as specified in each individual Job Order for project delays that are determined to be attributable to the CONTRACTOR.

**LIMITATIONS ON SUBCONTRACTING:** The Contractor shall self-perform at least 30% of the total number of LABOR HOURS performed at the Project Site (such 30% self-performance minimum shall hereinafter be referred to as the "Self-Performance Requirement"). For purposes of this document, "self-perform" shall mean labor hours performed by employees of the Contractor other than field superintendents and office management personnel. Note: The COUNTY has determined that the Self-Performance Requirement is a CRITICAL PERFORMANCE CRITERIA, such that violation of the Self-Performance Requirement shall constitute grounds for the COUNTY to terminate such Contract for cause. Upon COUNTY's requested, the Contractor shall provide to COUNTY a written report detailing (i) the total number of labor hours performed at the Project Site, and (ii) the number of labor hours self-performed by the Contractor at the Project Site.

## BIDDERS BOND

KNOW ALL MEN BY THESE PRESENTS:

R. Burke Corporation

That we, \_\_\_\_\_ as Principal, and THE OHIO CASUALTY \* as Surety (hereinafter referred to as Surety), are held firmly bound unto the County of Santa Barbara, State of California (hereinafter called "Owner") in the penal sum of \$25,000, submitted by said Principal to Owner for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents. Surety shall be and hereby warrants that it is listed in the Insurance Organizations Authorized by the Insurance Commissioner to Transact Business of Insurance in the State of California, published by the Department of Insurance, State of California or successor publications. In no case shall the liability of the Surety hereunder exceed the sum of DOLLARS (\$ \*\* ). The condition of this obligation is such that a bid to Owner for certain construction specifically described as follows for which bids are to be opened, has been submitted by Principal to Owner.

\* INSURANCE COMPANY

\*\* TWENTY FIVE THOUSAND NO/100 (\$25,000.00)

**COUNTY OF SANTA BARBARA**  
**General Building Construction Job Order Contract 2023-2024**  
**Project No. 23000-JOC**

for which bids are due on Monday, November 13th at 10: 00A.M.has been submitted by Principal to Owner.

NOW, THEREFORE, if the aforesaid Principal shall not withdraw said bid within the period therein after the opening of the same, or, if no period be specified within sixty (60) days after said opening and shall within the period specified therefore, or, if no period be specified, within eight (8) days after the prescribed forms are presented to him for signature, enter into a written Contract with Owner, in the prescribed form, in accordance with the bid as accepted, and file the two Bonds with Owner, one to guarantee faithful performance and the other to guarantee payment for labor and materials, as required by law, then this obligation shall be null and void; otherwise, it shall remain in full force, virtue and affect.

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

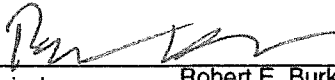
It is hereby agreed that any progress payment made after the scheduled completion date will not constitute a waiver of any liquidated damages heretofore agreed upon.

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

Death, Bankruptcy, Receivership, Going Out of Business for any reason, or incompetence of the Principal shall not relieve the Surety of its obligations hereunder.

Dated 11/13/22

R. Burke Corporation  
Name of Principal


 (Seal)  
Signature of Principal Robert E. Burke, President

THE OHIO CASUALTY INSURANCE COMPANY  
Name of Surety

175 BERKLEY STREET  
Address

BOSTON, MA 02116  
City, State & Zip

Dated 11/10/2023

 (Seal)  
Signature of Principal BRITTON CHRISTIANSEN, ATTORNEY-in-FACT  
Signature of Surety's Attorney-in-fact

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

BRITTON CHRISTIANSEN  
Name of Agent

575 PRICE ST. #207  
Address

PISMO BEACH, CA 93449  
City, State & Zip

805-343-7434  
Telephone Number

805-219-0101  
FAX Number

NOTE: Signatures of those executing for Surety MUST be properly acknowledged. This form may be reproduced for transmittal to the Surety for execution and attached to the front of the original Bid Bond Form.



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8210752-969577

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Britton Christianscn; Kevin E. Vega; Philip E. Vega

all of the city of Covina state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 11th day of September, 2023.



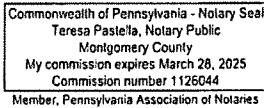
Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY

On this 11th day of September, 2023 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 10TH day of NOVEMBER, 2023.



By: Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

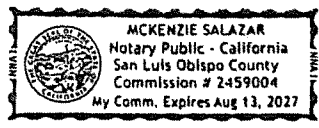
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of SAN LUIS OBISPO )  
On NOV 10 2023 before me, McKENZIE SALAZAR, NOTARY PUBLIC  
Date Here Insert Name and Title of the Officer  
personally appeared BRITTON CHRISTIANSEN  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature M Salazar  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  Partner —  Limited  General  
 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_



ISSUED IN THREE (3) ORIGINAL COUNTERPARTS

BOND NUMBER 024272444

PREMIUM:\$11,550.00 IS SUBJECT TO  
CHANGE BASED ON FINAL CONTRACT  
PRICE.

## 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 R. Burke Corporation (hereinafter referred to as Principal) have by written agreement dated \_\_\_\_\_, entered into a contract identified as:

Project Title: County of Santa Barbara

**General Building Construction Job Order Contract 2023-2024**

**Project No. 23000-JOC**

(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 under the terms and conditions of said Contract to furnish a bond for the faithful performance of Contract.

NOW, THEREFORE, said Principal and THE OHIO CASUALTY INSURANCE COMPANY

---

as corporate surety (hereinafter referred to as "Surety"), are held firmly bound unto the County in the amount of \$ ONE MILLION \*, 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 listed in the Insurance Organizations Authorized by the Insurance Commissioner to Transact Business of Insurance in the State of California, published by the Department of Insurance, State of California or successor publications.

\* NO/100 DOLLARS (\$1,000,000.00)

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.

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.

R. Burke Corporation  
Principal

By:   
Robert E. Burke, President

DATED: 11/15/2023

THE OHIO CASUALTY INSURANCE COMPANY  
Surety

  
Signature of Attorney-in-fact BRITTON CHRISTIANSEN

BRITTON CHRISTIANSEN, ATTORNEY-in-FACT

175 BERKLEY STREET  
Address

BOSTON, MA 02116  
City, State & Zip Code

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

BRITTON CHRISTIANSEN  
Name of Agent

575 PRICE ST. #207  
Address

PISMO BEACH, CA 93449  
City, State & Zip Code

805-343-7434  
Telephone Number

805-219-0101  
FAX Number

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



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8210752-969577

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Britton Christiansen; Kevin E. Vega; Philip E. Vega

all of the city of Covina state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 11th day of September, 2023.



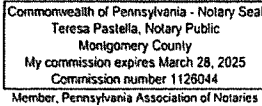
Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 11th day of September, 2023 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 14TH day of NOVEMBER, 2023.



By: Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

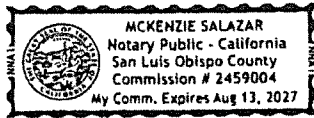
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of SAN LUIS OBISPO )  
On NOV 14 2023 before me, McKENZIE SALAZAR, NOTARY PUBLIC  
Date Here Insert Name and Title of the Officer  
personally appeared BRITTON CHRISTIANSEN  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature M Salazar  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

ISSUED IN THREE (3) ORIGINAL COUNTERPARTS

BOND NUMBER 024272444

PREMIUM IS INCLUDED IN  
PERFORMANCE BOND.

## 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 R. Burke Corporation (hereinafter referred to as Principal) have by written agreement dated \_\_\_\_\_, entered into a contract identified as:

Project Title: County of Santa Barbara

**General Building Construction Job Order Contract 2023-2024**

**Project No. 23000-JOC**

(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 THE OHIO CASUALTY INSURANCE COMPANY

---

as corporate surety (hereinafter referred to as Surety), are held firmly bound unto the County in the amount of \$ ONE MILLION \*, 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 listed in the Insurance Organizations Authorized by the Insurance Commissioner to Transact Business of Insurance in the State of California, published by the Department of Insurance, State of California or successor publications.

\* NO/100 DOLLARS (\$1,000,000.00)

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 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.

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.

R. Burke Corporation  
Principal

By:   
Robert E. Burke, President

DATED: NOVEMBER 14TH, 2023

THE OHIO CASUALTY INSURANCE COMPANY  
Surety

  
Signature of Attorney-in-fact BRITTON CHRISTIANSEN

BRITTON CHRISTIANSEN, ATTORNEY-in-FACT

175 BERKLEY STREET ,  
Address

BOSTON, MA 02116  
City, State & Zip Code

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

BRITTON CHRISTIANSEN  
Name of Agent

575 PRICE ST. #207  
Address

PISMO BEACH, CA 93449  
City, State & Zip Code

805-343-7434  
Telephone Number

805-219-0101  
FAX Number

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



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8210752-969577

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Britton Christiansen; Kevin E. Vega; Philip E. Vega

all of the city of Covina state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 11th day of September, 2023.



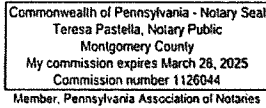
Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 11th day of September, 2023 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 14TH day of NOVEMBER, 2023.



By: Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of SAN LUIS OBISPO )

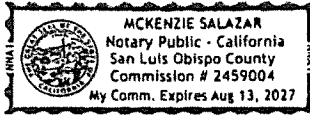
On NOV 14 2023 before me, McKENZIE SALAZAR, NOTARY PUBLIC  
*Date Here Insert Name and Title of the Officer*

personally appeared BRITTON CHRISTIANSEN  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Msalazar*  
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



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# General Conditions for Job Order Contracting

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July 2017

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# GENERAL CONDITIONS

## FOR JOB ORDER CONTRACTING

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## ARTICLE 1: CONTRACT DOCUMENTS

### 1.1 DEFINITIONS

- 1.1.1 The Contract Documents: The Contract Documents consist of the Agreement between the Owner and the Contractor, the Conditions of the Contract (General Conditions, General Requirements and other Conditions), the Construction Task Catalog<sup>®</sup>, the Job Order Contracting Technical Specifications, Job Orders, the Drawings, the Specifications, all Addenda, Supplements, Advertisements for Bids, Invitations to Bid and Proposal Forms issued prior to execution of the Contract and all Modifications issued after the execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties (2) a written interpretation issued by the Architect/Engineer pursuant to Subparagraph 3.2.2 or (3) a written order for a minor change in the Work issued on the Owner's behalf pursuant to Paragraph 13.4.1.
- 1.1.2 The Contract: The Contract Documents form the Contract with the Contractor. This Contract represents the entire and integrated agreement and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect/Engineer and the Contractor or between the Architect/Engineer and the Designated Representative but the Architect/Engineer and the Designated Representative shall be entitled to performance of the obligations of the Contractor intended for their benefit and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner, the Designated Representative or the Architect/Engineer and any Subcontractor or Sub-subcontractor.
- 1.1.3 NOT USED
- 1.1.5 The Owner: As defined in Article 2 of the General Conditions, the Owner for the Contract is:  
Santa Barbara County, through its Board of Supervisors
- 1.1.6 Architect/Engineer: As defined in Article 3 of the General Conditions.
- 1.1.7 Designated Representative: As defined in Article 4 of the General Conditions, the Designated Representative is also the Labor Compliance Coordinator for the Work.
- 1.1.8 Contractor: As defined in Article 5 of the General Conditions.
- 1.1.9 Product: The term "product" shall include materials, equipment and systems.
- 1.1.10 The Drawings: The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.11 The Specifications: The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work and performance of related services.
- 1.1.12 The Project Manual: The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, conditions of the Contracts, Specifications, Construction Task Catalog<sup>®</sup>, and Job Order Contracting Technical Specifications.
- 1.1.13 As Approved: Where used in conjunction with the Designated Representative or the Architect/Engineer's response to submittal's, requests, applications, inquiries, reports and claims by the Contractor, the meaning of the term "approved" shall not exceed the limitations of the Designated Representative or the Architect/Engineer's responsibilities and duties as established in these General Conditions.
- 1.1.13.1 In no case shall "approval" by the Designated Representative or the Architect/Engineer be interpreted as a release of the Contractor from the responsibilities to fulfill the requirements of the Contract Documents.
- 1.1.13.2 Approval, where required for an item, shall be obtained from the Architect/Engineer through the Designated Representative in writing.
- 1.1.14 Indicated: The term "indicated" is a cross reference to details, notes or schedules on the drawings, other paragraphs or schedules in the Specifications and similar means of recording requirements in the Contract Documents.

- 1.1.14.1 Where terms such as "shown", "noted", "scheduled", and "specified" are used instead of "indicated", it is for the purpose of helping the reader accomplish the cross reference and no limitation of locations is intended except as specifically noted.
- 1.1.14.2 Directed, Requested, Etc.: Where not otherwise explained, terms such as "directed", "requested", "authorized", "selected", "approved", "required", "accepted", and "permitted" mean "directed by the Architect/Engineer, Designated Representative or Owner's Representative", "requested by the Architect/Engineer, Designated Representative or the Owner's Representative", etc. However, no such implied meaning will be interpreted to extend to the Architect/Engineer's or Designated Representative's responsibility in the Contractor's area of construction supervision.
- 1.1.15 Installer: The person or entity engaged by the Contractor or its Subcontractor or Sub-subcontractor for the performance of a particular unit of Work at the project site, including installation, erection, application and similar required operations. It is a General Requirement that installers be recognized as experienced and competent in the Work that they are engaged to perform.
- 1.1.16 Suitable, Reasonable, Proper, Correct, and Necessary: Such terms shall mean as suitable, reasonable, proper, correct or necessary for the purpose intended as required by the Contract Documents, subject to the judgment of the Architect/Engineer or the Designated Representative.
- 1.1.17 Including, Such As: The Terms "including" and "such as" shall always be taken in the most inclusive sense, namely, "including, but not limited to", and "such as, but not limited to."
- 1.1.18 Option: The term "option" shall mean a choice from the specified products which shall be made by the Contractor. The choice is not "whether" the Work is to be performed, but "which" product or "which" procedure is to be used. The product or procedure chosen by the Contractor shall be provided at no increase in the cost to the Owner or the Designated Representative and with no lessening of the Contractor's responsibility for its performance. All or any options selected or proposed are still subject to all requirements for submittals and for approval of same.
- 1.1.19 Exposed: The term "exposed" shall mean any item or surface, exterior or interior, which can be seen by a person outside the building, or seen by a person inside any usable space within the building during normal activity.
- 1.1.20 At No Additional Cost: The term "at no additional cost" shall mean at no additional cost to the Owner and at no cost to the Architect/Engineer or the Designated Representative.
- 1.1.21 Testing Laboratory: An independent entity engaged to perform specific inspections or tests of the Work, either at the project site or elsewhere; and to report and interpret the results of those inspections or tests.
- 1.1.22 Record Documents: Construction Documents revised to show changes made during the construction process, usually based on marked-up prints, drawings and other data furnished by the Contractor to the Designated Representative.
- 1.1.23 Compliance Group Representative: The person or entity representing a third-party observer whose sole purpose on the PROJECT is to interview contractor employees, including any subcontractor for prevailing wage compliance consistent with federal and state prevailing wage requirements as set forth in the David-Bacon Act and other related codes, laws or regulations.
- 1.2 ABBREVIATIONS**
- 1.2.1 The language of the specifications and elsewhere in the Contract Documents is of the abbreviated type in certain instances and implies words and meanings which will be appropriately interpreted.
- 1.2.2 Actual word abbreviations of a self-explanatory nature have been included in the Specifications and Drawings. These are generally defined in the Specifications Section at the first instance of use of each term so abbreviated. They are generally summarized in a list on the Drawings.
- 1.2.3 Singular words will be interpreted as plural and plural words will be interpreted as singular where applicable and the full context of the requirements so indicates.
- 1.3 EXECUTION, CORRELATION AND INTENT**
- 1.3.1 By executing this Agreement, the Contractor represents that he has familiarized himself with the Contract Documents and local conditions under which the Work is to be performed and correlated its observations with the requirements of the

Contract Documents. Claims, as a result of failure to do so, will not be considered.

- 1.3.2 The contract agreement shall be signed in triplicate by the Owner and Contractor. Original copies are to be provided to Owner, Contractor, and Designated Representative.
- 1.3.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations in the Contract Documents which have well-known technical or trade meanings are used in accordance with such recognized meanings.
- 1.3.4 The organization of the Specification into divisions, sections and articles and the arrangements of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any Trade.
- 1.3.5 All indications or notations which apply to one or a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, unless otherwise indicated in the Contract Documents.
  - 1.3.5.1 Where the word "similar" appears on the drawings, it shall be interpreted in its general sense and not as meaning identical and all details shall be worked out in relations to their location and connection with other parts of the Work.
  - 1.3.5.2 Where, on any drawings, a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall also apply to parts outlined.
- 1.3.6 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.
- 1.3.7 The Contract Documents should be read as one package and are dependent on one another for interpretation. If there is an ambiguity or conflict between documents, the Contractor or its Subcontractor has the duty of inquiring with the Designated Representative and the Architect/Engineer before he bids on the job. Conflicts and discrepancies discovered during the process of the Work shall be referred to the Architect/Engineer and Owner via the Designated Representative for resolution.
- 1.3.8 Any noted discrepancies between the Contract Documents shall be promptly called to the attention of the Designated Representative and the Architect/Engineer and no Work so affected shall be undertaken in advance of the Designated Representative's and the Architect/Engineer's decision, except at the Contractor's own risk.

#### **1.4 OWNERSHIP AND USE OF DOCUMENTS**

- 1.4.1 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, up to eight (8) sets of approved Working Drawings and Specifications for the execution of the Work of individual Job Orders.
- 1.4.2 All Drawings, Specifications and copies thereof furnished by the Owner are and shall remain its property. They are to be used only with respect to a specific Job Order and are not to be used on any other project. With the exception of one contract set for each party, such documents are to be returned or suitably accounted for to the Owner on request at the completion of the Work.

### **ARTICLE 2: OWNER**

#### **2.1 DEFINITION**

- 2.1.1 The Owner is the person or entity identified as such in the Agreement between the Owner and the Contractor and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or its authorized representative.

#### **2.2 INFORMATION AND SERVICES FURNISHED BY THE OWNER**

- 2.2.1 The Owner will furnish all surveys describing the physical characteristics and approximate known utility locations for the site

of each individual Job Order.

- 2.2.2 Except as provided in Subparagraph 5.7.1, the Owner will secure and pay for necessary approvals, easements, assessments and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities unless otherwise noted.
- 2.2.3 Information or services under the Owner's control will be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.
- 2.2.4 The Owner shall forward all instructions to the Contractor through the Designated Representative.
- 2.2.5 The Owner shall at all times have access to the Work for inspection, wherever it is in preparation or in progress. When directed by the Designated Representative, the Contractor shall provide facilities for such access and inspection at the Contractor's cost.

### 2.3 DELEGATION

- 2.3.1 The Board of Supervisors delegates to the County Director of General Services the authority to act on its behalf in the administration of this contract.
- 2.3.2 The Director of General Services has the authority to change the Designated Representative when the Designated Representative is an employee of the County.
- 2.3.3 If the Designated Representative is a person or entity other than an employee of the County, the Director of General Services shall recommend to the Board of Supervisors a replacement for the Designated Representative whenever such replacement is in the best interest of the County. An affirmative majority vote by the Board of Supervisors is required to complete the replacement of the Designated Representative.

### 2.4 AUTHORITY OF BOARD AND INSPECTION

- 2.4.1 The Board of Supervisors has the final authority in all matters affecting the work covered by the Contract Documents. Within the scope of the contract, the Designated Representative has the authority to enforce compliance with the Contract Documents. The Contractor shall promptly comply with instructions from the Designated Representative.
- 2.4.2 On all questions relating to quantities, the acceptability of material, equipment, or work, the execution, progress or sequence of work, and the interpretation of specifications or drawings, the decision of the Designated Representative is final and binding, and shall be precedent to any payment under the contract, unless otherwise ordered by the Board.
- 2.4.3 Labor Compliance Monitoring: To ensure compliance with prevailing wage requirements in the WORK, the Board of Supervisors has adopted a *Joint Labor Compliance Monitoring Program*. This program monitors labor compliance by conducting interviews with CONTRACTOR employees and subcontractors at the project site. A copy of the *Joint Labor Compliance Monitoring Program* is available at the Capital Projects Division Office. A copy of the *Joint Labor Compliance Monitoring Program* will be provided upon request. The Contractor, and all subcontractors, shall cooperate by allowing approved Compliance Group Representatives access to its employees on the project site for the purpose of conducting prevailing wage compliance interviews. The Compliance Group Representative shall restrict their on-site activities to prevailing wage compliance interviews only. Promotion, advertising or other related activities of the Compliance Group Representative is strictly prohibited. Any additional effort required by the Contractor in compliance with this Article shall be incorporated into the Bid Scope of Work and no additional compensation will be considered.

The Designated Representative (or its designee) may accompany any Compliance Group Representative when conducting prevailing wage compliance interviews. The Compliance Group Representative will display in plain view a county-issued identification card when conducting prevailing wage compliance interviews at the project site.

## ARTICLE 3: ARCHITECT/ENGINEER

### 3.1 DEFINITIONS

- 3.1.1 The Architect/Engineer is the person lawfully licensed to practice architecture or engineering or an entity lawfully practicing



architecture or engineering who has entered into an Agreement with the Owner to serve as Architect/Engineer and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Architect/Engineer means the Architect/Engineer or its authorized representative.

- 3.1.2 Architect/Engineer shall be entitled to performance by the Contractor of any obligations expressly set forth which are intended for the Architect/Engineer's benefit and to enforcement thereof.
- 3.1.3 In the case of the termination of the employment of the Architect/Engineer, the Owner shall appoint a capable and reputable Architect/Engineer. The status under the Contract of the Architect/Engineer so appointed shall be that of the former Architect/Engineer. The Owner shall notify the Contractor whenever the Architect/Engineer is replaced.
- 3.1.4 The Architect/Engineer may be an employee of the County or other governmental entity.
- 3.1.5 The Owner reserves the right to utilize a Design Professional (s) at any time during the duration of this Contract. If utilized, the Design Professional will be determined and identified on a Job Order-by-Job Order basis; therefore no Design Professional has been identified herein. The Owner may designate some of its duties, responsibilities and powers defined herein to the Design Professional.

## **3.2 ARCHITECT/ENGINEER'S DUTIES DURING CONSTRUCTION**

- 3.2.1 The Architect/Engineer shall at all times have access to the Work wherever it is in preparation and progress. When directed by the Designated Representative, the Contractor shall provide facilities for such access at the Contractor's cost so the Architect/Engineer may perform its functions under the Contract Documents.
- 3.2.2 The Architect/Engineer will be the interpreter of the requirements of the Drawings and Specifications. Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings or otherwise, will be issued with reasonable promptness by the Architect/Engineer through the Designated Representative and in accordance with any schedule agreed upon. The Contractor or Owner shall make written dated request through the Designated Representative to the Architect/Engineer for such interpretations. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents. The Contractor or Owner shall execute and complete the Work in accordance with such interpretations. The Architect/Engineer shall not be liable to the Contractor for the result of any interpretation or decisions rendered in good faith in such capacity.
  - 3.2.2.1 The Architect/Engineer shall interpret the requirements of Supplemental Job Orders and he shall decide all other questions of design intent in connection with the Work.
  - 3.2.2.2 It shall be the responsibility of the Architect/Engineer to make interpretations and render opinions in regard to all claims to the Owner or Designated Representative involving questions of interpretation of the intent of the drawings and specifications. Such opinions and interpretations, together with the reasons therefore, shall be furnished in writing by the Architect/Engineer to the Owner, Designated Representative and Contractor within ten (10) days after a request is made thereof.
  - 3.2.2.3 Neither the Contractor, nor the Designated Representative, nor the Owner shall be bound by any determination, interpretation or opinion of the Architect/Engineer if it is determined that such is not in accord with the true intent of the Contract Documents. The party taking issue with the determination, interpretation, or decision of the Architect/Engineer shall give the other party or parties, as the case may be, written notice of such fact within ten (10) days after the determination, interpretation, or opinion is rendered by the Architect/Engineer. However, it is the intent of this Paragraph 3.2 that in the actual performance of the Work, the Contractor and the Designated Representative shall, in the first instance, proceed in accordance with the instruction given by the Architect/Engineer unless the Owner and the Designated Representative mutually agree that the Contractor and the Designated Representative shall proceed otherwise.
- 3.2.3 The Architect/Engineer's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.
- 3.2.4 The Architect/Engineer will have the authority to reject Work which does not conform to the Contract Documents. Whenever, in its opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 8.7.2 whether or not such Work be then fabricated, installed or completed. However, neither the Architect/Engineer's authority to act under this Subparagraph 3.2.4, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect/Engineer to the Contractor, any

Subcontractor, any of their agents or employees, or any other person performing any of the Work.

- 3.2.4.1 The Architect/Engineer will be the judge of the performance of the Work and will use its powers under the Contract to enforce its faithful performance. The Architect/Engineer will determine the amount, quality, acceptability and fitness of all parts of the Work.
- 3.2.4.2 The Architect/Engineer will recommend suspension of the Work whenever suspension may be necessary to ensure the proper execution of the Work.
- 3.2.5 The Architect/Engineer will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect/Engineer approval of a specific item shall not indicate approval of an assembly of which item is a component.
- 3.2.6 For each Job Order, the Architect/Engineer along with the Designated Representative will conduct inspections to determine the dates of Substantial Completion and Final Completion and will receive and review written warranties and related documents required by the Contract and assembled by the Contractor.
- 3.2.7 Architect/Engineer shall prepare and deliver to the Owner a set of reproducible mylar record construction drawings and record construction specifications showing significant changes in the Work during the construction process based upon marked up prints of drawings and other data provided by the Contractor through the Designated Representative.
- 3.2.8 The Architect/Engineer will communicate with the Contractor through the Designated Representative.
- 3.2.9 The Architect/Engineer will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an Architect/Engineer, the Architect/Engineer will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.
- 3.2.10 The Architect/Engineer will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 5.3. The Architect/Engineer will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer will not have control or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractor, or their agents or employees, or of any other persons performing portions of the Work.
- 3.2.11 The Architect/Engineer has no authority to issue Supplemental Job Orders. All requests for proposals shall be prepared by the Architect/Engineer, shall be approved by the Owner or Director of General Services, and shall be issued to the Contractor through the Designated Representative.

#### **ARTICLE 4: DESIGNATED REPRESENTATIVE**

##### **4.1 DEFINITION**

- 4.1.1 The Designated Representative is the person or entity who has been identified in writing by the Owner for each individual Job Order to serve as Designated Representative and is referred to throughout the Contract Documents as if singular in number and masculine in gender. When the Designated Representative is an entity, other than a singular person, the term Designated Representative includes the Designated Representative acting through its authorized representatives as indicated to the Contractor in writing at the preconstruction meeting or whenever changes in personnel assignments occur.

##### **4.2 ADMINISTRATION OF THE CONTRACT**

- 4.2.1 The Designated Representative will provide, as the Owner's authorized representative, the general administration of the Project as herein described.
- 4.2.2 The Designated Representative will be the Owner's construction representative during the construction until final payment and shall have the responsibility to monitor the Work of the Contractor.

- 4.2.3 The Designated Representative shall monitor the Work to be performed through completion. His activities shall in no way supersede or dilute the Contractor's obligation to perform the Work in conformance with all contract requirements, but he is empowered, by the Owner, to act on its behalf with respect to the proper execution of the Work and shall give instructions to require such corrective measures as may be necessary, in its opinion, to ensure the proper execution of the contract or to protect the Owner's interest. The Designated Representative shall have the authority to require prompt execution of Work whenever such action may be necessary, in its opinion, to ensure the proper execution of the Work or to protect the interests of the Owner. Except as otherwise provided herein, the Designated Representative shall determine the amount, quality, acceptability, fitness and progress of the Work covered by the Contract without, however, assuming any of the Architect/Engineer's statutory or customary obligations.
- 4.2.4 The Designated Representative shall be deemed to be the Owner's Representative to the extent set forth below and elsewhere in this Contract. The Designated Representative shall have no authority to obligate or otherwise bind the Owner.
- 4.2.5 The Designated Representative shall review and monitor the Contractor's Work and construction schedule and establish specific measures and actions which the Contractor shall take to maintain the current approved schedule.
- 4.2.6 The Designated Representative shall examine the Contractor's Work to determine if the construction conforms to the requirements of this Contract (provided, however, that such action by the Designated Representative shall not supersede or diminish the Contractor's obligation to furnish materials and perform the Work in conformity with all requirements of this Contract).
- 4.2.7 The Designated Representative shall determine any corrective measures which may be necessary to bring the Contractor's performance into conformity with Contract requirements.
- 4.2.8 The Designated Representative shall monitor the Contractor's performance in coordinating the Contractor's Work under this Contract with the Work being performed or to be performed by other separate contractors.
- 4.2.9 The Designated Representative shall assist the Owner and the Architect/Engineer in the resolution of questions of Contract interpretation. If the Contractor either disagrees with the Designated Representative's interpretation or considers that such interpretation constitutes a constructive change in Contract requirements, the question shall be referred to the Owner for contract interpretation.
- 4.2.10 The Designated Representative shall establish and recommend administrative procedures for coordinating the activities of the Contractor, the Designated Representative, the Architect/Engineer and the Owner.
- 4.2.11 The Designated Representative shall monitor the Contractor's submittal schedule.
- 4.2.12 The Designated Representative shall coordinate the activities of the Testing Agencies with the activities of the Contractor.
- 4.2.13 The Designated Representative shall review all requests or recommendations for changes affecting this Contract, review proposals, assist in negotiating and submit recommendations thereon to the Owner.
- 4.2.14 The Designated Representative shall make recommendations, together with the Architect/Engineer where appropriate, to the Owner as to the qualifications of Subcontractors or Suppliers wherever submittals of Subcontractors and Suppliers are required to be furnished under this contract.
- 4.2.15 The Designated Representative shall transmit to the Owner all written guarantees and warranties which the Contractor is required to furnish under this contract.
- 4.2.16 The Designated Representative may call meetings which shall be attended by the Contractor, Subcontractors and Material Suppliers, as the Designated Representative may deem necessary.
- 4.2.17 The Designated Representative shall have the authority to reject Work which does not conform to the Contract Documents and to require any Special Inspection and Testing in accordance with Subparagraph 8.7.2.
- 4.2.18 The Designated Representative shall review all applications by the Contractor for progress payments and final payment and make recommendations to the Architect/Engineer and Owner for approval thereof in accordance with the Owner's procedures.

- 4.2.19 For each Job Order, the Designated Representative along with the Architect/Engineer will conduct inspections to determine the dates of Substantial Completion and Final Completion and will receive and review written warranties and related documents required by the Contract and assembled by the Contractor.
- 4.2.20 In the event any claim is made or any action brought in any way relating to the design or construction of the Project, the Designated Representative will render to the Owner any and all assistance required of it.
- 4.2.21 The Owner may, at his option, designate the Designated Representative as its representative to perform additional functions, including functions for which other authorized representatives may be designated by the provisions of this contract.
- 4.2.22 It shall be the duty of the Contractor to comply with all procedures established and implemented by the Designated Representative and approved by the Owner as stated above. In the event any such procedures are at a variance with other provisions of the Contract Documents, such procedures shall prevail.
- 4.2.23 The Designated Representative shall, at all times, have access to the Work wherever it is in preparation and progress. When directed by the Designated Representative, the Contractor shall provide facilities for such access so the Designated Representative may perform its functions under the Contract Documents.
- 4.2.24 In no event shall any act or omission on the part of the Designated Representative relieve the Contractor from its obligation to perform its Work in full compliance with the Contract.

### **4.3 OWNER'S AND DESIGNATED REPRESENTATIVE'S RIGHT TO STOP WORK**

- 4.3.1 If the Contractor fails to correct defective Work as required by Paragraph 14.2 or persistently fails to carry out the Work in accordance with the Contract Documents, the Designated Representative or the Owner through the Designated Representative may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- 4.3.1.1 The Contractor shall bear all costs of such Work stoppage unless it is determined that no fault existed in the Contractor's Work. Any Work stoppage for the correction of defective Work or removal and replacement of unacceptable materials and equipment will not be considered as the basis for any time extension.
- 4.3.2 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Document and fails within 48 hours after receipt of written notice from the Designated Representative to commence and continue correction of such default or neglect with diligence and promptness, the Designated Representative may, by written notice and without prejudice to any other remedy he or the Owner may have, make good such deficiencies. In such case an appropriate Supplemental Job Order shall be issued deducting from the payments of the initial Job Order then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect/Engineer's and the Designated Representative's additional services made necessary by such default, neglect or failure.
- 4.3.3 The relationship of the Designated Representative to the Owner may be that of an independent contractor and the Designated Representative shall have no authority to bind the Owner in any way with the Contractor, its subcontractors, materials suppliers or any third parties.

## **ARTICLE 5: CONTRACTOR**

### **5.1 DEFINITION**

- 5.1.1 A Contractor is the person or entity identified as such in the Agreement between the Owner and a Contractor and is referred to throughout the Contract Document as if singular in number and masculine in gender. The term Contractor means the Contractor or its authorized representative.
- 5.1.2 It is the duty of the Contractor to comply with all procedures established and implemented by the Designated Representative and approved by the Owner as stated herein.

### **5.2 REVIEW OF CONTRACT DOCUMENTS**

- 5.2.1 The Contractor shall carefully study and compare the Contract Documents, shall investigate existing site

**conditions of each Job Order, and shall at once report to the Designated Representative any error, inconsistency or omission he may or reasonably should discover.**

5.2.2 All soil and test borehole data, water table elevations, and soil analyses shown on the drawings or included in the specifications apply only at the locations of the test holes and to the depths indicated. Soil test reports for the test holes which have been drilled are available for inspection at the office of the Director of General Services. Any additional subsurface exploration not indicated in a Job Order shall be done by bidders or the Contractor at their own expense.

5.2.3 The indicated elevation of the water table is that existing at the date the test hole was determined. It is the Contractor's responsibility to determine and allow for the elevation of groundwater at the date of project construction. A difference in elevations between groundwater shown in soil boring logs and groundwater actually encountered during construction will not be considered as a basis for a Supplemental Job Order unless otherwise indicated in a Job Order.

### **5.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

5.3.1 The Contractor shall supervise and direct the Work, using the best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

5.3.1.1 The Designated Representative may reject any means, methods, techniques, sequences or procedures proposed by the Contractor, which might constitute or create a hazard to the Work or to persons or property, or which will not provide Work in accordance with the Contract Documents. However, neither the Designated Representative's acceptance of nor its failure to reject any means, methods, techniques, sequences and procedures shall relieve the Contractor of its responsibilities to safely and properly complete the Work.

5.3.2 The Contractor shall be responsible to the Owner and the Designated Representative for the acts and omissions of its employees and all its Subcontractors and their agents and employees and other persons performing any of the Work under a contract with the Contractor.

5.3.3 Neither observations, inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from its obligations to perform the Work in accordance with the Contract Documents.

5.3.4 The Contractor shall do and be responsible for the correct horizontal and vertical layout out and completion of the Work as per the Contract Documents and written instruction of the Designated Representative including all necessary leveling and checking. The Contractor shall protect and preserve all permanent survey monuments or bench marks and shall bear the expense of replacing any that may be disturbed without permission of the Designated Representative. Replacement of damaged permanent survey monuments or benchmarks shall be performed by a licensed land surveyor hired by the Owner.

5.3.5 The Contractor shall keep the Designated Representative informed of the plan and progress of its Work. No Work shall be closed or covered until it has been duly inspected and approved. Should uninspected Work be covered, the Contractor shall, at its own expense, uncover all such Work so that it can be properly inspected; and after such inspection, he shall properly repair and replace all such Work.

### **5.4 LABOR AND MATERIALS**

5.4.1 The Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

5.4.1.1 The Contractor shall accept delivery and store, protect and provide security for any Owner-purchased materials, systems and equipment which are a part of the Work until such items are incorporated into the Work. The Contractor shall document receipt of such materials, systems and equipment on forms acceptable to the Designated Representative.

5.4.1.2 The Contractor shall furnish, install, connect, make operable, and test all heating, ventilating and air conditioning equipment, plumbing fixtures, lighting fixtures, kitchen equipment, and any other mechanical or electrical equipment shown on the plans or called for in the specifications or indicated in the Detailed Scope of Work for a Job Order. In connection therewith, the Contractor shall also furnish and install all necessary devices, hardware, and systems required to make said equipment properly and safely operable including, but not limited to, mounting hardware and framing, insulation, vibration control devices, duct systems, gas piping systems, hot and cold water systems, venting ducts, control systems, and

electrical circuits.

- 5.4.1.3 The Contractor shall furnish and install complete utility systems ready for use and shall pay any special fees, permits or assessments required by the serving utility. Any fees shall be treated as a reimbursable task without markup.
- 5.4.2 The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.
  - 5.4.2.1 Any person employed, who is found to be incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fails or refuses to perform its work properly and acceptably, shall be immediately removed from the work by the Contractor and not be re-employed on the work.
  - 5.4.2.2 The Owner may remove and may order the Contractor to remove any person who is incompetent or otherwise objectionable from the site of the Work.
- 5.4.3 Approval of the Architect/Engineer under any substitution clause shall be obtained in writing before any substitution is made. In the event of the Contractor failing to obtain such approval, no consideration will be given to any appeal from the decision of the Architect/Engineer condemning any materials furnished.
- 5.4.4 Pursuant to the Public Contract Code, any reference in the Detailed Scope of Work, specifications, or plans to any brand name, article, device, product, materials, fixture, form or type of construction by brand name, make, or catalog number, such references shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition; and the Contractor, in such cases, may at its option use any article, device, product, materials fixture, form or type of construction which in the judgment of the Architect/Engineer expressed in writing is equal to that specified. The Contractor must within forty (40) days after award of the Contract or 10 days after issuance of a Job Order submit data substantiating a request for substitution.
- 5.4.5 If the Contractor proposed to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents he shall inform the Architect/Engineer through the Designated Representative in writing of the nature of such deviations at the time that the materials are submitted for approval and shall request a written approval of the deviation from the requirements of the Contract Documents.
- 5.4.6 In requesting approval of deviations or substitutions, the Contractor shall provide evidence leading to a reasonable certainty that the proposed substitutions or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the Architect/Engineer, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the Architect/Engineer may reject such substitution or deviation without further investigation.
- 5.4.7 The Architect/Engineer will judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the project, as well as for their intrinsic merits. The Architect/Engineer will not approve proposed substitutes as equal to items specified which, in its opinion, would be unharmonious, or otherwise inconsistent with the character or quality of design of the project.
- 5.4.8 Any additional cost, or any loss or damage, arising from the substitution of any material or method for those originally specified or drawn shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the Owner or Architect/Engineer, unless such substitution was made at the written request or direction of the Owner or Architect/Engineer.
- 5.4.9 The investigation, review and approval of substitute materials requires a minimum of 30 calendar days additional time more than for specified items. The Contractor is required to assure the time impact will not delay its or other Contractor's Work when submitting (proposing) a substitution. Submittal of a substitution will be promptly rejected if the Contractor does not accept the delay responsibility in making its submittal.
- 5.4.10 The Contractor, its agents and employees shall be bound by and comply with all applicable provisions of the California Labor Code, and with Federal, State, and local laws related to labor.
- 5.4.11 The Contractor shall strictly adhere to the provisions of the California Labor Code regarding minimum wages, the eight-hour day and the forty-hour week, overtime, Saturday, Sunday, and holiday work and non-discrimination because of race, color, national origin, religion, sex, age, or physically handicapped when otherwise qualified. The Contractor shall forfeit to the Owner the penalties prescribed in the California Labor Code for violations.

- 5.4.12 The Contractor, as required by the California Labor Code, Sections 1770 et seq, the Contractor shall pay not less than the prevailing rate of per diem wages for each classification of worker employed as determined by the Director of the California Department of Industrial Relations. A copy of the general prevailing rate of per diem wages is available at the General Services Department to be viewed upon request. The Contractor shall post a copy of such wage determination at each job site.
- 5.4.13 As provided in Section 1775 of the California Labor Code, as a penalty, the Contractor shall forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for any public work done under the Contract by the Contractor or any Subcontractor under him.
- 5.4.14 The Contractor shall submit completed Payroll Reporting Forms for all Tradesmen employed on the Work with the monthly Progress Payment Application.
- 5.4.15 Payroll Reporting Forms shall be the forms prescribed by the Owner or computer generated payroll reporting forms which have been approved in writing by the Owner or the Designated Representative.
- 5.4.16 The Contractor's attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq.
- 5.4.17 To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, the Contractor and Subcontractors should, where some question exists, contact the Division of Apprenticeship Standards prior to commencement of the Work. Responsibility for compliance with the law lies with the Contractor.
- 5.4.18 The Owner's policy is to encourage the employment and training of apprentices in its construction contracts as may be permitted under local apprenticeship standards.
- 5.4.19 As required by Section 1773.8 of the California Labor Code, the Contractor shall pay travel and subsistence payments to each worker needed to execute the Work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with this section.
- 5.4.20 To establish such travel and subsistence payments, the representative of any craft, classification, or type of workman needed to execute the Work shall file with the Department of Industrial Relations fully executed copies of collective bargaining agreements for the particular craft classification or type of work involved. Such agreements shall be filed within ten (10) days after their execution and thereafter shall establish such travel and subsistence payments whenever filed thirty (30) days prior to the call for bids.
- 5.4.21 The Contractor shall comply with all applicable provisions of Sections 1810 to 1815, inclusive of the California Labor Code relating to working hours. As a penalty, the Contractor shall forfeit twenty-five dollars (\$25.00) for each worker employed in the execution of the Work by the Contractor or by any Subcontractor for each calendar day during which such work is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of these limits at not less than one and one half (1.5) times the basic rate of pay.

**5.5 WARRANTIES AND GUARANTEES**

- 5.5.1 The Contractor, prior to or at the time of Substantial Completion for the Work of each individual Job Order and during administrative closeout of the project, shall submit three (3) copies of all warranties and guarantees to the Designated Representative for subsequent transmittal to the Architect/Engineer and Owner. All guarantees and warranties shall be in writing on guarantors'/warrantors' stationery or official forms and signed by a responsible company official, and shall be submitted in full force and effect by the Contractor.
  - 5.5.1.1 The Contractor warrants to the Owner and the Designated Representative that all materials and equipment furnished under this contract will be new unless otherwise specified and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these requirements, including substitutions not properly approved or authorized, shall be considered defective unless specifically accepted by the Owner. If required by the Designated Representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 14.2.
  - 5.5.1.2 The warranty of materials, equipment and workmanship defined in 5.5.1 is separate from, independent of and in addition to

any other guarantees in this contract or any other warranties required by the Contract Documents.

- 5.5.1.3 Except as otherwise specified, all Work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment or workmanship for one year from the date of Substantial Completion of each individual Job Order and acceptance/occupancy by the Owner in writing, provided that if prior to the acceptance of the entire project, the Owner occupies or uses any separate unit of Work, the guarantee period shall, as to the unit so occupied or used, commence on the date of such occupancy or use, with the further provision that the Owner shall have first agreed in writing that the separate unit shall be occupied or used by the Owner until such certificate has been given. Equipment and facilities, which have seasonal limitations on their operations, shall be guaranteed for one full year from the date of test and acceptance in writing by the Owner.
- 5.5.1.4 If within any guarantee period, repairs or changes are required in connection the guaranteed Work, as the result of the use of materials, equipment or workmanship which are defective or inferior or not in accordance with the terms of the Contract, the Contractor shall, promptly, within 48 hours after receipt of notice from the Designated Representative or Owner and without expense to the Owner or the Designated Representative, commence and continue to effect such repairs or changes.
- (a.) The Contractor shall place in satisfactory condition, in every particular, all of such guaranteed Work and correct all defects therein.
  - (b.) The Contractor shall make good all changes to the structure or site or equipment or contents thereof, which, in the opinion of the Architect/Engineer and the Designated Representative is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract. The Contractor shall make good any Work or materials, or the equipment and contents of structures or site disturbed in fulfilling such guarantee.
  - (c.) Notifications by Owner of defects shall stop the warranty time period. The guarantee or warranty period for that replaced or restored Work shall be reinstated for the remaining time period, starting on the date of acceptance of the replaced or restored Work.
- 5.5.1.5 In any case, where in fulfilling the requirement of the Contract or of any guarantee embraced in or required thereby, the Contractor disturbs any Work guaranteed under another contract, he shall restore such Work to a condition satisfactory to the Architect/Engineer and the Designated Representative and guarantee such restored Work to the same extent as it was guaranteed under such other contract.
- 5.5.1.6 If the Contractor, after notice, fails to proceed within 48 hours to commence and continue to comply with the terms of the guarantee, the Owner or Designated Representative may have the defect corrected in which case the Contractor and its surety shall be liable for all expenses incurred.
- 5.5.1.7 All special guarantees or warranties applicable to definite parts of the Work that may be stipulated in the Specifications or other papers forming a part of the Contract shall be subject to the terms of the Subparagraph 5.5.1.2 during the first year of the life of such special guarantee.
- 5.5.1.8 Nothing contained in Subparagraph 5.5.1 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including liability for defective Work under Subparagraph 5.5.1. Subparagraph 5.5.1 relates to the specific obligation of the Contractor to correct the Work and does not limit the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the Contractor's Liability with respect to its other obligations under this contract.
- 5.5.1.9 In the event the Work of the Contractor is to be modified by another Contractor, either before or after the Inspection provided for in Subparagraph 10.7.1, the first Contractor shall remain responsible in all respects under the warranty given in Paragraph 5.5 and under any other warranties provided in the General Conditions or by law. However, the first Contractor shall not be responsible for any defects in materials or workmanship introduced by the Contractor modifying its Work. Both the first Contractor and the Contractor making the modifications shall be responsible solely for the Work done by each. The Contractor modifying the earlier Work shall be responsible for any damage to or defect introduced into the Work which it is modifying.
- 5.5.1.10 Warranties and guarantees shall clearly define what is to be guaranteed; the extent, terms, conditions, time and effective dates.



- 5.5.1.11 Copies of the same warranties and guarantees shall be included in the "Owner's Maintenance Manual" as specified herein.
- 5.5.2 The Owner shall schedule an end of warranty review meeting with the Designated Representative, Architect/Engineer, and Contractor prior to the end of one year warranty to determine any Work requiring correction.
- 5.6 CONTROL OF OPERATIONS AND EMPLOYEES**
- 5.6.1 The Contractor shall not use any of the existing Owner's facilities, such as, but not limited to, toilets, cafeteria, parking areas, power hookup, except with the Owner's written approval.
- 5.6.2 The Contractor shall confine and perform its operations in those areas where construction is required. Contractor shall protect the contiguous non-construction property. The Contractor shall protect from damage all existing trees, utilities, or other improvements at the site. Should damage result from the Contractor's failure to exercise reasonable care in the performance of its Work, the Contractor shall repair or restore any such damage at its own expense.
- 5.6.3 Obnoxious behavior or possession or consumption of alcoholic beverages or drugs on the premises is strictly prohibited. Violators shall be promptly discharged from the site.
- 5.6.4 All roads, siding and other transportation facilities at the site where Work under the Contract is being performed are for the general use and the Contractor's operations must conform to the regulations of the local authorities. If the Work of a Contractor requires that such facilities be temporarily discontinued, after obtaining Designated Representative's and local authorities' approval, the Work shall be done expeditiously and detour roads, bridges or other temporary structures shall be erected by such Contractor and maintained as directed.
- 5.6.4.1 To minimize public inconvenience and possible hazards and to restore streets and other work areas to their original condition and former state of usefulness as soon as practicable, the Contractor shall diligently prosecute the work to completion. If, in the Designated Representative's opinion the Contractor fails to prosecute the work to the extent that the above purposes are not being accomplished, the Contractor shall, upon orders from the Designated Representative, immediately take the steps necessary to fully accomplish said purposes. All costs of prosecuting the work as described herein shall be borne by the Contractor. Should the Contractor fail to take the necessary steps to fully accomplish said purposes, after orders of the Designated Representative to do so, the Owner may suspend the work in whole or in part, until the Contractor takes said steps.
- 5.6.4.2 As soon as possible under the provisions of these specifications, the Contractor shall back fill all excavations and restore to usefulness all improvements existing prior to the start of the work.
- 5.6.4.3 If work is suspended through no fault of the Owner, all expenses and losses incurred by the Contractor during such suspensions shall be borne by him. If the Contractor fails to properly provide for public safety, traffic, and protection of the work during periods of suspension, the Owner may elect to do so, and deduct the cost thereof from monies due the Contractor. Such action will not relieve the Contractor from liability.
- 5.6.5 The Contractor shall not disturb any existing structure, piping, apparatus or other Work unless expressly required by the contract. Where cutting, drilling or removals are required in existing walls, floor or roof construction, the Work shall be done in such a manner to safeguard and not endanger the structure and shall in all cases be as approved by the Architect/Engineer. Prior to any cutting, drilling or removals, the Contractor shall investigate both sides of the surface involved, shall determine the exact location of adjacent structural members by visual examination and shall avoid interference with such members. No structural members, such as joists, beams or columns supporting Work that are to remain shall be cut, drilled or removed unless such conditions are shown in detail on the Drawings or otherwise indicated in the Detailed Scope of Work and reinforcing of members affected or new members to compensate for such cutting, drilling and removals are shown. If unforeseen obstructions are encountered, the Contractor shall take all precautions necessary to prevent damage and shall apply for and obtain full instructions from the Designated Representative, in writing, before proceeding with the Work.
- 5.6.6 Rights of way or easements for the improvement as shown on the plans or indicated in the Detailed Scope of Work will be provided by the Owner. Unless otherwise provided, the Contractor shall make its own arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required by him. The Contractor shall indemnify and hold the Owner, Designated Representative, and Architect/Engineer harmless from all claims for damages occasioned by such actions.
- 5.6.7 The Contractor shall remove and dispose with the Owner's approval, existing improvements for which no specific

disposition is made on the plans but which could interfere with the work.

## **5.7 PERMITS, FEES AND NOTICES**

5.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits including encroachment permits, governmental fees, licenses and inspections necessary for the proper execution and completion of this Work, which are customarily secured after execution of the contract and which are legally required at the time the Job Order Proposal for a Job Order is received. Unless provided for in a task in the Construction Task Catalog<sup>®</sup>, the amount of such fees paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The cost of expediting services or equipment use fees are not reimbursable.

5.7.1.1 The Project pays County Building Permit Fees as applicable.

5.7.1.2 The Owner will pay for building permits required by other governmental entities.

5.7.1.3 The Contractor shall sign for all building permits and shall be responsible for all inspections required.

5.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work.

5.7.3 Unless otherwise provided in the Contract Documents, it is the responsibility of the Contractor to make certain that the Contract Documents are in accordance with the applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Designated Representative in writing and any necessary changes shall be by appropriate Modification.

5.7.4 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notices to the Designated Representative he shall assume full responsibility therefore and shall bear all costs attributable thereto.

## **5.8 ALLOWANCES – NOT USED**

## **5.9 SUPERINTENDENT**

5.9.1 The Contractor shall employ an experienced, competent superintendent and necessary assistants who shall be in attendance at the Project site of each Job Order full time during the progress of the Work until the date of Substantial Completion and for such additional time thereafter as the Designated Representative may deem necessary for the expeditious completion of the Work. The superintendent shall be satisfactory to the Designated Representative and shall not be changed without the consent of the Designated Representative, unless the superintendent proves to be unsatisfactory to the Contractor or ceases to be in its employ. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

5.9.2 The Contractor shall submit a job organization chart and resumes which identify the key personnel he intends to assign to each Job Order, to the Designated Representative within 48 hours after receipt of the Notice to Proceed of each Job Order. The Owner, acting through the Designated Representative, reserves the right to approve the Contractor's proposed personnel and anyone not so approved shall be immediately replaced by someone acceptable. If in the course of construction, the Owner, on advice of the Designated Representative, determines that it would be in its best interest to request a change in the Contractor's personnel, he may do so; and the Contractor shall immediately assign a suitable replacement who is acceptable to the Owner and the Designated Representative at no additional cost.

5.9.2.1 A duly authorized representative of the Contractor shall be available for emergency telephone communication from the Owner or Designated Representative on a 24 hour basis, seven days a week during the performance of the Work.

## **5.10 CONSTRUCTION SCHEDULE**

5.10.1 Submission of Schedule and Format

5.10.1.1 Within 5 calendar days of the Notice to Proceed of each Job Order, the Contractor shall submit to the Designated Representative a construction Schedule covering the entire project. The schedule and any updates shall be in a format approved by the Designated Representative, and may include an electronic version or PDF. The logic, durations, and float

shall be easily accessible to the County.

- 5.10.1.2 The Schedule shall be prepared utilizing the critical path method of scheduling. The Schedule will show the Contractor's plan for construction in sufficient detail to indicate the sequence of construction and planned dates for achieving major milestones.
- 5.10.1.3 The maximum duration for any single activity will be twenty (20) working days, with the exception of "Fabrication and Delivery" activities. Although portions of the Work may take longer than 20 working days, all work shall be presented in the schedule to allow for monitoring of progress through completion of incremental activities with a duration not exceeding 5 days.
- 5.10.1.4 A sufficient number of activities will be carried in the schedule so that each subcontract subdivision is represented and the planned start and completion of each Subcontractor's Work can be determined.
- 5.10.1.5 All submittals required by the specifications will be scheduled along with the approval period (fifteen calendar days minimum) and fabrication and delivery periods.
- 5.10.1.6 The Contractor shall submit to the Designated Representative for approval a hand prepared critical path schedule and bar charts. The hand prepared schedule shall contain the following information and shall be presented in a legible format acceptable to the Designated Representative. In lieu of the hand prepared documents, a computer generated schedule and reports may be submitted.

- (a.) The critical path schedule shall indicate for each activity:

- Description
- Original Duration
- Remaining Duration
- Percentage Complete
- Total Float (critical path highlighted)
- Responsibility Code (who will perform the work)
- Early Start/Finish Dates (current update)
- Late Start/Finish Dates (current update)
- Predecessor and Successor Activities to the activity (arrow connections)

- (b.) The Contractor shall submit a bar chart schedule listing all activities in the schedule as organized by responsibility, area or date as approved by the Designated Representative. The bar chart shall include all the information listed in paragraph (a.) above for each activity except the listing of predecessor and successor activities.

- 5.10.1.7 If construction must commence during Schedule preparation and approval period, the Contractor shall prepare a sixty (60) calendar day schedule to cover the initial field construction and submittals. Activities on this Schedule should have maximum durations of five (5) days to allow for monitoring of progress through completion of the incremental activities.

- 5.10.1.8 The Schedule documents will be submitted in six (6) copies. At the time of submittal, The Contractor's lead on-site manager or superintendent will make a presentation to the Designated Representative on the planned construction sequence/schedule. Within thirty (30) calendar days of receipt, the Designated Representative will notify the Contractor, in writing, as to any objections to the Schedule submitted. If the Schedule is deemed objectionable, the Contractor will have five ( 5 ) calendar days from receipt to revise the schedule and resubmit it as above. The Contractor's presentation will include, but not be limited to:

- (a.) Describing the sequence and phasing of work.
- (b.) Delineating any area subdivision used to plan the work sequence/schedule.
- (c.) Identifying the critical path.
- (d.) Identifying when the milestone events specified herein are planned to be achieved (earliest and latest times).
- (e.) Any plans for shift work, weekend work, or extended work weeks and non-work days (i.e. holidays observed).
- (f.) Any planned interruptions of building power, water, communications, or other utilities.
- (g.) Any assumptions used in planning and sequencing the work.
- (h.) Long lead fabrication items.
- (i.) Manpower projections for the project.
- (j.) Noise/dust control measures.
- (k.) Safety plan.

- (l.) Plans for moving materials into the building and removing refuse and debris.
- (m.) Demolition identifying the duration of demolition, timeframes for extra noisy activities and off-hour coordination
- (n.) Any other planning information requested by the Owner or its Designated Representative prior to the presentation.

5.10.2 Updating of the Schedule

5.10.2.1 The Schedule documents will be updated monthly at a minimum to reflect progress through the "Data Date". All contract changes as they are agreed to shall be specifically incorporated into the appropriate Schedule update. The Data Date may be the last working day of the month or it may be the "closure" date of the requisition for payment, as the Contractor may choose and as approved by the Designated Representative. However, when one of the above Data Dates is selected, it will be used throughout the project. The update will be submitted within seven (7) calendar days following the Data Date.

5.10.2.1 The Contractor shall submit marked up copies of the approved critical path schedule and the bar chart indicating progress through the data date. If the Contractor submits a computer generated schedule, monthly update reports and schedule plots shall be submitted as directed by the Designated Representative.

5.10.3 Revision of the Schedule

5.10.3.1 Every effort shall be made by all parties to Work in accordance with the accepted Project Schedule. The Schedule will be revised only if the actual status of Work cannot be brought into conformance with the existing Schedule. If the Schedule is revised, the revised Schedule will be submitted as if any initial Schedule.

5.10.4 Minor Changes of the Schedule

5.10.4.1 The Schedule is not considered to be "revised" if the Contractor must make minor changes, such as:

- (a.) Adding additional details to a sub-network to facilitate coordination of subcontract Work.
- (b.) Additions/deletions/modifications of Schedule activities to reflect Work added or deleted by change order.

5.10.5 Extensions of Job Order Completion Time

5.10.5.1 All claims for extensions to Job Order Completion Time shall be supported by a detailed comprehensive analysis of the accepted Schedule. This analysis shall provide sufficient supporting evidence to justify a time extension. No time claims will be considered without the supporting analysis. If a time extension is granted, it shall be included in the next update of the Schedule.

5.10.6 During Construction

5.10.6.1 Construction milestone event dates will be incorporated into the detailed Construction Schedule as "target dates". These dates will be clearly noted and fixed on the Schedule graphics and corresponding computer file. It is the intent that the Work will be undertaken so as to achieve each target date and thereby achieve overall project completion as specified in the Job Order.

5.10.6.2 The milestone event target dates will not be revised unless delays beyond the control of the Contractor occur.

5.10.6.3 If, when the Schedule is updated, the planned dates for achieving any milestone(s) falls more than ten (10) working days behind the target date(s), and if this has occurred through no fault of the Owner, the Architect/Engineer or their consultants, the Contractor may be directed by the Owner or the Designated Representative, to take any and all actions required to bring the actual construction back into accordance with the target dates.

5.10.6.4 When the Contractor falls behind its schedule and is not entitled to any time extension other than extensions already reflected in the current approved schedule, he shall submit its plan for bringing the Work back up to schedule and shall implement the plan. If other measures will not be sufficient to make up the lag, the Contractor's plan and implementation thereof shall include, but not be limited to increasing the number of shifts and days of Work, additional Work, additional equipment, increasing manpower and expediting deliveries, all at the Contractor's sole expense.

5.10.6.5 If the Contractor works overtime, more than forty (40) hours per week, Saturdays, Sundays or holidays; whether by choice or by necessity, the Contractor shall be responsible for the reimbursement of the Owner for additional costs incurred for the Owner's, Designated Representative's and Architect/Engineer's overtime services.

5.10.6.6 In the event the Contractor fails or refuses to implement such measures as will bring its Work back up to conformity with the approved schedule, its right to proceed with any or all portions of the Contract requirements may be canceled or suspended; but permitting the Contractor to proceed shall in no way operate as a waiver of any rights of the Owner or deprive the Owner of its rights under any provisions of this contract.

5.10.6.7 The Contractor shall include milestone activities in the Schedule as applicable to the Work. Milestone events shall at a minimum include the following:

- (a.) Demolition and Excavation complete
- (b.) Start foundation concrete
- (c.) Complete footings and piers
- (d.) Complete all subgrade concrete construction
- (e.) Each level's structural slab complete
- (f.) Roof level structural slab complete
- (g.) Penthouse Level structural slab complete
- (h.) Begin structural steel
- (i.) Complete structural steel
- (j.) Complete decks/structure
- (k.) Permanent power available
- (l.) Temporary heating/cooling available
- (m.) Begin roofing
- (n.) Complete roofing
- (o.) Begin exterior facades
- (p.) Complete exterior facades
- (q.) Begin exterior glazing
- (r.) Complete exterior glazing
- (s.) Building dry-in
- (t.) Elevators operational
- (u.) Begin mechanical/electrical/plumbing rough-in
- (v.) Begin building controls
- (w.) Complete building controls
- (x.) System start-up
- (y.) Begin partition rough-in
- (z.) Complete partition rough-in
- (aa) Begin drywall
- (bb) Begin finishes and millwork
- (cc) Complete finishes and millwork
- (dd) Begin site work and landscaping
- (ee) Complete grading
- (ff) Begin underground utilities
- (gg) Complete underground utilities
- (hh) Complete site paving
- (ii) Complete landscaping
- (jj) Substantial completion
- (kk) Start installation of Owner furnished equipment
- (ll) Project complete/beneficial occupancy

5.10.7 Owner Directed Schedule

5.10.7.1 On projects involving extensive coordination between the Contractor and the Owner's ongoing operations, the Owner may issue with the Contract Documents an Owner Directed Schedule which shall be used by the Contractor in preparing its plan of operations. The Contractor shall not deviate from the Owner Directed Schedule without the written prior approval of the Owner or Designated Representative. As indicated in Paragraph 5.10.6, the Contractor may be directed by the Owner or Designated Representative to take any and all actions required to perform the actual construction in accordance with the Owner Directed Schedule and its "target dates".

## 5.11 SUBMITTAL SCHEDULE

5.11.1 The Contractor shall prepare a schedule of required submittals not later than fourteen (14) days after the receipt of the Notice to Proceed for each Job Order. The schedule shall include a complete list of items requiring shop drawings, design

mixes, material certification, product data, brochures, catalog cuts, etc., to be approved by the Architect/Engineer. The Contractor shall coordinate all submittals requiring approvals by code enforcement agencies and shall include these special approvals in the submittal schedule. The schedule is to be submitted on a form approved by the Designated Representative. The schedule shall be updated monthly or as required by the Designated Representative. All shop drawings and other submittals shall be accompanied by a transmittal letter and reference should be indicated to the item numbers of the above mentioned schedule. The Contractor is to indicate the following in its submittal schedule.

- (a.) Description of item
- (b.) Specification division, page numbers, article and paragraph
- (c.) Type of submittal (shop drawings, sample, product data)
- (d.) Date that submittal shall be delivered to the Designated Representative's office.
- (e.) Date that Contractor must have approval.
- (f.) Date that material, equipment must be on site in order to maintain the Contractor's progress schedule.

5.11.2 The Contractor's submittal schedule shall allow reasonable time (15 calendar days minimum) for review by the Designated Representative and the Architect/Engineer, and revision or correction, resubmittal and approval, sufficiently in advance of the time that the item is scheduled for incorporation into the Work.

5.11.3 The Designated Representative and the Architect/Engineer shall review the Contractor's submittal schedule for completeness, fulfillment of Specification requirements and compatibility with the anticipated construction schedule. The sequence and duration of Contractor, Architect/Engineer, Designated Representative activities on the submittal schedule may be adjusted by the Designated Representative.

## **5.12 DRAWINGS AND SPECIFICATIONS AT THE SITE**

5.12.1 The Contractor shall maintain at the site for the Designated Representative and the Architect/Engineer, two (2) copies of all Job Orders, drawings, specifications, addenda, Supplemental Job Orders, responses to requests for information, proposals and other modifications, in good order and marked currently to record all changes made during the construction, including any changes in locations, size and arrangement of the various components of the Work or any other variations from the drawings or shop drawings. The Contractor shall mark each drawing as the Work shown thereon is completed in the field, revising any or adding lines, dimensions, elevations, depths, notes or any other information required to accurately record conditions. These drawings, marked to record all changes during the construction and approved shop drawings, product data, samples, addenda, Supplemental Job Orders, responses to requests for information, proposals and other records of modifications shall be delivered to the Designated Representative, for the Owner, upon completion of the Work.

5.12.1.1 In addition to maintaining and delivering to the Designated Representative those record drawings required by Subparagraph 5.12.1, the Contractor shall also prepare and submit to the Designated Representative, upon completion of the Work, record reproducible drawings if the technical specifications so require.

## **5.13 USE OF SITE**

5.13.1 The Contractor shall confine operations at the site to areas approved by the Designated Representative, permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

5.13.2 The Contractor shall not disturb existing monuments and markers at the site. Should monuments or markers or both be disturbed at any time by the Contractor, he shall bear the cost of a licensed surveyor engaged by the Owner for the purpose of relocating such monuments or markers.

5.13.3 The Contractor shall lay out its Work and shall be responsible for the accuracy of all lines, elevations and measurements, grading, utilities and other Work executed by him under its Contract. He must exercise proper precaution to verify figures shown on drawing before laying out Work and will be held responsible for any error resulting from its failure to exercise such precaution.

5.13.4 All discrepancies shall be brought to the attention of the Designated Representative in writing for review and direction before proceeding with the Work. Should the Contractor proceed without direction, he shall be responsible to make whatever changes are necessary and pay call costs incurred by that Contractor, the Designated Representative, the Owner or other Contractors.

5.13.5 Any enclosure including safety barricades, perimeter rails, opening covers and devices required to protect the Work,

workmen, materials or equipment shall be provided by the Contractor.

5.13.6 Weather protection shall be supplied by the Contractor and shall include all enclosure, supplemental heating and furnishing all other features (insulation, etc.), or meeting conditions required by the Designated Representative or by the specifications relative to the Contractor's Work, to protect the Work and any materials stored on site.

5.13.7 Protection of finished Work until acceptance shall be furnished by the Contractor.

#### **5.14 CUTTING AND PATCHING WORK**

5.14.1 The Contractor shall be responsible for all cutting or patching that may be required to complete the Work or to make its several parts fit together properly. He shall provide protection of existing Work as required.

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

5.14.3 The Contractor shall not cut, weld to or otherwise alter any structural member without the written consent of the Architect/Engineer obtained through the Designated Representative.

#### **5.15 DAILY AND FINAL CLEAN UP**

5.15.1 The Contractor shall be responsible for daily and final clean up and continuous removal of all rubbish and debris from the building and site.

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

5.15.2 The job site shall be maintained in a neat and orderly condition and kept free from accumulations of waste materials and rubbish during the entire construction period. Remove all crates, cartons and other flammable waste materials or trash from the Work areas at the end of each working day to appropriate waste hauling receptacles.

5.15.3 Elevator shafts, electrical closets, pipe and duct shafts, chases, furred spaces and similar spaces which are generally unfinished, shall be cleaned and left free from rubbish, loose plaster, mortar drippings, extraneous construction materials, dirt and dust before a Job Order's Substantial Completion inspection.

5.15.4 The Contractor shall be responsible for the cleaning of all surfaces as necessary to make them free of spatters or other deposits of paint, plaster, mortar, concrete, adhesives, roofing, dirt, soil, oil, and all other materials foreign to the surface involved.

5.15.5 The Contractor and Designated Representative may conduct a preconstruction meeting at the site of a Job Order to ensure it is ready for construction and a full inventory of the condition of any site staging areas, areas immediately outside of the construction zone, etc taken. The Contractor is responsible for returning the areas surrounding the construction zone to pre-construction conditions or better, including but not limited to staging areas, hallways, finishes in adjacent areas including walls and floors, elevators, parking zones, etc.

#### **5.16 COMMUNICATIONS**

5.16.1 The Contractor shall forward all communications to the Owner and Architect/Engineer through the Designated Representative.

5.16.1.1 The Contractor shall promptly return telephone calls or respond to any other form of communication initiated by the Designated Representative. Failure to promptly do so shall be considered lack of performance on the part of the Contractor.

5.16.1.2 All written correspondence to the Designated Representative shall be dated and signed by the Contractor or its authorized representative.

5.16.2 Weekly project progress review meetings will be conducted with Designated Representative, Architect/Engineer, their consultants as necessary, and Contractor in attendance. The Designated Representative may call for special meetings of the Contractor, Subcontractors and material suppliers as he deems necessary for the proper coordination of the Work. Such meetings shall be held at the job site on regular working days during Normal Working Hours. Unless otherwise directed by the Designated Representative, attendance shall be mandatory for all parties notified to attend the meeting.

## 5.17 ROYALTIES AND PATENTS

5.17.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner and Designated Representative harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Designated Representative.

## 5.18 INSURANCE

### 5.18.1 Indemnification

5.18.1.1 CONTRACTOR agrees to 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.

5.18.1.2 CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

### 5.18.2 Insurance Requirements for Contractor

5.18.2.1 Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

5.18.2.2 Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.

5.18.2.3 General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies



for general and automobile liability insurance shall not be less than \$2,000,000 per occurrence and \$3,000,000 in the aggregate. Any deductible or Self-Insured Retention (SIR) over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form: "Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

5.18.2.4 CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder. In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

5.18.2.5 The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonably based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any **amendment** of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the **amended** Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by **written** amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

## 5.19 CONTRACTOR QUALITY CONTROL SYSTEM

5.19.1 The Contractor shall provide and maintain an effective quality control program of Contractor inspection system, which will assure that all supplies and services required under the Contract Documents conform to the Contract Documents whether constructed or processed by the Contractor or procured from subcontractors or vendors. The Contractor shall substantiate that all supplies and services conform to the Contract Documents and shall also perform or have performed all inspections and tests otherwise required by the Contract Documents unless the required inspection and test is specifically designated to be performed by the Owner or the Owner's designated representative. Mechanical and electrical personnel, either engineers or highly qualified technicians shall be provided during the testing, balancing, adjusting and regulating mechanical and electrical devices and systems. The Contractor's inspection system shall be documented, as specified herein, and shall be available for review by the Designated Representative prior to the start of construction and throughout the life of the Contract. The Contractor shall notify the Designated Representative in writing of any proposed change to its inspection system and change shall be subject to disapproval if they would, in the opinion of the Designated Representative, result in non-conformance with the Contract requirements. The Contractor's inspection system shall include the minimum requirements stated below. The Contractor's full time job site superintendent may function as the Contractor's Contractor Quality Control representative.

5.19.1.1 Preparatory Inspection: The Contractor's Quality Control organization shall perform prior to the beginning any Work on any definable segment of Work; a review of contract requirements; a check to assure that all materials and equipment have been tested, submitted and approved; a check to assure that provisions have been made to provide required control testing; examination of the Work area to ascertain that all preliminary Work has been completed; and a physical examination of materials and equipment to assure that they conform to approved shop drawings or submittal data and that all material and equipment are on hand. As a part of this preparatory Work, the Contractor's Quality Control organization will review and certify all shop drawings, certificates and other submittal data prior to submission to the Designated Representative. Each submittal offered to the Designated Representative will bear the date and the signature of a member of the Contractor's Quality Control organization indicating that he has reviewed the submittal and certified it to be in compliance with the Contract Documents (or showing the required change). The Designated Representative shall be notified a minimum of seventy two (72) hours prior to the beginning of a Preparatory Inspection.

- 5.19.1.2 Initial Inspection: The Contractor's Quality Control organization shall perform, as soon as a representative segment of the particular item of Work has been accomplished, an examination of the quality of workmanship and a review of control testing for compliance with Contract Requirements, use of defective or damaged materials, omissions, and dimensions requirements.
- 5.19.1.3 Follow-Up Inspection: The Contractor's Quality Control organization shall perform daily, or as frequently as necessary, follow up inspections to assure continuing compliance with Contract Requirements, including control testing, until completion of the particular segment of the Work.
- 5.19.1.4 The Contractor shall maintain current records on an appropriate approved format of all inspections and tests performed. These records should provide factual evidence that the required inspections or tests have been performed, including type and number of inspections or tests involved; results of inspections or tests; nature of defects, causes for rejection, etc.; proposed remedial action and corrective actions taken. The Contractor shall not build upon or conceal any feature of the Work containing uncorrected defects, and payment on deficient items will be withheld until satisfactorily corrected or other actions taken as authorized. These records must cover both conforming and defective items and shall include a statement that all supplies and materials, incorporated in the Work, are in full compliance with the terms of the contract. Legible copies shall be furnished to the Designated Representative. The report will cover all Work placement subsequent to the previous report and will be verified by the prime Contractor's Quality Control representative. The Contractor shall include in all subcontracts, purchase orders or other agreements, either written or oral, with a commercial testing laboratory for quality control testing under the subject Contract, a requirement that copies of any test reports, data or other information relating to tests conducted by said laboratory under this Contract, be mailed simultaneously to the Designated Representative when said report, data or other information are mailed or delivered to the Contractor.
- 5.19.1.5 The Contractor shall establish controls necessary to assure scheduled completion dates established by the Contract are not impacted by the delinquent submittal data and operational tests. Sixty (60) days in advance of the Substantial Completion and prior to scheduling a pre-final inspection of the Work, or any phase of Work, under the Contract, the Contractor's Quality Control organization shall submit to the Designated Representative a complete and factual report of all remaining submittals, inspections and tests required prior to acceptance of the Work. The report shall include the following:
- (a.) A list of outstanding shop drawing submittals or re-submittals requiring approval by the Contractor.
  - (b.) A list of manuals, test reports, spare parts, keys, etc., to be furnished to the Designated Representative and scheduled submittal dates.
  - (c.) Schedule of required operations tests and instruction periods.
  - (d.) Scheduled delivery dates for materials or equipment impacting contract completion dates.
  - (e.) Plan of action by the Contractor for correcting all known contract deficiencies including delay in scheduled progress.
- 5.19.1.6 The Contractor shall maintain marked-up documents depicting Record Document conditions. These drawings will be maintained in a current condition at all times until completion of the Work and will be available for review by the Designated Representative at all times. All variations from the Contract Documents, for whatever reason, including those occasioned by the required coordination between trades, will be indicated. These variations will be shown in the same general detail utilized in the Contract Documents. Upon Substantial Completion of a Job Order, the marked-up documents shall be furnished to the Designated Representative for delivery to the Owner or the Owner's designated representative. The Contractor shall also furnish Record Documents as provided in the Technical Provisions of the specifications.
- 5.19.1.7 After a Job Order is issued and before construction operations are started, the Contractor shall meet with the Designated Representative and discuss the inspection system requirements. The meeting shall develop mutual understanding relative to details of the Contractor's Quality Control system including the form to be used for recording the inspection, administration of the system and the interrelationship of the Contractor and the Designated Representative. The Contractor shall furnish to the Designated Representative within five (5) days after receipt of the Notice to Proceed, an inspection system plan which shall include the procedures, instructions and reports to be used. No progress payments will be processed under this Contract until the inspection plan is acceptable to the Owner and the Designated Representative. The Contractor's Quality Control plan documentation will include the following minimum elements:
- (a.) The inspection organization.
  - (b.) Number and qualifications of inspection personnel to be used.

- (c.) Authority and responsibilities of inspection personnel.
- (d.) Schedule of use of inspection personnel by types and phase of Work.
- (e.) Methods of inspection, including Subcontractor's work.
- (f.) Test methods including as specified, name of qualified testing laboratory to be used, if applicable.
- (g.) Method of documenting inspection and testing.
- (h.) A copy of a letter of direction to the Contractor's Quality Control representative responsible for the quality control inspection, outlining its duties and responsibilities and signed by a responsible officer of the firm.

5.19.1.8 The Contractor's Quality Control inspection system shall provide for procedures which will assure that the latest applicable drawings, including shop drawings, specifications and instruction required by the contract, as well as authorized changes thereto, are used for fabrication, inspection and testing.

5.19.1.9 The Designated Representative and the Architect/Engineer reserves the right to inspect at source supplies or services not manufactured or performed within the Contractor's facility. The Designated Representative's and the Architect/Engineer's inspection shall not constitute acceptance, nor shall it in any way replace Contractor inspection or otherwise relieve the Contractor of its responsibility to furnish an acceptable end item. When inspection at Subcontractor's plant is performed by the Designated Representative, such inspection shall not be used by Contractor as evidence of effective inspection by such Subcontractor.

5.19.1.10 The Designated Representative may notify the Contractor or its Quality Control representative at the site of noncompliance with the foregoing provisions. This notice may be in writing by a form titled "Deficiency Correction Report" or "Notice of Noncompliance". The Contractor shall immediately, upon receipt of said notice, indicate the corrective action which will be taken and the date by which it will be complete, and submit this data for the Designated Representative's approval. If the Contractor refuses to comply promptly with these requirements, the Designated Representative may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost or cost of damages due to such stop orders shall be compensable and payment representing the noncompliance item and corrective action will be withheld until the Designated Representative has approved the corrective action.

5.19.1.11 Each of the Contractor's Quality Control Inspectors shall be responsible for inspecting the Work under its surveillance for compliance with OSHA Standards for the Construction Industry Section and approved safety program and shall immediately bring to the attention of the Contractor's supervisory personnel any unsafe Work conditions and instance of noncompliance noted.

5.19.2 Certificates of Compliance: The Designated Representative may require certificates of compliance with the specifications for materials or manufactured items produced outside of the job site. Such certificates will not relieve the Contractor from the requirements of providing material and manufactured items complying with the specifications even though they have been incorporated into the job.

5.19.3 Weighing Equipment: All scales used for proportioning materials shall be inspected for accuracy and certified within the past twelve (12) months by the State of California Bureau of Weights and Measures, by the County Director or Sealer of Weights and Measures, or by a Scale Mechanic registered with or licensed by the County.

5.19.3.1 The accuracy of the work of a scale service agency, except as stated herein, shall meet the standards of the California Business and Professions Code and the California Administrative Code pertaining to weighing devices. A certificate of compliance shall be presented prior to operation to the Designated Representative for approval and shall be renewed whenever required by the Designated Representative at no cost to the Owner.

5.19.3.2 All scales shall be so arranged that they may be read easily from the operator's platform or area. They shall indicate the true net weight without the application of any factor. The figures of the scales shall be clearly legible. Scales shall be accurate to within 1% when tested with the plant shut down. Weight equipment shall be so insulated against vibration or moving of other operating equipment in the plant area that the error in weighing with the entire plant running will not exceed 2% for any setting nor 1-1/2% for any batch.

**5.20 COMPLETION INSPECTIONS**

5.20.1 Contractor's Quality Control Completion Inspection: Based upon the Designated Representative's concurrence that the Work is nearing Substantial Completion, at least 15 days prior to pre-final inspection, the Contractor's Quality Control Inspection personnel shall conduct a detailed inspection. The Designated Representative shall be notified of the inspection date in order that he may participate, if he so elects. The Work shall be inspected for conformance to plans, specifications, quality, workmanship and completeness. The Contractor shall prepare an itemized list of Work not properly completed,

inferior workmanship or not conforming to Contract Documents. The list shall also include outstanding administrative items such as Record Documents, operations and maintenance manuals, spare parts, installed property list, etc. The list shall be included in the Quality Control documentation and submitted to the Designated Representative with an estimated date for correction of each deficiency within five (5) working days after conducting this inspection.

- 5.20.2 Pre-Final Inspection: The Contractor's Quality Control Inspection personnel, its superintendent, or other primary management person and the Designated Representative will be in attendance at this inspection. Additional Owner personnel, including but not limited to those from the Owner's General Services Department user groups, Board of Supervisors and the Architect/Engineer may be in attendance. The pre-final inspection will be formally scheduled by the Owner or the Designated Representative based upon notice from the Contractor. This notice will be given to the Owner or the Designated Representative at least fifteen (15) days prior to the pre-final inspection and must include the Contractor's assurance that all specific items previously identified to the Contractor as being unacceptable, along with the remaining Contract Work will be complete and acceptable by the date scheduled for the pre-final inspection. Failure of the Contractor to have all Contract Work acceptably complete for this inspection will be the cause of the Owner or the Designated Representative to be reimbursed by the Contractor for the additional inspection costs of the Owner or the Designated Representative. At this inspection, the Owner or the Designated Representative will develop a specific list of incomplete and unacceptable Work performed under the Contract and will subsequently furnish this list to the Contractor. Failure of the Owner or the Designated Representative to detect or list all incomplete and unacceptable Work during this inspection will not relieve the Contractor from acceptably performing all Work required by the Contract Documents. The Owner or the Designated Representative, at their option, may accept this inspection as the final acceptance inspection, if in its opinion the completion status of the inspected facilities and other Work performed under the Contract warrant this consideration.
- 5.20.3 Final Acceptance Inspection: The Contractor's Quality Control Inspection personnel, its superintendent or other primary management persons and the Owner or the Designated Representative will be in attendance at this inspection. Additional Owner personnel including, but not limited to, those from the Owner's General Services Department, user groups, Board of Supervisors and the Architect/Engineer may also be in attendance. The final acceptance inspection will be formally scheduled by the Owner based upon the Contractor's written assertion to the Owner that the Work is complete. This notice will be given to the Owner or the Designated Representative at least fifteen (15) days prior to the final acceptance inspection and must include the Contractor's assurance that all specific items previously identified to the Contractor as being unacceptable, along with all remaining Work performed under the Contract, will be complete and acceptable by the date scheduled for the final acceptance inspection. Failure of the Contractor to have all Work acceptably complete for this inspection will be cause for the Owner and the Designated Representative to bill the Contractor for any additional inspection costs.
- 5.20.4 If, in the Designated Representative's judgment, the work has been completed in accordance with the Job Order and Contract Documents and is ready for acceptance he will so certify to the Owner, which may accept the completed work. The Designated Representative will, in its certification to the Owner, give the date when the work was completed. This will be the date when the Contractor is relieved from responsibility to protect the work. This will also be the date to which liquidated damages will be computed.

## 5.21 WARRANTY OF CONSTRUCTION

- 5.21.1 Performance Bond: The Performance Bond shall remain in effect for a 12 month warranty period after the date of substantial completion, as determined by the County for the final Job Order. Extended warranty periods shall be provided under manufacturer warranties, as required by project specifications.
- 5.21.2 In the event that the Contractor or its designated representative fails to commence and diligently pursue all Work required under Paragraph 5.5 within a reasonable time after receipt of written notification pursuant to the requirements thereof, the Owner or the Designated Representative shall have the right to demand that said Work be performed under the Performance Bond by making written notice on the surety. If the surety fails or refuses to perform the obligation it assumed under the Performance Bond, the Owner or the Designated Representative shall have the Work performed by others, and after completion of the Work, shall make demand for reimbursement of any or all expenses incurred by the Owner while performing the Work, including, but not limited to, administrative personnel.
- 5.21.3 Warranty repair work which arises to threaten the health or safety of personnel or the safety of property or equipment will be handled by the Contractor on an immediate basis as directed verbally by the Owner or the Designated Representative. Written verification will follow the Owner's or the Designated Representative's verbal instructions. Failure of the Contractor to respond as verbally directed will be cause for the Owner or the Designated Representative to have the warranty repair work performed by others and to proceed against the Contractor as outlined in Paragraph 5.21.2 above.

5.21.4 Pre-Warranty Conference: Prior to Substantial Completion of a Job Order and at a time designated by the Owner or the Designated Representative, the Contractor shall meet with the Owner or the Designated Representative to develop a mutual understanding with respect to the requirements of Paragraph 5.5 of this specification. The Owner or the Designated Representative shall establish communication procedures for the Contractor notification of warranty defects, priorities with respect to the type of defect and reasonable time required for the Contractor response and other details deemed necessary by the Owner or the Designated Representative for the execution of the construction warranty. In connection with these requirements, the Contractor will furnish the name, telephone number and address of a licensed and bonded company which is authorized to initiate and maintain warranty Work action on behalf of the Contractor. This single point of contact will be located within the local service area of the warranted construction and will be responsive to the Owner's inquiry on warranty Work action and status. This requirement does not relieve the Contractor of any of its responsibilities in connection with Paragraph 5.5.

## **5.22 SUBCONTRACTS**

5.22.1 Each bidder shall file with its Job Order Proposal for each Job Order the name, license number, and the location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the Detailed Scope of Work, in an amount in excess of one-half of one percent of the Contractor's Job Order Price. Each bidder shall state the portion of the work which will be done by each subcontractor under this act. The Contractor shall list only one subcontractor for each such portion as is defined by the Contractor in its bid.

5.22.2 In each instance, the nature and extent of the work to be sublet shall be described. The failure of the Contractor to specify a subcontractor, or the listing of more than one subcontractor for the same portion of the work, constitutes an agreement by the Contractor that he is fully qualified to perform that portion himself, and that he shall perform that portion himself.

5.22.3 The Contractor must have the written consent of the Owner to substitute a subcontractor other than that designated in the Job Order Proposal, to permit any subcontract to be assigned or transferred, or to allow a subcontract to be performed by other than the original subcontractor. The Contractor shall submit an acknowledgement signed by the original subcontractor that there is no objection to its replacement by another subcontractor. Any substitution of subcontractors must comply with California Public Contract Code.

5.22.4 Subcontracting of work for which no subcontractor was designated in the original bid, and which is more than one-half of one percent of the work, will be allowed only in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the Owner, setting forth the facts constituting the emergency or necessity.

5.22.5 Violation of any of the above provisions will be considered a violation of the Contract, and the Owner may cancel the Contract or assess the Contractor a penalty of not more than 10% of the subcontract involved.

5.22.6 All persons engaged in the work, including subcontractors and their employees, will be considered as employees of the Contractor. He will be held responsible for their work. The Owner will deal directly with, and make all payments to the Contractor.

5.22.7 When subcontracted work is not being prosecuted in a satisfactory manner, the Contractor will be notified to take corrective action. If the Owner so orders, and on receipt by the Contractor of written instructions from the Owner, the subcontractor shall be removed immediately from the work. He shall not again be employed on the work.

## **5.23 LAWS TO BE OBSERVED**

5.23.1 The Contractor shall keep himself fully informed of State and National laws and County and municipal ordinances and regulations which in any manner affect those employed in the work or the materials used in the work or in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, ordinances and regulations.

5.23.2 Santa Barbara County Ordinance 2946 Unlawful Discrimination in Employment Practices: Contractor agrees with the County of Santa Barbara that it will not discriminate against any employee or applicant for employment 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 handicap when otherwise qualified, Vietnam era veteran/disabled or age. If it is determined by the Board of Supervisors upon recommendation of the Affirmative Action Officer and the County Counsel that during the life of this contract any such unlawful discriminations have occurred, the County Board of Supervisors may forthwith terminate this contract. Contractor further agrees that whether or not the term

of this contract is still in existence at the time of final determination of such unlawful discrimination, that it will forthwith reimburse the County for any and all damages, costs and expenses incurred in connection with such unlawful discrimination, including but not limited to damages from loss of Federal or State grants, subventions or loans; costs of processing, investigating and reporting complaints of unlawful discrimination; additional costs or expenses incurred in completion of this agreement by another party if this agreement is terminated before completion; all costs of suit including reasonable attorney's fees incurred in collecting any such damages, costs and expenses; and interest at 7% on all such damages, costs and expenses from the date they are incurred to date of payment.

- 5.23.2.1 Employment practices shall include, but are not limited to employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rates of pay, employee benefits and all other forms of compensation, selection for training and apprenticeship and probationary periods.
- 5.23.2.2 Contractor further agrees to 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.
- 5.23.2.3 Failure to fully comply with any of the foregoing provisions relating to unlawful discrimination in employment practices shall be deemed to be a material breach of this contract.

## **ARTICLE 6: SUBCONTRACTORS**

### **6.1 DEFINITION**

- 6.1.1 A Subcontractor is a person or entity who has a direct contract with a Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or its authorized representative.
- 6.1.2 Nothing in the Contract Documents shall create any contractual relationship between the Owner, the Architect/Engineer or the Designated Representative and any Contractor, any Subcontractor, or any Sub-subcontractor or its authorized representative.

### **6.2 SUB-CONTRACTUAL RELATIONS**

- 6.2.1 By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor, by the terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these documents, assumes toward the Owner, the Designated Representative or the Architect/Engineer. Said agreement shall preserve and protect the rights of the Owner, the Designated Representative and the Architect/Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents has against the Owner or Designated Representative. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with its Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 6.3 and shall identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents to its Subcontractors.

## **ARTICLE 7: SEPARATE CONTRACTS**

### **7.1 OTHER CONTRACTORS**

- 7.1.1 The Owner reserves the right to let other separate contracts in connection with the Work of any Project. The Contractor shall cooperate with other separate contractors and he shall afford the Designated Representative and other Contractors reasonable opportunity for the introduction and storage of their materials and equipment and execution of their Work and shall properly connect and coordinate its Work with others under the general direction of the Designated Representative. Temporary structures, equipment or materials shall be located where directed by the Designated Representative and if not so located, they shall be moved by the Contractor when directed at no additional cost.

## 7.2 CONTRACTOR TO INSPECT OTHER WORK

- 7.2.1 If any part of the Contractor's Work depends, for proper execution or results, upon the Work of the Designated Representative or any separate contractor, the Contractor shall, prior to proceeding with the Work, inspect and measure Work already in place and promptly report to the Designated Representative any discrepancies from the Detailed Scope of Work or defects in such Work that render it unsuitable for such proper execution and results. The Contractor shall submit the report of discrepancies or defects in the form of a written request for information. Failure of the Contractor to so report shall constitute an acceptance of the other contractor's Work as fit and proper to receive its Work, except as to defect which may develop after the execution of its Work.
- 7.2.2 Copies of Drawings and specifications relating to these separate contracts will be available to the Contractor, upon request, for its information in carrying out the above provisions. The Contractor shall be held responsible for any damage or misfit resulting from its neglect to comply with the foregoing.

## 7.3 COORDINATION AND COOPERATION

- 7.3.1 The Contractor shall coordinate Work to be done hereunder with the Work of such other contractors in such manner as the Designated Representative may direct. The Work shall be scheduled and executed at such time and in such a way as to cause the least inconvenience to the Owner and with proper consideration for the rights of other contractors and public. The Contractor shall keep fully informed with the entire operation and install its Work promptly.
- 7.3.2 If the Designated Representative determines that the Contractor is failing to coordinate its Work with the Work of other contractors as directed, he may, upon written notice to the Contractor recommend the following actions by the Owner:
- 7.3.2.1 The Owner may withhold any payment otherwise due hereunder until the Designated Representative's directions are complied with by the Contractor.
- 7.3.2.2 The Owner, through the Designated Representative, may direct other contractors to perform portions of the contract and charge the cost of such Work to the contract amount.
- 7.3.2.3 The Owner may terminate any and all portions of a Job Order or the contract for the Contractor's failure to perform in accordance with the contract.
- 7.3.3 If the Contractor notifies the Designated Representative, in writing, that another contractor on this project is failing to coordinate its Work with the Work of this contract, as directed, the Designated Representative will promptly investigate the charge. If he finds it to be true, he will promptly issue such directions to the other contractor with respect thereto as the situation may require. The Designated Representative shall not, however, be liable for any damages suffered by this contractor by reason of the other contractor's failure to promptly comply with the directions so issued by the Designated Representative or by reason of another contractor's default in performance; it being understood that the Designated Representative does not guarantee the responsibility or continued efficiency of any contractor.
- 7.3.4 In the event of any labor dispute, affecting the Contractor or its employees, the Contractor shall utilize all possible means to resolve the dispute in order that the project not be delayed to any extent.
- 7.3.5 The Contractor shall cooperate with the Owner, the Architect/Engineer and the Designated Representative and other Contractors working on this project in order to avoid interference, inconvenience or damage. To aid in avoiding conflicts, the Contractor, without additional charge, shall make all reasonable modification in the Work as may be directed by the Designated Representative. In the event of the Contractor's operations causes any damage, interference, or inconvenience to Work being carried out under any other contract, the Contractor shall restore, replace, rectify, or otherwise make good any damage to the satisfaction of the Designated Representative or to the other contractors. Should the responsible Contractor fail to comply with this provision, the Work will be done by others at the expense of the responsible Contractor.
- 7.3.6 The Contractor shall ensure that all labor employed by him, its agents, or those he assigns for Work on any project shall be in harmony with and be compatible with all other labor being used by the Designated Representative or other Contractors. The Contractor shall observe hours and conditions of labor as directed by Designated Representative and in any event, in compliance with all applicable laws, ordinances and regulations. The Contractor shall coordinate its work with the work of other Contractors, the Owner and the Designated Representative and shall provide adequate information and planning of its work to allow for effective coordination by others with its operations. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work of this contract, the Contractor shall immediately give notice thereof to the Designated Representative. The Contractor shall then confirm the

notice, in writing within 24 hours of the giving thereof, and shall include all relevant information with respect thereto. No claims will be accepted for costs incurred as a result of jurisdictional or labor practice disputes.

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

7.4.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph 5.15, the Owner may clean up and charge the cost thereof to the Contractor responsible therefore as the Owner shall determine to be just.

#### **7.5 DAMAGES TO WORK**

7.5.1 Should the Contractor wrongfully cause damage to the Work or property of the Owner or to other Work on the site, the Contractor shall promptly remedy such damage.

7.5.2 Should the Contractor wrongfully cause damage to the Work or property of any other Contractor, the Contractor shall, upon due notice, promptly attempt to settle with the other Contractor by agreement, or otherwise resolve the dispute. If such other Contractor sues the Owner or the Designated Representative or initiates any legal proceeding against the Owner or the Designated Representative on account of any damage alleged to have been caused by the Contractor, the Owner or Designated Representative shall notify the Contractor who shall defend such proceedings at the Contractor's expense and if any judgment or award against the Owner or Designated Representative arises from, the Contractor shall pay or satisfy it and shall reimburse the Owner or Designated Representative for all attorney's fees and court costs which the Owner or Designated Representative has incurred.

7.5.3 Should the Contractor sustain any damage through any act or omission of any other contractor having a contract for the performance of Work upon the site or of Work which may be necessary to be performed for the proper execution of the Work to be performed hereunder, the Contractor shall have no claim against the Owner, Architect/Engineer, Designated Representative or the Owner's consultants for such damage, but shall have a right to recover such damage from the other contractor as provided herein.

7.5.4 The Contractor shall indemnify and hold the Owner, Architect/Engineer and Designated Representative harmless from any and all claims or judgments for damages and from costs and expenses to which the Owner and Designated Representative may be subjected or which either may suffer or incur by reason of the Contractor's failure to comply with the Designated Representative's directions promptly.

### **ARTICLE 8: MISCELLANEOUS PROVISIONS**

#### **8.1 GOVERNING LAW**

8.1.1 This contract shall be governed by the laws of the State of California.

#### **8.2 SUCCESSORS AND ASSIGNS**

8.2.1 The Owner and the Contractor each binds himself, its partners, successors, assignees and legal representatives to the other part hereto and to the partners, successors, assignees and legal representatives of such other parties in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract nor sublet it as a whole without written consent of the other.

8.2.1.1 The Contractor shall not assign any monies due, or to become due, under this Contract without prior written consent of the Owner obtained through the Designated Representative.

#### **8.3 WRITTEN NOTICE**

8.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by the registered or certified mail to the last business address known to him who gives the notice.

#### **8.4 CLAIMS FOR DAMAGES**

8.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts he is legally liable, claims shall be made in writing to such



other party within a reasonable time after the first observance of such injury or damage.

## **8.5 PERFORMANCE BOND AND LABOR MATERIAL PAYMENT BOND**

8.5.1 The Contractor shall deliver to the Designated Representative, on forms approved by the Designated Representative and Owner, all executed and Standard Performance Bond and Standard Labor Material Payment Bond and a one (1) year Maintenance (Warranty) Bond, both with an approved surety acceptable to the Owner or Designated Representative and each payable in the amount at least equal to one hundred (100%) percent of the awarded Contract Value as guarantee for the faithful performance of the Contractor and the payment of all persons who have, and fulfill, contracts which are directly with the successful bidder. The sureties of all bonds shall be of such security company or companies as are approved by the Designated Representative and the Owner. No Contract shall be deemed to be in effect until all bonds have been approved. Additionally, a "letter of Bondability" shall be provided by a Surety Corporation duly and legally licensed to transact business in the State of California, for the Maximum Contract Value of \$5,098,418.

8.5.2 The insurance and bonding companies providing or underwriting such bonding shall be duly authorized and registered to do business in the State of California and shall be acceptable to the Owner and the Designated Representative.

8.5.3 The performance bond required by the Contract Documents shall remain in full force and effect during the warranty periods required by the Contract so as to give the Designated Representative and Owner recourse on the bond if the Contractor fails to remedy defects during the warranty period.

8.5.4 The Contractor's Payment and Performance Bond shall name the Owner as obligee.

## **8.6 RIGHTS AND REMEDIES**

8.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

8.6.2 No action or failure to act by the Designated Representative, Architect/Engineer or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract Documents nor shall any such action or failure to act constitute an approval or acquiescence in any breach there under, except as may be specifically agreed in writing.

## **8.7 TESTS**

8.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Designated Representative timely notice of its readiness so the Architect/Engineer and Designated Representative may observe such inspection, testing, or approval. The Owner shall bear all costs of such inspections, tests or approvals unless otherwise provided. The Contractor shall bear all costs of retesting any work failing to pass initial testing.

8.7.2 If the Architect/Engineer or Designated Representative determine that any Work requires special inspection, testing, or approval which Subparagraph 8.7.1 does not include, he will, through the Designated Representative, instruct the Contractor to prepare for such special inspection, testing or approval and the Contractor shall give notice as in Subparagraph 8.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, Contractor shall bear all costs thereof, including compensation for the Architect/Engineer's and the Designated Representative's additional services made necessary by such failure. If the Work complies, the Owner shall bear such costs and an appropriate Change Order shall be issued.

8.7.3 Where operating tests are specified, the Contractor shall test its Work as it progresses, on its own account and shall make satisfactory preliminary tests in all cases before applying to the Designated Representative for official tests.

8.7.4 Official tests shall be made as directed by the Designated Representative, in the manner specified, for the different branches of the Work or portions thereof. The Contractor shall furnish all materials and apparatus, make connections and conduct the official test under the observation of the Owner's independent testing agency where appropriate. The official test will be conducted in the presence of a representative of the Designated Representative. Should defects appear, they shall be corrected by the Contractor and the official test repeated until the installation is acceptable to the Designated Representative.

8.7.5 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him through the Designated Representative to the Architect/Engineer.

- 8.7.6 If the Architect/Engineer or Designated Representative is to observe the inspections, tests or approval required by the Contract Documents, he will do so promptly and, where practicable, at the source of supply.
- 8.7.7 The Contractor shall deliver test samples of any of the materials specified in any of the Sections of the Specifications to the Owner's testing agency. This may apply to materials proposed for use, materials already delivered to the job, or materials already incorporated into the construction.
- 8.7.8 Neither the observations of the Architect/Engineer or the Designated Representative in their Administration of the Construction Contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from its obligation to perform the Work in accordance with the Contract Documents.
- 8.7.9 Any materials which fail to meet the requirements of these specifications shall not be used whether or not previously approved by the Architect/Engineer. If they have been delivered to the job, they shall be removed. If they have already been incorporated into the construction, the Designated Representative or Architect/Engineer may order them removed, or, at the discretion of the Owner through the Designated Representative, they may be permitted to remain in place, providing the Contractor agrees to a proper deduction from the Job Order Price.
- 8.7.10 The services of a testing and inspection engineer, selected by the Owner, Designated Representative and Architect/Engineer, shall be provided and paid for by the Owner for the tests required in the various sections, unless specifically stated otherwise or due to deficient Work.
- 8.7.11 No Work of any kind shall be covered or enclosed before it has been tested and approved.

## **8.8 ORDER OF PRECEDENCE**

- 8.8.1 In the event of any conflict or discrepancy in the provisions of the Contract Documents, the documents shall be interpreted on the basis of the following order or priority:
- (a.) Agreement between the Owner and the Contractor
  - (b.) Addenda, with later date having greater priority
  - (c.) Job Order Contracting Special Conditions
  - (d.) Job Orders including Detailed Scopes of Work and Requests for Proposals
  - (e.) Job Order Drawings and Specifications
  - (f.) General Conditions
  - (g.) The Construction Task Catalog®
  - (h.) Job Order Contracting Technical Specifications
- 8.8.2 In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum the better quality or greater quantity of Work shall be provided in accordance with the Architect/Engineer's and Designated Representative's interpretation.

## **8.9 FEDERALLY ASSISTED JOB ORDER**

- 8.9.1 A Job Order may be assisted by the United States of America: Federal provisions must be included in the Job Order Proposal pursuant to the provisions applicable to such Federal assistance. Reference Exhibits A through D of these contract documents.

## **ARTICLE 9: TIME**

### **9.1 DEFINITIONS**

- 9.1.1 Unless otherwise provided, the Job Order Completion Time is the period of time allotted in the Job Order for the Substantial Completion of the Detailed Scope of Work as defined in Subparagraph 9.1.3 including authorized adjustments thereto.
- 9.1.2 The date of commencement of the Work is the date established in a Notice to Proceed (NOP) for each Job Order from the Owner.
- 9.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the date certified by the Architect/Engineer when construction is sufficiently complete in accordance with the Contract Documents, so that the Owner can occupy or

utilize the Work or designated portion thereof for the use for which it is intended.

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

## 9.2 PROGRESS AND COMPLETION

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

9.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 9.1.2. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Job Order Completion Time. The actual date on which the Contractor starts work will not affect the required time for completion of the work.

9.2.3 The Contractor shall furnish sufficient forces, plant and equipment and shall Work such hours, including night shifts and lawful overtime operations as may be necessary to ensure the execution of the Work in accordance with the Construction Schedule. If, in the opinion of the Designated Representative, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve its progress and shall submit its plans demonstrating the manner in which the desired rate of progress may be regained. It shall be the responsibility of the Contractor to maintain its schedule so as not to delay the progress of the project. If the Contractor delays the progress of the project, he shall, in order to maintain the overall schedule, take all necessary actions, not limited to an increase in the number of shifts, days of Work and to the extent permitted by law, to institute or increase overtime operations, all without additional cost.

9.2.4 If the Designated Representative determines that the Contractor, without just cause, fails or refuses to employ an adequate working force, or to employ them for a maximum number of hours per day as permitted by law or by shifts of its working forces as would be sufficient, in the opinion of the Designated Representative to complete the Work in accordance with the approved project schedule or within the time to which such completion may be extended, then after formal notice to the Contractor, the Owner shall have the right to complete or to have the Work completed by such means and in such manner, by contract or otherwise, as permitted by law, as the Owner may deem advisable, utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies remaining on the site. Formal notice in this article shall be telegram, or registered letter to the last known business address of the Contractor.

9.2.5 The expense of such completion shall be charged against and deducted out of such money as would have been payable to the Contractor if he had completed the Work; the balance of such moneys, if any, subject to the other provisions of this contract, to be paid to the Contractor without interest after completion. Should the expense of such completion, so certified by the Designated Representative, exceed the total sum which would have been payable under this contract, if the same had been completed by the Contractor or its surety, the surety shall remit such balance due to the Owner upon its demand.

9.2.6 Whether or not the Contractor's right to proceed is terminated, he and its surety will be liable for any damage to the Owner, other Contractors and the Designated Representative from the Contractor's refusal to complete the Work in accordance with the approved progress schedule or within the time for which such completion may be extended. Formal notice in this article shall be by telegram, or registered letter to last known business address of the Contractor.

9.2.7 The permitting of the Contractor or the surety on the performance bond to proceed to complete all Work or any part of it after the date of Substantial Completion or after the date to which the time for Substantial Completion may have been extended, shall in no way operate as a waiver on the part of the Owner of any of its rights hereunder.

9.2.8 In order to expedite the completion of the Contractor's Work, the Designated Representative may direct the Contractor to Work on the basis of two (2) shifts instead of one (1) or to take such other measures as he deems necessary to expedite construction. If the need for such direction is not attributable to delays or other fault on the part of the Contractor, the Owner shall issue a Supplemental Job Order. If, however, the Contractor is behind schedule due to its own delays or other fault on its part and the Designated Representative directs him to Work additional shifts, expedite deliveries or purchase additional materials or equipment in order to bring its Work up to schedule, all additional costs shall be borne by the Contractor.

9.2.9 With the Designated Representative's approval, the Contractor shall suspend any Work that may be subject to damage by climatic conditions. Under such conditions, the Contractor shall take measures to protect the Work and to minimize the impact on the progress of the Work.

## 9.3 DELAYS AND EXTENSIONS OF TIME

- 9.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner, Designated Representative or the Architect/Engineer or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Owner or Designated Representative pending litigation, or by any other cause which the Designated Representative determines may justify the delay, then the Job Order Completion Time shall be extended by Supplemental Job Order for such reasonable time as the Director of General Services may determine.
- 9.3.2 Any claim for extension of time shall be made in writing to the Designated Representative not more than ten (10) days after commencement of the delay; otherwise, it shall be waived. Any claim for extension of time shall state the cause of the delay and the number of days of extension requested. If the cause of the delay is continuing, only one claim is necessary, but the Contractor shall report the termination of the cause for the delay within ten (10) days after such termination and shall simultaneously make final claim for said delay, otherwise any claim for extension of time based upon that cause shall be waived.
- 9.3.3 In the event of a delay attributable in part to the Contractor and in part to causes for which the Contractor is not responsible, then provided the Contractor has given proper and timely notice hereunder, the delay shall be equitably apportioned among the parties causing it and the Contractor shall remain liable for the portion not so excused.
- 9.3.4 If no agreement is made stating the dates upon which interpretations as set forth in Subparagraph 3.2.2 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them and not then, unless such claim is reasonable.
- 9.3.5 If a Project is delayed as a result of the Contractor's refusal or failure to begin the Work on the date of commencement, as defined in Subparagraph 9.1.2, or its refusal or failure to carry the Work forward expeditiously with adequate forces, equipment, material or other resources, the Contractor shall be liable to the Owner for damages for every day Contractor's scheduled completion is exceeded, provided, however, that such refusal or failure is not the result of a justifiable delay as defined in Subparagraph 9.3.1.
- 9.3.6 Neither the Owner, Architect/Engineer, nor Designated Representative shall have liability to the Contractor nor to any other Contractor or subcontractor for delay, hindrance or interference in the performance of the Work, however caused, except for delay or hindrance resulting from active interference of the Owner or its representatives in such Contractor's execution of the Work.
- 9.3.7 In addition to damages, as defined in Subparagraph 9.3.5, the Contractor shall be liable to the Owner for any damages sustained as the result of the Contractor's refusal or failure to perform the Work, provided however that such refusal or failure is not the result of a justifiable delay as defined in Subparagraph 9.3.1
- 9.3.8 Contractor shall not request additional time to complete the project because of delays occurring on Sundays or holidays. Neither shall he request additional time for Saturday delays except and unless he can show proof of normally working on Saturdays in order to complete the Work on time.
- 9.3.9 Anticipated Normal Weather Days: The time estimated by the Contractor for completion of the entire Work ready for use shall include the number of calendar days, for anticipated delays due to normal weather conditions. No time extensions for delays due to weather will be allowed until and unless such delays exceed the time included for normal weather delays. In case of claims for extension of time because of abnormal inclement weather, such extension of time shall be granted only because such abnormal inclement weather prevented the execution of major items of Work on normal working days. A weather table reflecting the meteorological data from the Santa Barbara area is given following the General Conditions and will be used to determine any Job Order Completion Time extension due to abnormally inclement weather. For the purpose of this contract, "abnormal inclement weather" will be interpreted as the number of days in excess of the normal on which rainfall exceeds 0.01 inch or snow/ice pellets exceed 1.0 inch. Extension of time to complete the project will be based on actual working days, i.e., Saturdays, Sundays and holidays will be considered in granting extension of time.
- 9.3.10 Liquidated Damages: The Owner will suffer financial loss if the project is not substantially complete on the date set forth in the Job Order. The Contractor and its surety shall be liable for and pay to the Owner, hereinafter stipulated as fixed, agreed and liquidated damages for each consecutive calendar day of delay until the Work is substantially complete, the sum noted in the Notice to Bid. The Owner reserves the right to withhold the liquidated damages, incurred because of failure to complete the project on time, from the final payment to the Contractor. The Owner reserves the right to withhold liquidated damages from any progress payments occurring after the contract completion date.

- 9.3.11 If a suspension of work is ordered by the Designated Representative, due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the contract, the days on which the suspension order is in effect shall be considered working days if such days are working days as defined.

## **ARTICLE 10: PAYMENTS AND COMPLETION**

### **10.1 JOB ORDER PRICE**

- 10.1.1 The Job Order Price is the total amount payable to the Contractor for the performance of the Work under the Contract Documents. The Owner will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the Owner may make partial, monthly payments based on a percentage of the work completed in accordance with paragraph 10.4.
- 10.1.2 Payment for work performed or materials furnished under an assessment proceedings contract will be made as provided in the particular proceedings or legislative act under which such contract was awarded.
- 10.1.3 Whenever any portion of the work is performed by the Owner at the Contractor's request, the cost thereof shall be charged against the Contractor, and may be deducted from any amount due or becoming due from the Owner.

### **10.2 SCHEDULE OF VALUES**

- 10.2.1 Within fifteen (15) days after issuance of a Job Order and at least fifteen (15) days before the first Application for Payment, the Contractor shall submit to the Designated Representative a schedule of values allocated to the various portions of the Work prepared in such a form and supported by such data to substantiate its accuracy as the Designated Representative may require. This schedule, unless objected to by the Designated Representative, shall be used only as a basis for the Contractor's Application for Payment.
- 10.2.2 The schedule of values shall equal in total the Job Order Price and shall correctly represent a reasonable apportionment of the Job Order Price.
- 10.2.3 Mobilization costs will be considered in the Unit Price for a task or the Adjustment Factor. Contractor shall not itemize in the schedule of values the cost of mobilization.
- 10.2.4 With said Schedule of Values contractor shall provide to Owner's Designated Representative copies of hourly wage rates for all workers in all trades associated with the job. If, during the course of construction, wage rates change, the contractor shall provide to Owner's Designated Representative copies of revised hourly wage rates the same day as said change is adopted or agreed-upon.

### **10.3 APPLICATION FOR PAYMENT**

- 10.3.1 The Designated Representative will, after issuance of the Job Order, establish a closure date for the purpose of making monthly progress payments. The Contractor may request in writing that such monthly closure date be changed. The Designated Representative may approve such request when it is compatible with the Owner's payment procedures.
- 10.3.1.1 Each month, the Contractor will make an approximate measurement of the work performed to the closure date and as a basis for making monthly payments, estimate its value based on the Job Order Price Proposal or as provided for in the approved schedule of values.
- 10.3.1.2 At a fixed date each month as established by the Designated Representative during the progress of the Work, the Contractor shall render to the Designated Representative a notarized Application for Payment for a portion of the Job Order Price, broken down into the categories itemized in the Contractor's Schedule of Values. The amounts invoiced shall be directly proportional to the percentage of completion of Work in each of the categories at the end of the closure date for the invoice period less any amounts previously invoiced. The Application for Payment shall be made on A.I.A. Document G702 with continuation sheets A.I.A. Document G703, or on other forms approved by the Designated Representative.
- 10.3.2 The Contractor shall certify monthly that he has made payment due to its Subcontractors and suppliers from the proceeds of prior payments and that he will make timely payments from the proceeds of the progress payment now due to its Subcontractor and suppliers in accordance with the contractual arrangements with them. The Contractor shall submit written certification that all amounts for equipment, materials, labor, union benefits and other services and all other items provided by the month covered by Contractor's invoice have been paid; and proof that Contractor has acquired title to the

equipment and materials invoiced the previous month. Partial Waivers of Lien will be required with the second and succeeding monthly invoices. The Designated Representative may request Record Documents, schedule updates, payrolls for all labor and other data supporting payment to Subcontractors and material suppliers before processing the requisition.

- 10.3.3 With respect to material purchased during the preceding month by the Contractor as Owner's special purchasing subagent, the Contractor shall provide the Designated Representative with a statement showing the costs of such materials and any state or local sales and use taxes paid by the Contractor in connection with the purchase or use thereof during the preceding month, which statement shall be supported by copies of invoices, receipts, etc., clearly and separately showing the costs of such materials and taxes. This statement shall be filed with the Designated Representative within one month after the purchase of such items.
- 10.3.4 Unless otherwise provided in the Contract Documents, payment will not be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site. If allowed, payments made for materials or equipment stored on the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Designated Representative to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest. Materials invoiced in pay applications, if not stored on site, must be kept stored in a bonded warehouse approved by the Designated Representative.
- 10.3.5 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner by incorporation in the construction and upon the receipt of final payment by the Contractor free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 10 as "liens" and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor by any other person performing its Work at the site or furnishing materials and equipment for its Work, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. All Subcontractors and Sub-subcontractors agree that title will so pass upon their receipt of payment from the Contractor.

#### **10.4 PROGRESS PAYMENTS**

- 10.4.1 If the Contractor has made Application for Payment in accordance with the General Requirements, the Designated Representative will, with reasonable promptness, review and process such Application for Payment in accordance with the Contract. From each progress estimate, five (5%) percent will be deducted and retained by the Owner, and the remainder less the amount of all previous payments will be paid to the Contractor.
- 10.4.2 No approval of an application for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents. Nor shall the same relieve the Contractor or its surety from any obligation under the Contract or the Standard Performance Bond and the Standard Labor and Material Payment Bond.
- 10.4.3 Except in case of bona fide disputes, or where the Contractor has some other justifiable reason for delay, the Contractor shall pay for all transportation and utility services not later than the end of the calendar month following that in which services are rendered and for all materials, tools and other expendable equipment to the extent of ninety percent (90%) of the cost thereof not later than the end of the calendar month following that in which such materials, tools and equipment are delivered at the site of the Project. The Contractor shall pay to each of its Subcontractors, not later than the end of the calendar month in which each payment is made to the Contractor, the representative amount allowed the Contractor on account of the Work performed by its Subcontractors, to the extent of each Subcontractor's interest herein. The Contractor shall, by an appropriate agreement with each Subcontractor, also require each Subcontractor to make payments to its suppliers and sub-subcontractors in a similar manner.
- 10.4.4 Payment shall not relieve the Contractor from its obligations under the contract; nor shall such payment be construed to be acceptance of any of the work. Payment shall not be construed as the transfer of ownership of any equipment or materials to the Owner. Responsibility of ownership shall remain with the Contractor who shall be obligated to store, protect, repair, replace, rebuild or otherwise restore any fully or partially completed work or structure for which payment has been made; or replace any materials of equipment required to be provided under the contract which may be damaged, lost, stolen or otherwise degraded in any way prior to acceptance of the work under the contract, except as provided in Paragraph 10.7.2.
- 10.4.4.1 Guarantee periods shall not be affected by any payment but shall commence on the date equipment or material is placed into service at the direction of the Owner. In the event such items are not placed into service prior to partial or final acceptance of the project, the guarantee period will commence on the date of such acceptance.

10.4.4.2 If, within the time fixed by law, a properly executed notice to stop payment is filed with the Owner, due to the Contractor's failure to pay for labor or materials used in the work, all money due for such labor or materials will be withheld from payment to the Contractor in accordance with applicable laws.

10.4.5 Per the California Public Contract Code, upon the Contractor's request, the County will make payment of funds withheld to ensure performance of the Contract if the Contractor deposits in escrow with the Santa Barbara County Treasurer, or with a bank acceptable to the COUNTY/DISTRICT, securities eligible for investment under Government Code Section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:

- (a.) The Contractor shall bear the expense of the COUNTY/DISTRICT and the escrow agent, either the County Treasurer or the bank, in connection with escrow deposit made.
- (b.) Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amount of retention to be paid to the Contractor pursuant to this section.
- (c.) The Contractor shall enter into an escrow agreement satisfactory to the COUNTY/DISTRICT which agreement shall include provisions governing inter alia:
  - (1) the amount of securities to be deposited.
  - (2) the providing of power of attorney or other documents necessary for the transfer of the securities to be deposited.
  - (3) conversion to cash to provide funds to meet defaults by the Contractor including, but not limited to, termination of the Contractor's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the contract.
  - (4) decrease in value of securities on deposit.
  - (5) the termination of the escrow upon completion of the Contract.
- (d.) The Contractor shall obtain the written consent of the surety of such agreement.

## 10.5 PAYMENTS WITHHELD

10.5.1 The Designated Representative, Architect/Engineer or the Owner may decline approval of an Application for Payment if, in its opinion, the Application is not adequately supported. If the Contractor and the Designated Representative or Owner cannot agree on a revised amount, the Designated Representative shall process the application for the amount he deems appropriate. An amount equaling one hundred fifty (150%) percent of the value of the Work related to any Stop Notice shall be withheld from payments applied for by the Contractor until the Stop Notice is expunged. The Designated Representative may also decline to approve any Applications for Payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify in whole or in part any approval previously made to such extent as may be necessary in its opinion because of:

- (a.) Defective Work not remedied.
- (b.) Third party claims filed or reasonable evidence indicating probably filing of such claims.
- (c.) Failure of the Contractor to make payments properly to Subcontractor or for labor, materials or equipment.
- (d.) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Job Order Price.
- (e.) Damage to the Designated Representative, the Owner or another contractor working at the Project.
- (f.) Reasonable evidence that the Work will not be completed within the Job Order Completion Time.
- (g.) Persistent failure to carry out the Work in accordance with the Contract Documents.
- (h.) The filing of a lien against the Project when lien is caused by the act or inaction of the Contractor or its subcontractor.
- (i.) Refusal to follow the Project Safety Program issued as a Contract Document.
- (j.) Failure to maintain records as specified.
- (k.) Failure to maintain record drawings as specified.
- (l.) Failure to secure required building inspections.

10.5.2 When the above grounds in Subparagraph 10.5.1 are removed, payment shall be made for the amounts withheld because of them, but in no case shall interest be paid on amounts withheld by the Owner to the Contractor.

## 10.6 FAILURE OF PAYMENT

10.6.1 If the Contractor is not paid within sixty (60) days after the Application for Payment is approved for payment by the Designated Representative and has become due and payable, then the Contractor may, upon thirty (30) additional days

written notice to the Owner and the Designated Representative, stop the Work until payment of the amount owing has been received. The Job Order Price shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start up, which shall be effected by the appropriate Supplemental Job Order in accordance with Paragraph 13.3., but in no case shall interest be paid by the Owner to the Contractor.

## **10.7 SUBSTANTIAL COMPLETION**

10.7.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 9.1.3, the Contractor shall prepare for submission to the Designated Representative a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Designated Representative and Architect/Engineer, on the basis of inspection, determine that the Work or designated portion thereof is substantially complete, the Architect/Engineer will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner, the Designated Representative and the Contractor for security, maintenance, heat, utilities, damage to the Work, insurance and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner, the Designated Representative and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. The Owner may retain a sum equal to an amount not to exceed one hundred twenty-five percent (125%) of the estimated cost of completing any unfinished items, separately listed and estimated at the time of substantial completion. Thereafter, the Owner shall pay to the Contractor monthly, the amount retained for incomplete items as each of said items are completed.

10.7.2 The Owner shall have the right to take possession of and use for any purpose any partially completed portion of the Work. The Designated Representative will give notice to the Contractor of the Owner's intention to take said possession and use. Such taking possession or use shall not be deemed to be the Designated Representative's acknowledgement of completion and acceptance of said portion of Work.

10.7.2.1 The Owner's taking over and utilizing all or part of any completed facility or appurtenance will relieve the Contractor of responsibility for injury or damage to said completed portions of the improvement resulting from use by the public or from the action of the elements or from any other cause, except injury or damage resulting from the Contractor's operations or negligence. The Contractor will not be required to reclean such portions of the improvements before final acceptance, except for clean up made necessary by its operations. Nothing in this section shall be construed as relieving the Contractor from full responsibility for correcting defective work or materials.

10.7.2.2 In the event the Owner exercises its right to place into service and utilize all or part of any completed facility or appurtenance, the Owner shall assume the responsibility and liability for injury to persons or property arising out of or resulting from the utilization of the facility or appurtenance so placed into service, except for any such injury to persons or property caused by any willful or negligent act or omission of the Contractor, subcontractor, their officers, employees or agents.

## **10.8 FINAL COMPLETION AND FINAL PAYMENT**

10.8.1 Following the Architect/Engineer's issuance of the Certificate of Substantial Completion of the Work or designated portion thereof of each Job Order and the Contractor's completion of the Work, the Contractor shall notify the Designated Representative in writing that the Work will be ready for final inspection and test on a definite date. Notice shall be given at least fifteen (15) days in advance of said date. Designated Representative shall forward the notice to the Architect/Engineer who will attach its endorsement as to whether or not he concurs with the Contractor's statement that the Work will be ready for final inspection or test on the date given, but such endorsement shall not relieve the Contractor of its responsibility in the matter. If the Architect/Engineer concurs that the Work will be ready for final inspection or test on the date given, the Architect/Engineer and the Designated Representative will make such inspection. The Contractor is required to furnish access for the final inspection as provided in Subparagraph 3.2.1. If the Work is found acceptable under the Contract Documents and the Job Order fully performed, the Designated Representative, upon receipt of a correct final Application for Payment, shall recommend to the Owner that such payment be made.

10.8.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Designated Representative all (1) inspection sign-offs, (2) final certificate of occupancy, (3) an affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise, (4) consent of surety, if any, to final payment and executed "General



Release and Lien Waiver and General Guarantee, on forms to be provided by the Designated Representative, (5) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the contract, to the extent and in such form as may be designated by the Owner or Designated Representative. If any Subcontractor refuses to furnish a release or waiver required by the Owner or Designated Representative, the Contractor may furnish a bond satisfactory to the Owner and Designated Representative to indemnify them against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner or Designated Representative all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees. Contractor is required to submit all "Record Documents" and operating manuals as required by the Contract Documents prior to the processing of the final payment.

- 10.8.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Supplemental Job Orders affecting the final completion, and the Designated Representative so confirms, the Owner shall upon certification by the Designated Representative and without terminating the Job Order, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance of Work not fully completed or corrected is less than the retention stipulated in the Contract Documents and if the bonds have been furnished as provided in Paragraph 8.5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Designated Representative prior to such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- 10.8.4 Upon successful completion of the final inspection and Work required by the Job Order, acceptance of the same by the Owner and the filing of all affidavits, consents of surety and other data required in Subparagraph 10.8.2 and the submission of all bonds, written warranties and guarantees and of all data documents required for project closeout by the Contract Documents, the Architect/Engineer shall file a written certification of completion with the Owner and with the Designated Representative as to the entire amount of Work performed and compensation earned, including Supplemental Job Orders and compensation therefore. At the expiration of thirty-five (35) days after the Owner's confirmation of such Certificate of Completion or as prescribed by law, the Owner shall pay the Contractor the amount stated therein, less all prior payments and advances, whatsoever, to or for the account of the Contractor except such amounts as are required to be withheld by properly executed and filed notices to stop payment or as may be authorized by the contract to be further retained. All prior estimates and payments including those relating to Supplemental Job Orders shall be subject to correction by this payment, which is throughout the Contract called "Final Payment."
- 10.8.5 The making of Final Payment of a Job Order shall constitute a waiver of all claims by the Owner or Designated Representative except those arising from:
- (a.) Unsettled liens.
  - (b.) Faulty or defective Work appearing after Substantial Completion.
  - (c.) Failure of the Work to comply with the requirements of the Contract Documents
  - (d.) Terms of any special warranties required by the Contract Documents.
- 10.8.5.1 The acceptance by the Contractor of the Final Payment of each Job Order shall be and operate as a release to the Owner and to the Designated Representative of all claims and of all liability to the Contractor for all things done or furnished in connection with the Job Order.
- 10.8.6 In accordance with Section 4551 of the Government Code, the Contractor and subcontractors shall conform to the following requirements. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code, arising from purchases of goods, services, or materials pursuant to the public works contract of the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.
- 10.8.7 In accordance with Section 4552 of the Government Code, the bidder shall conform to the following requirements. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code, arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

## 10.9 MEASUREMENT OF QUANTITIES

- 10.9.1 General: Unless otherwise specified, quantities of work shall be determined from measurements or dimensions in horizontal planes. However, linear quantities of pipe, piling, fencing, and timber shall be considered as being the true length measured along the longitudinal axis. Unless otherwise provided in the Contract Documents, volumetric quantities shall be the product of the mean area of vertical or horizontal sections and the intervening horizontal or vertical dimension. The planimeter shall be considered an instrument of precision adapted to the measurement of all areas.
- 10.9.2 Methods of Measurement: Materials and items of work which are to be paid for on the basis of measurement, **and as so indicated in the Detailed Scope of Work of a Job Order**, shall be measured in accordance with the methods stipulated in the particular section involved.
- 10.9.3 Certified Weights: When payment is to be made on the basis of weight, the weighing shall be done on certified platform scales or, when approved by the Designated Representative, on a completely automated weighing and recording system. The Contractor shall furnish the Designated Representative with duplicate licensed weighmaster's certificates showing the actual net weights. The Designated Representative will accept the certificate as evidence of the weights delivered.
- 10.9.4 Units of Measurement: Measurements shall be in accordance with U. S. Standard Measures. A pound is an avoirdupois pound. A ton is 2,000 pounds avoirdupois. The unit of liquid measure is the U. S. gallon.
- 10.9.5 Lump Sum Items: Items for which quantities are indicated as "Lump Sum", "L.S.", "Job", or words of like import shall be paid for at the price named. Such payment shall be full compensation for the work named and all work appurtenant thereto required by the contract which is not specifically provided for by other pay items.
- 10.9.6 Actual Quantities: ONLY if indicated in the Detailed Scope of Work of a Job Order, payment to the Contractor will be made for the actual quantities of contract items constructed in accordance with the Detailed Scope of Work. Upon completion of the construction, if the actual quantities show either an increase or decrease from the quantities given in the Job Order Price Proposal, a Supplemental Job Order will be issued.
- 10.9.7 Waste: Payment will not be made for materials wasted or disposed of in a manner not called for under the Job Order. This includes rejected materials not unloaded from vehicles, material rejected after it has been placed and material placed outside of the plan lines. No compensation will be allowed for disposing of rejected or excess material.

## ARTICLE 11: PROTECTION OF PERSONS AND PROPERTY

### 11.1 SAFETY PRECAUTIONS AND PROGRAMS

- 11.1.1 The Contractor expressly undertakes, both directly and through its Subcontractor, to take every precaution at all times for the protection of persons, including employees and property. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- 11.1.2 The Contractor shall comply with the provisions of the "Construction Safety Act" and the "Occupational Safety and Health Act of 1970" and the Designated Representative's safety program, as well as all other applicable, Federal, State and local requirements. The Contractor shall submit its safety program to the Designated Representative prior to mobilizing the job and shall be responsible for the safety, efficiency and adequacy of its plant, appliances and methods and for any damage which might result from failure or improper construction, maintenance or operation. The Contractor shall provide a safety report to the Designated Representative on a weekly basis. During the conduct of the Work, the Contractor shall take immediate corrective action, as required upon notification of any deficiencies in safety provisions by the Designated Representative or identification of any deficiencies by Subcontractor personnel.
- 11.1.3 If the Contractor fails to maintain the safety precautions required by law or directed by the Designated Representative, the Designated Representative may take such steps as necessary and charge the Contractor therefore.
- 11.1.4 The failure of the Owner to take any such action shall not relieve the Contractor of its obligations in Subparagraph 11.1.1.
- 11.1.5 The Contractor shall immediately notify the Designated Representative of all accidents and submit a written report describing in detail the circumstances of all accidents within twenty-four (24) hours.
- 11.1.6 The Contractor alone shall be responsible for the safety, efficiency and adequacy of its plant, appliances and methods and for any damage which may result from their failure or their improper construction, maintenance or operation.

## **11.2 SAFETY OF PERSONS AND PROPERTY**

- 11.2.1 The Contractor shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to:
- (a.) All employees on the Project and all other persons who may be affected thereby;
  - (b.) All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of its Subcontractors or Sub-subcontractors; and
  - (c.) Other property at the site or adjacent thereto, including trees, shrubs, lawns walks, pavements, roadways, structures and utilities not designed for removal, relocation or replacement in the course of construction.
- 11.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- 11.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards promulgating safety regulations and notifying the Owners and users of adjacent utilities. He shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall adequately protect adjacent property as provided by law and the Contract Documents. He shall provide and maintain all passageways, guard fences, light and other facilities for protection required by public authority, local conditions or any of the Contract Documents. If the Contractor fails to so comply, he shall, at the direction of the Designated Representative, remove all forces from the Project without cost or loss to the Owner or Designated Representative, until he is in compliance.
- 11.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.
- 11.2.5 The Contractor shall notify the Designated Representative of any flammable, combustible and toxic materials intended for use on the project and shall furnish the Designated Representative literature pertinent to the use and control of such materials.
- 11.2.6 Every employee will be dressed for the Work he performs. Minimum dress will consist of long pants, tee shirt and work shoes. Shorts, cut-offs, "tank-top" shirts or soft-soled shoes will not be permitted.
- 11.2.7 The Contractor shall promptly remedy all damage or loss (other than damage or loss insured under Paragraph 12.2) to any property, referred to under Articles 11.2.1.2 and 11.2.1.3, caused in whole or in part by the Contractor, its Subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under the Articles 11.2.1.2 and 11.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of them or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to its obligations under Paragraph 5.18. The Contractor shall be responsible to the Owner and the Designated Representative for the acts and omissions of all its employees and all Subcontractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor.
- 11.2.8 The Contractor and each Subcontractor shall designate a responsible member of its organization at the site to act as its Safety Representative whose duty shall be the prevention of accidents and who shall be responsible to maintain all Safety requirements of the Contractor and shall attend all Project Safety Meetings scheduled by the Contractor. This person shall be the Contractor's or Subcontractor's Superintendent unless otherwise designed by the Contractor in writing to the Designated Representative.
- 11.2.9 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger safety.
- 11.2.10 When necessary for the proper protection of the Work, temporary heating of a type approved by the Designated Representative and Architect/Engineer shall be provided by the Contractor unless otherwise specified.

## **11.3 EMERGENCIES**

- 11.3.1 In an emergency affecting the safety or life of individuals, of the Work, or of adjoining property, the Contractor without special instruction or authorization from the Owner or Designated Representative or Architect/Engineer shall act, at its discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the Owner or Designated Representative or Architect/Engineer, he shall so act, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency Work shall be determined as provided by Article 13 - Changes in the Work.
- 11.3.2 Whenever immediate action is required to prevent impending injury, death, or property damage, and precautions which are the Contractor's responsibility have not been taken and are not reasonably expected to be taken, the Owner or Designated Representative may, after reasonable attempt to notify the Contractor, cause such precaution to be taken and shall charge the cost thereof against the Contractor, or may deduct such cost from any amount due or becoming due from the Owner. The Owner's or Designated Representative's action or inaction under such circumstances shall not be construed as relieving the Contractor or its surety from liability.

## **ARTICLE 12: UTILITIES**

### **12.1 LOCATION**

- 12.1.1 The Owner will search known substructure records and furnish the Contractor, when requested by the Contractor, with copies of documents which describe the location of utility substructures, or will indicate on the plans for the project those substructures, except for service connections, which may affect the work. Information regarding removal, relocation, abandonment, or installation of new utilities will be furnished in the Job Order.
- 12.1.2 Where underground main distribution conduits such as water, gas, sewer, electric power, telephone or cable television are shown on the plans, the Contractor, for the purpose of preparing its Job Order Proposal, shall assume that every property parcel will be served by a service connection for each type of utility.
- 12.1.3 At least two (2) working days before entering on the work, the Contractor shall request the utility owners whose utilities will be affected by the Contractor's work to mark or otherwise indicate the approximate location of their subsurface facilities including, but not limited to, structures, main conduits and service connections. This requirement will not apply to sewer and storm drain installations where their location and depth are shown on the plans for the project.
- 12.1.4 It shall be the Contractor's responsibility to determine the location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which he believes may affect or be affected by its operations.

### **12.2 PROTECTION**

- 12.2.1 The Contractor shall not interrupt the service function or disturb the supporting base of any utility without authority from the utility owner or order from the Designated Representative.
- 12.2.2 Where protection is required to insure support of utilities located as shown on the plans or in accordance with Paragraph 12.1, the Contractor shall, unless otherwise provided, furnish and place the necessary protection at its expense.
- 12.2.3 Upon learning of the existence and location of any utility omitted from or shown incorrectly on the plans, or not properly marked, the Contractor shall immediately notify the Designated Representative in the form of a written request for information. When authorized by the Owner, support or protection of the utility will be paid for as provided in Article 13.
- 12.2.4 The Contractor shall immediately notify the Designated Representative and the utility owner if any utility is disturbed.
- 12.2.5 When placing concrete around or contiguous to any non-metallic utility installation, the Contractor shall (1) furnish and install a two-inch cushion of expansion joint material or other similar resilient material; or (2) provide a sleeve or other opening which will result in a two-inch minimum clear annular space between the concrete and the utility; or (3) provide other acceptable means to prevent embedment in or bonding to the concrete. Where concrete is used for backfill or for structures which would result in embedment, or partial embedment, of a metallic utility installation; or where the coating, bedding or other cathodic protection system is exposed or damaged by the Contractor's operations or as may be required by the work, the Contractor shall notify the Designated Representative and arrange to secure the advice of the affected utility owner regarding the procedures required to maintain or restore the integrity of the system.

### **12.3 EXCAVATIONS**

12.3.1 For any displacement or excavation of the ground that may be required by any performance under this Contract, the Contractor shall obtain an inquiry identification number by calling Underground Service Alert (USA) 1 (800) 422-4133 or by such other means as may be required; shall conform to all requirements of Government Code Sections 4215 through 4217 regarding any such displacement or excavation, including the payment of any fees required; and shall facilitate performance by the Owner of any obligation required of the County under said sections.

12.3.2 There shall be no performance under this Contract by either party unless and until the provisions of such Sections are complied with and the Designated Representative is notified regarding the compliance.

#### **12.4 REMOVAL**

12.4.1 Unless otherwise specified, the Contractor shall remove all interfering portions of utilities shown on the plans or indicated in the Job Order as "abandoned" or "to be abandoned in place".

12.4.2 Before starting removal operations, the Contractor shall ascertain from the Designated Representative whether the utility abandonment is complete.

#### **12.5 RELOCATION**

12.5.1 When feasible, the utility owners responsible for utilities within the area affected by the work will complete their necessary installations, relocations, repairs or replacements before commencement of work by the Contractor. When the Job Order or plans indicate that a utility installation is to be relocated, altered or constructed by others, the Owner will conduct all negotiations with the utility owners and the work will be done at no cost to the Contractor.

12.5.2 Utilities which are relocated in order to avoid interference with the proposed permanent work shall be protected in their relocated position.

12.5.3 After award of the contract, portions of utilities which are found to interfere with the work will be relocated, altered or reconstructed by the utility owners, or the Owner may order changes in the work to avoid interference. Such changes will be paid for in accordance with Article 13.

12.5.4 When the Detailed Scope of Work, plans or specifications provide for the Contractor to alter, relocate, or reconstruct a utility, all costs for such work shall be included in the Job Order Price Proposal. Temporary or permanent relocation or alteration of utilities requested by the Contractor for its own convenience shall be its responsibility, and he shall make all arrangements and bear all costs.

12.5.5 The utility owner will relocate service connections as necessary within the limits of the work or within temporary construction or slope easements unless otherwise specified. When directed by the Designated Representative, the Contractor shall arrange for the relocation of service connections as necessary between the meter and property line, or between a meter and the limits of temporary construction or slope easements. The relocation of such service connections when not detailed on the plans or in the specifications will be paid for in accordance with provisions of Article 13. Payment will include the restoration of all existing improvements which may be affected thereby. The Contractor may, for its own convenience or to expedite the work, agree with any utility owner to disconnect and reconnect interfering service connections. The Owner will not be involved in any such agreement.

#### **12.6 DELAYS**

12.6.1 The Contractor shall notify the Designated Representative of its construction schedule insofar as it affects the protection, removal or relocation of utilities. Said notification shall be in writing and shall be included as a part of the construction schedule required in Paragraph 5.10. He shall notify the Designated Representative in writing of any subsequent changes in its construction schedule which will affect the time available for protection, removal or relocation of utilities.

12.6.2 The Contractor will not be entitled to damages or additional payment for delays attributable to utility relocations or alterations if correctly located, noted and completed in accordance with Paragraph 12.1. The Contractor may be given an extension of time for unforeseen delays attributable to utility relocations or alterations not shown or incorrectly shown on the plans, or for unreasonably protracted interference by utilities in performing work correctly shown on the plans. If the Contractor sustains loss due to delays attributable to interferences, relocations or alterations not covered by Paragraph 12.1, which could not have been avoided by the judicious handling of forces, equipment or plant, then at the discretion of the Owner, the Owner may issue a Supplemental Job Order to modify the Detailed Scope of Work.

## **12.7 COOPERATION**

- 12.7.1 When necessary, the Contractor shall so conduct its operations as to permit access to the work site and provide time for utility work to be accomplished during the progress of the contract work.

## **ARTICLE 13: CHANGES IN THE WORK**

### **13.1 SUPPLEMENTAL JOB ORDERS**

- 13.1.1 The Owner, without invalidating the Job Order, may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Job Order.
- 13.1.2 Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.

### **13.2 CONCEALED CONDITIONS**

- 13.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract be encountered, the Contractor shall report the conditions to the Designated Representative before the conditions are disturbed. The Designated Representative shall thereupon notify the Architect/Engineer. Upon such notices, or upon its own observation of such conditions, the Architect/Engineer shall promptly make such changes in the Contract Documents as he finds necessary to conform to the different conditions. Any change in the cost of the Work or the time needed for completion resulting from concealed conditions shall be determined in accordance with Paragraph 13.1 provided a notice thereof is made within ten (10) days after the first observance of the conditions.

### **13.3 CLAIMS FOR ADDITIONAL COST**

- 13.3.1 If the Contractor claims that any instructions given to him by the Owner or Designated Representative or by the Architect/Engineer, by drawings or otherwise, involve extra Work not covered by the Contract, he shall give the Designated Representative written notice thereof within ten (10) days after the receipt of such instructions and before proceeding to execute the Work, except in emergencies endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 11.3. Should it not be clear to the Contractor that a change will involve extra Work, written notice given within ten (10) days that the change may involve extra work will be considered sufficient notice. If it is later determined that the Work involved in such instruction shall be recognized as an extra, the amounts of additional compensation to be paid therefor should be determined in accordance with Paragraph 13.1. Except as otherwise specifically provided, no claim for additional cost shall be allowed unless the notice specified by this Subparagraph is given by the Contractor.
- 13.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) written interpretation issued pursuant to Subparagraph 3.2.2, (2) any order by the Owner or Designated Representative to stop the Work pursuant to Paragraph 4.3 where the Contractor was not at fault, or (3) any written order for a minor change in the Work issued pursuant to Paragraph 13.4, the Contractor shall make such claims as provided in Subparagraph 13.3.1.
- 13.3.2.1 Any claim for damages of any character, delays for which the Owner is liable under the Contract Documents, extra work or extra compensation of any other nature, shall be waived unless notice thereof is given to the Owner, in writing, within ten (10) days after the initial occurrence of the first event, which is relied upon to justify the claim or within such time as the event should have reasonably been discovered by the Contractor and in any event, before extra cost is incurred.
- 13.3.2.2 Any claim for a delay for which the Owner is liable will not be allowed where there is a concurrent delay that is the responsibility of the Contractor.
- 13.3.2.3 No claim for damages of any character due to delays caused by adverse weather, acts of God, strikes, fire or unavoidable casualties will be allowed. The Contractor shall bear the expenses related to additional time granted for "force majeure" events.
- 13.3.2.4 The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation

will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Designated Representative prior to the time that the Contractor shall have performed the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Designated Representative, or in all other cases within ten (10) days after the happening of the event, thing or occurrence giving rise to the potential claim. It is the intention of this paragraph that differences between the parties arising under and by virtue of the contract be brought to the attention of the Designated Representative at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that he shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed.

#### **13.4 MINOR CHANGES IN THE WORK**

13.4.1 The Architect/Engineer will have the authority to order, through the Designated Representative, minor changes in the Work not involving an adjustment in the Job Order Price or an extension of the Job Order Completion Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order and such changes shall be binding on the Owner, the Designated Representative and the Contractor. The Contractor shall carry out such written orders promptly.

### **ARTICLE 14: UNCOVERING AND CORRECTION OF WORK**

#### **14.1 UNCOVERING OF WORK**

14.1.1 If any portion of the Work should be covered contrary to the request of the Owner through the Designated Representative or Architect/Engineer, or to requirements specifically expressed in the Contract Documents, it shall, if required in writing by the Designated Representative, be uncovered for their observation and replaced, at the Contractor's expense.

14.1.2 If any other portion of the Work has been covered which neither the Designated Representative nor the Architect/Engineer has specifically requested to observe prior to being covered, the Architect/Engineer or Designated Representative, with written approval of the Owner, may request to see such work and it shall be uncovered by the Contractor. If such work is found in accordance with the Contract, the cost of uncovering and replacement shall, by an appropriate Supplemental Job Order, be charged to the Owner, as the case may be. If such Work is found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by a separate contractor employed as provided in Article 7 and in that event, the separate contractor shall be responsible for payment of such costs.

#### **14.2 CORRECTION OF WORK**

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

14.2.2 Notwithstanding acceptance of the Work by the Owner, if any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Designated Representative to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive the termination of the Contract. The Designated Representative shall give such notice promptly after discovery of the condition.

14.2.2.1 If, within one (1) year after the Date of Substantial Completion of the Work or the designated portion thereof, or within one (1) year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner or Designated Representative to do so unless the Owner or the Designated Representative has previously given the Contractor written acceptance of such condition. This obligation shall survive the termination of the Contract. The Owner or Designated Representative shall give such notice promptly after discovery of the condition.

14.2.3 The Contractor shall remove from the site all portions of the Work which are defective or nonconforming and which have not been corrected under Subparagraph 5.5.1, 14.2.1 and 14.2.2 unless removal has been waived by the Owner.

14.2.4 If the Contractor fails to correct the defective or nonconforming Work as provided in Subparagraph 5.5.1, 14.2.1 and 14.2.2,

the Owner may correct it in accordance with Subparagraph 4.3.2.

- 14.2.5 If the Contractor does not proceed with the correction of such defective or nonconforming Work within a reasonable time fixed by written notice from the Designated Representative, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may, upon ten (10) additional days written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all costs that should have been borne by the Contractor, including compensation for the Designated Representative's additional services made necessary thereby. If such proceeds of sale do not cover all costs, which the Contractor should have borne, the difference shall be deducted from monies owed to the Contractor. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.
- 14.2.6 The Contractor shall bear the cost of making good all Work of the Owner or other contractors destroyed or damaged by such removal or correction.
- 14.2.7 Nothing contained in this Paragraph 14.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 5.5 hereof. The establishment of the time period of one (1) year after the Date of Substantial Completion of the Job Order or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents, relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations other than specifically to correct the Work.
- 14.3 ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK**
- 14.3.1 If the Owner prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Supplemental Job Order will be issued to reflect the change in the original Detailed Scope of Work to reduce the Job Order Price where appropriate and equitable. Such adjustment shall be affected whether or not Final Payment has been made.

## **ARTICLE 15: TERMINATION OF THE CONTRACT**

### **15.1 TERMINATION BY THE CONTRACTOR**

- 15.1.1 If the Work is stopped under an order of any court or other public authority having jurisdiction for a period of three (3) months, through no fault of the Contractor or a Subcontractor or their agents or employees or any other person performing any of the Work under a contract with the Contractor, or if the Designated Representative should arbitrarily fail to issue any certificate for payment within a reasonable time after it is due, or if the Owner should fail to pay within sixty (60) days, any sum certified by the Designated Representative to the Contractor, he may, upon thirty (30) additional days written notice by the Contractor, stop Work or terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery.

### **15.2 TERMINATION BY THE OWNER**

- 15.2.1 If the Contractor is adjudged bankrupt or if he makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules regulations, orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Owner may, without prejudice to any right or remedy and after giving the Contractor and its surety, ten (10) days written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.
- 15.2.1.1 If the unpaid balance of the Job Order Price exceeds the costs of finishing the Work, including compensation for the Designated Representative's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner.



- 15.2.1.2 The expenses incurred by the Owner or Designated Representative and the damage incurred through the Contractor's default shall be certified by the Architect/Engineer.
- 15.2.2 The Owner may terminate this Agreement for its convenience at any time upon providing five (5) days written notice to the Contractor. The Owner may terminate the contract at its own discretion or when conditions encountered during the work make it impossible or impracticable to proceed, or when the Owner is prevented from proceeding with the contract by act of God, by law, or by official action of a public authority.
- 15.2.3 After receipt of a Notice of Termination, the Contractor shall submit to the Owner through the Designated Representative its written termination claim in the form and with the certification which the Owner or Designated Representative may require. Such claims shall be submitted promptly, but in no event more than thirty (30) days after the effective date of termination.

## **ARTICLE 16: PROJECT REQUIREMENTS**

### **16.1 PROJECT REPORTS**

- 16.1.1 Contractor Reports: Immediately after the Job Order is issued, a meeting will be scheduled at the project site to review project procedures, designation of name and title of the authorized person or persons, representing the Contractor and responsible for the project management and field operation, designation of Emergency Contact, designation of representative for progress meetings, the requirements for daily, weekly and monthly reports and other submittals required to perform and administer the project. Without limiting the reports required, several reports are indicated below with their requirements:
- 16.1.2 Daily Force and Activity Reports: The Contractor shall prepare and submit to the Designated Representative, including similar data for each of its Subcontractors, a Daily Force and Activity Report. This report shall be on a form approved by the Designated Representative and shall indicate all Supervisors, Journeymen, Laborers or Helpers and, by crew, the activities, related to the Contractor's schedule, that are being performed. The Daily Force and Activity Report shall include information on material deliveries, tests, weather conditions and other significant events. Each Daily Force and Activity Report shall be delivered to the Designated Representative at the job site by 9:00 a.m. on the next succeeding business day.
- 16.1.3 Daily Change Documentation: The Contractor shall submit to the Designated Representative for review and verification, separate daily documentation of any "Change in the Work" being performed on any basis, other than agreed upon lump sum, as described in Article 13 of the General Conditions. This report shall be on a form approved by the Designated Representative. The Contractor shall certify the accuracy of this report.
- 16.1.4 Safety Reports: The Contractor shall submit to the Designated Representative copies of all accident reports and weekly minutes/reports of Safety Program "Tool Box" meeting and other safety information.
- 16.1.5 Material Status Reports: The Contractor shall prepare a Materials Status Report not later than fifteen (15) calendar days after the Notice to Proceed. The report shall include a complete list of suppliers, items to be purchased from them, the fabricator and manufacturer, the time required and the promised delivery dates for each item. This report shall be updated and submitted with the payment requisition monthly as an integral part thereof and more frequently as requested by the Designated Representative.
- 16.1.6 Purchase Orders: A copy of each purchase order as issued by the Contractor shall be furnished to the Designated Representative, except that prices may be omitted.
- 16.1.7 Job Cost Breakdown: The Contractor shall submit job cost breakdown reports for record and tax purposes to the Designated Representative. The first report shall be submitted within thirty (30) calendar days after date of each Notice to Proceed on any portion of the Work and shall be consistent in format with the schedule of values. Another report shall be submitted at the completion of the job and shall include all additions and deletions. Interim reports on various elements of the Work shall be submitted as required by the Owner for investment, tax credit, pollution control, financing and other purposes.
- 16.1.8 Monthly Progress Payment Applications: The Contractor shall submit Monthly Progress Payment Applications in the form and at the time as approved by the Designated Representative.
- 16.1.9 Monthly Reports: The Contractor shall submit to the Designated Representative copies of all monthly reports, such as MBE Participation, etc., required by governing bodies.

- 16.1.10 Monthly Certification: The Contractor shall submit to the Designated Representative periodic evidence and a monthly certification that "Record Documents", Test Reports and other Project Record Documents are being maintained for ultimate submittal to the Designated Representative and Owner at the completion of the Work.
- 16.1.11 Weekly Request for Information Status: The Contractor shall submit, each week on a day agreed to between the Contractor and the Designated Representative, a Request for Information Status Report indicating the Contractor's perception of the status of all submitted Requests for Information. The Request for Information Status Report will include a brief description of the request, date the request was submitted to the Designated Representative, date a response is needed from the Architect/Engineer, date a response is actually made by the Architect/Engineer, and any pertinent remarks. The Request for Information Status Report shall be in a format approved by the Designated Representative.
- 16.2 DRAWINGS, PRODUCT DATA AND SAMPLES**
- 16.2.1 Shop Drawings: Shop drawings are drawings, diagrams, schedules and other data especially prepared for the Work by the Contractor, Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Shop drawings shall be signed by a registered professional engineer where required by law.
- 16.2.2 Product Data: Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product, equipment or system for some portion of the Work.
- 16.2.3 Samples: Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 16.2.4 Submittals: Submittals forwarded by the Contractor to the Designated Representative shall be in conformance with the requirements of the Contract Documents. The Contractor shall notify the Architect/Engineer and Designated Representative in writing of any deviations in the submittals from the requirements of the Contract Documents at the time of submission. Before submission of each Shop Drawing, Product Data or Sample, the Contractor shall have determined and verified all quantities, dimensions, specified design and performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and review or coordinated each Shop Drawing, Product Data or Sample with other Shop Drawings, Product Data and Samples and with the requirements of the Work and the Contract Documents. The term "submittal" as used herein includes Shop Drawings, Product Data and/or Samples as required by the Contract Documents. All submittals shall be submitted thirty (30) days prior to commencement of work affected.
- 16.2.5 Notice of Variation: At the time of each submission, the Contractor shall give the Architect/Engineer specific written notice of each Contractor perceived variation that the submittal may have from the requirements of the Contract Documents and, in addition, the Contractor shall cause a specific notation to be made on each Shop Drawing, Product Data and/or Sample submitted to the Architect/Engineer for review and "approval" demonstrating each such perceived variation.
- 16.2.6 Architect/Engineer Submittal Review: The Architect/Engineer will review and "approve" with reasonable promptness the required submittals. The Architect/Engineer's review and approval of the Contractor's submittal does not constitute a complete check, but indicates only that design, general method of construction and detailing is satisfactory. The Architect/Engineer's review and approval does not permit any deviation from the Contract Requirements and does not relieve the Contractor of the responsibility for errors in dimensions, details, sizes of member, etc., or the coordinating of installation and construction with actual conditions of the Work. The Architect/Engineer's review and "approval" will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, the methods, technique sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or safety programs incident thereto. The individual review and "approval" of a component item as such will not indicate "approval" of the integrated final assembly into which the item is placed and in which the item must function. The Contractor shall make any corrections required by the Architect/Engineer, without any additional cost to the Owner. The Contractor shall return the required number of corrected copies of submittals to the Architect/Engineer who will promptly, as required, review the re-submittals for conformance with the design concept.
- 16.2.7 Resubmission Notice: The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to all revisions other than those requested by the Architect/Engineer or Designated Representative on previous submittals.
- 16.2.8 Contractor Responsibility: Review and "approval" of submittals by the Architect/Engineer shall not relieve the Contractor

from responsibility for any variation from the requirements of the Contract Documents unless the Contractor has in writing called the Architect/Engineer's attention to each such variation at the time of submission as required and the Architect/Engineer has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the submittal "approval"; nor will any "approval" by the Architect/Engineer relieve the Contractor from the responsibility for the Contractor's own errors or omissions in the submittal or from the Contractor's responsibility for compliance with all Contract Document provisions.

- 16.2.9 No Work Prior to Submittal Approval: The Contractor shall resubmit submittals as required until the Architect/Engineer's approval is obtained. No work requiring submittals shall be executed until the Architect/Engineer's approval is given. Where a submittal is required by the Specifications, any related work performed prior to the Architect/Engineer's review and "approval" of the pertinent submission will be at the sole risk, expense and responsibility of the Contractor.
- 16.2.10 Transmittal Requirements: After checking and verifying all field measurements and complying with applicable procedures specified in the Contract Documents, the Contractor shall transmit all submittals to the Architect/Engineer with one (1) copy to the Designated Representative and shall include:
- (a.) Date and revision dates.
  - (b.) Project title and number.
  - (c.) The names of:
    - (1.) Architect/Engineer
    - (2.) Designated Representative
    - (3.) Contractor
    - (4.) Contract Number
    - (5.) Subcontractor or Supplier
    - (6.) Manufacturer
    - (7.) Separate Detailer when pertinent
  - (d.) Number of Shop Drawings, Product Data and Sample submitted. (System to be established by Designated Representative.)
  - (e.) Identification of product or material.
  - (f.) Relation to adjacent structure or materials.
  - (g.) Field dimensions, clearly identified as such.
  - (h.) Specification section number and paragraph.
  - (i.) Applicable standards such as ASTM number or Federal Specification.
  - (j.) A blank space, minimum of 2 1/2 by 3 1/2 inches for the Architect/Engineer stamp.
  - (k.) Identification of deviations from Contract Documents.
  - (l.) Other pertinent data.
- 16.2.11 Approval Delays: The Contractor shall be responsible for any delays caused by the rejection of the submittal for inadequate or incorrect shop drawings, manufacturer's data or other information.
- 16.2.12 Working Drawings: The Contractor is responsible for seeing that only "Approved" copies of shop drawings bearing the stamp of the Architect/Engineer are allowed on the job.
- 16.2.13 Approved Equals: The Contractor's attention is directed to Article 5.4 LABOR AND MATERIALS. Where two or more products are specified for an item of Work, either one thereof is acceptable and the choice is left to the Contractor. Where only one product is specified and where the term "or approved equal" or similar wording is used in connection with specified products, the Contractor may, if he so desires, offer for consideration a substitute product which he judges to be equal in every respect to the required product. When a specific process is specified as well as a guarantee of the results, the Contractor shall, if in its judgement the process may not produce the required result, submit for approval, an alternative process which he would guarantee. All such submittals shall be made, within forty (40) calendar days after award of the Contract, in writing to the Designated Representative, who in turn will forward them to the Architect/Engineer. Review of any substitute product will (1) be contingent upon submission of substantiating serviceability to specified product; (2) use of the item will not entail changes in details and construction of related Work; (3) item conforms to required design and artistic effect. The Contractor shall furnish with the first submittal, a sufficient number of drawings, specifications, samples, performance data and other information necessary to assist the Architect/Engineer in determining whether the proposed substitution is acceptable. The burden of proof shall be upon the Contractor. No consideration will be given to incomplete submittals. Substitutions shall be approved in writing before they may be used.
- 16.2.14 Conflicting Instructions: When product manufacturer's instructions are in conflict with the Contract Documents, the

Contractor shall notify the Designated Representative for clarification before proceeding. The Contractor shall keep a copy of the various product manufacturer's instructions applicable to the Work at the project site.

- 16.2.15 Submittal Log: Each week on a day agreed to between the Contractor and the Designated Representative, the Contractor shall submit an updated submittal log to the Designated Representative indicating the Contractor's perception of the status of all required submittals and reviews. Similar information to that outlined below shall be provided for any required re-submittals. The submittal log will include such information as:
- (a.) The schedule date to receive information from a subcontractor or supplier.
  - (b.) The actual date information was received from a subcontractor or supplier.
  - (c.) The scheduled date to submit information to the Architect/Engineer.
  - (d.) The date information was submitted to Architect/Engineer.
  - (e.) Anticipated date of return of information from Architect/Engineer.
  - (f.) Actual date information was received from Architect/Engineer.
  - (g.) Status or actions required.
- 16.2.16 Sample Submission: The Contractor shall submit all required samples for review and "approval" by the Architect/Engineer, with such promptness as to cause no delay in the Work. All samples shall be checked by the Contractor and accompanied by a specific written indication that the Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the Contractor's review of the submission. The samples shall be identified clearly as to equipment, material, supplies and include pertinent data such as demonstrating compliance with a certain Specification Section, catalog number, etc., and the use for which the material is intended. An approved sample of each material shall be provided to the Designated Representative prior to delivery of any materials for which submission of samples is required.
- 16.2.17 Sample Review: The Contractor shall submit four (4) samples of materials to the Architect/Engineer for approval as indicated in the Specifications. All samples shall be properly labeled to indicate type of material submitted, intended use, manufacturer's name, trade name, project name, Designated Representative's name, Contractor's, Subcontractor's and Supplier's names; and shall be transmitted as required by paragraph 16.2.10. Samples will be inspected and tested as required and if acceptable an approved notice will be sent to the Contractor along with one (1) approved sample. Rejected samples will be returned along with a statement of reasons for rejection. Accepted samples will be retained by the Architect/Engineer, one of which will be provided to the Designated Representative and shall become the property of the Owner.
- 16.2.18 Submittals Affecting the Job Order Price: The Architect/Engineers approval of submittals which deviate from the Contract Documents does not authorize changes to the Job Order Price. The Contractor shall notify the Architect/Engineer and the Designated Representative in writing at the time of transmittal of any changes to the Job Order Price affected by such approval of a submittal; otherwise, claim for extras will not be considered.
- 16.2.19 Ductwork Layout Drawings: As soon as practical and in no case starting later than thirty (30) days after the issuance of the Job Order, the Mechanical Subcontractor shall prepare layout drawings of all duct work and piping at not less than 3/8" scale. The ductwork layout drawings shall show registers, grilles, diffusers and similar features as well as locations of all valves, dampers and other items requiring access for service and maintenance. The ductwork layout drawings shall also show beams, ceiling heights, walls, floor to floor dimensions, columns, doors and other major architectural and structural features as shown on the architectural and structural drawings.
- 16.2.20 Coordination with Subcontractors: The Contractor shall, within sixty (60) days after issuance of a Job Order, send a reproducible and two (2) prints of the ductwork layout drawings to the plumbing, materials handling, fire protection and electrical subcontractors who shall then make on the reproducible their own routings as well as other major items such as valves, access panels, switch panels, etc., as required to determine interrelationship and possible interferences with the mechanical ductwork and architectural or structural features. The marked-up reproducible shall then be returned to the Mechanical Subcontractor through the Contractor with copies to the Designated Representative no less than thirty (30) days after receipt by the other Subcontractors.
- 16.2.21 Composite Drawings: The Mechanical Subcontractor shall prepare preliminary composite drawings of such layout drawings, incorporating all the information and routings provided by the other Subcontractors. (At its option, a group of transparent overlays may be substituted, provided that they clearly show the relationship of all proposed installations.) The preliminary composite drawings, or the overlays, shall be reviewed during a series of meetings, called by the Contractor and attended by the Architect/Engineer and the Designated Representative, at which all Subcontractors and trades shall be represented, in order to review and resolve any real or apparent interferences or conflicts.

- 16.2.22 Agreement by Subcontractors: After all conflicts or interferences are resolved the Mechanical Subcontractor shall develop a final set of composite drawings showing the agreed upon routing, layout and juxtaposition of all ductwork, conveyers, piping, major conduit, valves, panels, lighting fixtures and all other major mechanical and electrical installations. In areas where no mechanical ductwork occurs, but where other mechanical and electrical installations are installed, each Subcontractor shall be responsible for its own Work and shall cooperate in preparing similar composite drawings, shall perform its own drafting Work and pay its own costs in connection therewith. In preparation of all the final composite drawings, large scale details as well as cross and longitudinal sections shall be as required to fully delineate all conditions. Particular attention shall be given to the locations, size and clearance dimensions of equipment items, shafts and similar features. These final composite drawings shall then be signed-off by each of the Subcontractors, including the Mechanical Subcontractor, and the Contractor indicating their awareness of and agreement with the indicated routings and layouts and their interrelationship with the adjoining or contiguous Work. Thereafter, no unauthorized deviations will be permitted and if made without knowledge or agreement of the Architect/Engineer and Designated Representative, this unauthorized Work will be subject to removal and correction at no additional cost to Owner.
- 16.2.23 Minor Changes: In preparing the composite drawings, minor changes in duct, pipe or conduit routings that do not affect the intended function may be made as required to avoid space conflicts, when mutually agreed, but items may not be resized or exposed items relocated without the Architect/Engineers and Designated Representative's written approval. No changes shall be made in any wall or chase locations, ceiling heights, door swings or locations, window or other openings or other features affecting the function or aesthetic effect of the building. If conflicts or interferences cannot be satisfactorily resolved, the Architect/Engineer and the Designated Representative shall be notified and their decision obtained.
- 16.2.24 Distribution of Composite Drawings: After the final composite drawings have been agreed upon and signed by all Subcontractors, the Contractor shall provide and distribute four (4) prints to each of the Subcontractors, to the Architect/Engineer and to the Designated Representative for reference and record purposes. The Contractor shall make similar distribution of all supplementary composite drawings, initiated by other Subcontractors as indicated herein before. All Subcontractors desiring additional prints of such drawings, beyond the basic distribution indicated above, shall arrange for and pay the cost of the same.
- 16.2.25 Record Composite Drawings: The record copies of the final composite drawings shall be retained by the Designated Representative and each Contractor as a working reference. All shop drawings, prior to their submittal to the Architect/Engineer, shall be compared with the composite drawings and developed accordingly by the Contractor and the responsible Subcontractor. Any revision to the composite drawings which may become necessary during the progress of the Work shall be noted by the Contractor and all Subcontractors and shall be neatly and accurately recorded on the record copies. The Contractor and each Subcontractor shall be responsible for the up-to-date maintenance of its record copies of the composite drawings and to keep two (2) copies available at the site. The composite drawings and any subsequent changes thereto, shall be utilized by the Contractor and each Subcontractor in the development of its "Record Document" drawings.
- 16.2.26 Timely Submissions: The composite drawings need not be submitted as a whole, but they shall be submitted in all cases in ample time to avoid construction delay. The coordination drawings may lack complete data in certain instances pending receipt of shop drawings, but sufficient space shall be allotted for the items affected. When final information is received, such data shall be promptly inserted on the composite drawings.
- 16.2.27 Improperly Coordinated Work: No extra compensation will be paid for relocating any duct, pipe, conduit, or other material that has been installed without proper coordination between the Contractor and all Subcontractors involved. If any improperly coordinated Work or Work installed that is not in accordance with the approved composite drawings, necessitates additional Work by the Contractor or other Subcontractors, the costs of all such additional Work shall be borne solely by the Contractor or the Subcontractor responsible for the nonconforming Work.
- 16.2.28 Incorporation of Changes: All changes in the scope of Work due to revisions formally issued and approved shall be shown on the composite drawings.
- 16.2.29 Quality Draftsmanship: All Work on shop drawings, ductwork layout drawings, coordination drawings, and composite drawings shall be performed by competent draftsmen and shall be clear and fully legible. The Architect/Engineer shall be the sole judge of the acceptability of the drawings.
- 16.2.30 Structural Cutting: The Contractor shall obtain specific positive written instructions from the Architect/Engineer through the Designated Representative before cutting beams or other structural members, arches or lintels, and the Contractor shall be guided by such instructions.

### 16.3 TEMPORARY SERVICES, SYSTEMS AND FACILITIES

- 16.3.1 Temporary Lighting, Power and Water: At its own expense, the Contractor shall furnish, install, maintain, and remove all temporary lighting, electric power, and potable water, including piping, wiring, lamps, and other equipment necessary for the execution and security of the Work; and shall be responsible for the cost of power and water usage. The Contractor shall not draw water from any fire hydrant, except to extinguish a fire, without first obtaining permission from the water agency concerned. The Contractor shall provide for distribution of drinking water to all work forces under this Contract.
- 16.3.2 Sanitation: The Contractor, as part of his Adjustment Factor, shall provide and maintain portable enclosed toilets for the use of all work forces under this Contract. These accommodations shall be maintained in a neat and sanitary condition. They shall also comply with all applicable laws, ordinances and regulations pertaining to the public health and sanitation of dwellings and camps. The Contractor shall not interrupt the flow of existing sanitary sewers. Should the Work involve the disruption of existing sewer facilities, the Contractor shall convey the sewage in closed containers and shall dispose of it in a sanitary sewer system as approved by local health authorities and the Designated Representative. Sewage shall not be permitted to flow in trenches or be covered by backfill.
- 16.3.3 Vermin Control: The Contractor shall maintain the job site free of rodents, insects, vermin and pests throughout all phases of construction, including suspensions of work, and until final acceptance of the Work. Necessary extermination work shall be arranged and paid for by the Contractor and shall be performed by a licensed agency in accordance with requirements of governing authorities. The Contractor shall be liable for injury to persons or property and responsible for the elimination of offensive odors resulting from extermination operations.
- 16.3.4 Water Pollution Control: The Contractor shall exercise every reasonable precaution to protect channels, storm drains, and bodies of water from pollution and shall conduct and schedule its operations so as to minimize or avoid muddying and silting of said channels, drains, and waters. Water pollution control work shall consist of constructing those facilities which may be required to provide prevention, control, and abatement of water pollution.
- 16.3.5 Air Pollution Control: The Contractor shall not discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.
- 16.3.6 Project Site Maintenance: Throughout all phases of construction, including suspensions of work, and until final acceptance of the Work, the Contractor shall keep the job site, including the interior of all structures, clean and free from rubbish and debris. The Contractor shall provide and maintain rubbish containers and periodic rubbish removal services as required by the pace of the Work and health regulations, and as acceptable to the Designated Representative.
- 16.3.6.1 The Contractor shall abate dust nuisance by cleaning, sweeping, and sprinkling with water, or other means as necessary. The use of water resulting in mud on public streets will not be permitted as a substitute for sweeping or other methods.
- 16.3.6.2 Materials and equipment shall be removed from the site as soon as they are no longer necessary; and upon completion of the Work and before final inspection the entire work site shall be cleared of equipment, unused materials, and rubbish so as to present a satisfactory clean and neat appearance. All cleanup costs shall be included in the Contractor's Adjustment Factor.
- 16.3.6.3 The Contractor shall take care to avoid spillage on haul routes. Any such spillage shall be removed immediately and the area cleaned by the Contractor.
- 16.3.6.4 Burning or burying of rubbish and waste materials on the project site is prohibited. Disposal of volatile fluid wastes in storm and sanitary sewer systems is prohibited.
- 16.3.6.5 Waste materials shall not be dropped or thrown from heights. Cleaning operations shall be scheduled so that dust and other contaminants resulting from the cleaning process will not fall on wet or newly painted surfaces. Dusty debris shall be sprinkled lightly with water as required to control dust.
- 16.3.6.6 The Contractor shall vacuum clean the interior of buildings prior to the start of finish painting. The Contractor shall continue vacuum cleaning thereafter on an as needed basis until the building is ready for acceptance.
- 16.3.6.7 Failure of the Contractor to comply with the Designated Representative's cleanup orders may result in an order to suspend the Work until the condition is corrected. No additional compensation will be allowed as a result of such suspension.
- 16.3.7 Final Cleaning: At the completion of the Work, the Contractor at its sole expense shall remove all waste materials and

rubbish from and about the project, as well as all tools, construction equipment, temporary facilities, machinery, and surplus materials.

- 16.3.7.1 At completion of construction and just prior to final inspection, the Contractor shall thoroughly clean the interior and exterior of the buildings, including hardware, floors, roofs, sills, ledges, glass, or other surfaces where debris, plaster, paint, spots, and dirt or dust may have collected. All glass shall be washed clean and polished. All grease, stains, labels, fingerprints, and other foreign materials shall be removed from interior and exterior surfaces. The Contractor shall repair, patch, and touch up marred surfaces to match adjacent finishes.
- 16.3.7.2 The Contractor shall use only experienced workmen or professional cleaners for final cleaning. Use only cleaning materials recommended by the manufacturer of the surface to be cleaned, and use cleaning materials only on surfaces recommended by the cleaning material manufacturer.
- 16.3.7.3 The Contractor shall broom clean all paved surfaces and rake clean other surfaces of grounds.
- 16.3.7.4 The Contractor shall replace air conditioning filters, if units were operated during construction. The Contractor shall clean all ducts, blowers, and coils if air conditioning units were operated at any time without filters during construction.
- 16.3.7.5 The Contractor shall maintain the building in a clean condition until it is accepted by the Owner.
- 16.3.8 Fire Protection: The Contractor at its sole expense shall provide temporary fire safety equipment for general use. The Contractor shall provide fire extinguishers for its trailers, for use as required when cutting and burning is performed, and as required throughout the job site as instructed by the local fire marshal.
- 16.3.9 Communication Systems: The Contractor shall provide telephone services at its own expense. The Contractor at its sole expense shall maintain in service a facsimile telecopy machine whenever telephone service is available at the job site. The use of portable radios shall be in accordance with Federal Regulations and shall not interfere with other local radio operations.
- 16.3.10 Office Facilities: The Contractor at its sole expense shall provide, maintain and remove temporary field office facilities, including all furniture, equipment, copiers, heating, cooling, lighting, power, telephones, drinking water, plumbing and toilet fixtures as necessary for its performance of the Work; and shall make these spaces, telephones, and services available for the use of the Owner, the Designated Representative and the Architect/Engineer. A designated work area shall be provided for the use of the Owner, the Designated Representative and the Architect/Engineer.
- 16.3.11 Weather Protection: The Contractor at its sole expense shall be responsible for providing protection for its own Work against inclement weather, in order to maintain all Work, materials, apparatus, and equipment. All Work subject to damage by adverse weather conditions shall be covered or otherwise protected as required. Weather protection shall be adequate to permit the Contractor to Work on a continuous basis without shutdown due to temperature or weather conditions as far as possible.
- 16.3.12 Dewatering: The Contractor at its sole expense shall provide all temporary drainage and dewatering measures including all pumping, drainage, erosion control or other work required to protect the Work while in progress.
  - 16.3.12.1 Inundation of partially completed work due to lack of control during non-working periods will not be permitted, and may be cause for requiring removal of work already completed with replacement at the Contractor's expense.
  - 16.3.12.2 The Contractor shall be responsible for obtaining the use of any property, in addition to that provided for in the Detailed Scope of Work which may be required for the diversion and protective works so as not to create a hazard to persons or property or to interfere with the water rights of others.
  - 16.3.12.3 It shall be understood and agreed that the Contractor shall hold the Owner and the Designated Representative harmless from legal action taken by any third party with respect to construction and operation of the diversion and protective works.
  - 16.3.12.4 All works installed by the Contractor in connection with dewatering, control, and diversion of water but not specified to become a permanent part of the project, shall be removed and the site restored, insofar as practical, to its original condition prior to completion of construction or when directed by the Designated Representative.
- 16.3.13 Material Handling: The Contractor at its sole expense shall be responsible for handling and transporting, including lifting, its material and equipment to the location of need in a timely manner in accordance with the Construction Task Catalog®.

- 16.3.14 Cranes, Hoists and Scaffolds: The Contractor, in accordance with the Construction Task Catalog® shall furnish, erect, maintain and remove all cranes, temporary hoists and scaffolding as may be required by the Contractor for the performance of the Work.
- 16.3.15 Storage: The Contractor at its sole expense shall provide and remove whatever temporary storage facilities, sheds, buildings, enclosures, partitions, etc., he deems necessary for the protection of its materials, tools and equipment after receiving approval from the Designated Representative on specific details of the method proposed. Any damage caused to Work in place by these temporary measures will be repaired / replaced at the Contractor's expense.
- 16.3.16 Security Fences: The Contractor, in accordance with the Construction Task Catalog®, shall provide temporary site enclosures (fences), barriers, and pedestrian walkways as indicated by the Contract Documents or as required to control access to the job site.
- 16.3.17 Security Services: The Contractor at its sole expense shall be responsible for job site security during various phases of the Work, including Other than Working Hours and at other times, and as may be required for the protection of the Owner and the Designated Representative's interests. All costs for same will be paid by the Contractor.
- 16.3.18 Openings, Sleeves and Supports: The Contractor, in accordance with the Construction Task Catalog®, shall provide all necessary openings, channels, chases, flues, sleeves, inserts, hangers, etc, if any, and such cutting, patching, finishing, etc., if any, required by the Contract Documents to complete the Work.
- 16.3.19 Protection and Restoration of Existing Improvements: The Contractor at its sole expense shall be responsible for the protection of public and private property adjacent to the Work and shall exercise due caution to avoid damage to such property. All costs to the Contractor for protecting, removing, and restoring existing improvements shall be paid by the Contractor.
- 16.3.19.1 The Contractor at its sole expense shall repair or replace all existing improvements which are damaged or removed as a result of its operations and which are not designated for removal (e.g. curbs, sidewalks, driveways, fences, walls, ceilings, floor coverings, signs, utility installations, pavements, structures, trees, shrubbery, grass etc.).
- 16.3.19.2 Repairs and replacements shall be at least equal to existing improvements and shall match them in finish and dimensions in such a manner that the repaired work will not be readily noticeable.
- 16.3.20 Excavation Protection: The Contractor, in accordance with the Construction Task Catalog®, shall provide and maintain fencing, shoring and bracing and dewatering of all excavation.
- 16.3.21 Temporary Safety Measures: The Contractor, in accordance with the Construction Task Catalog®, shall provide, maintain and remove when no longer required all temporary safety measures, including all construction supplies, barricades, pedestrian walkways and equipment as may be required by the Contract Documents for its Work.
- 16.3.22 Advertising: The names of the Contractor, Subcontractors, the Architect/Engineer, including their consultants, with their addresses and the designation of their particular specialties, may be displayed on removable signs. The size, format and location of such signs shall be subject to the Designated Representative's approval. Commercial advertising matter shall not be attached or painted on the surfaces of buildings, fences, canopies, or barricades. All signs shall be removed when directed by the Designated Representative but not later than final acceptance of the Work.

#### **16.4 SAFETY**

- 16.4.1 OSHA and California Codes and Regulations: The Contractor, in accordance with the Construction Task Catalog®, shall provide, erect, maintain, dismantle and remove any and all barricades, railings, covers, warning lights, safety netting, and similar safety devices required to complete its Work and protect the public in accordance with OSHA, California Administrative Code, Title 8 Industrial Relations, Chapter 4 Division of Industrial Safety, Section 4 Construction and Safety Orders, Article 8 Explosives, and all other applicable code requirements.
- 16.4.2 Traffic Control: The Contractor shall conduct its Work so as to interfere as little as possible with pedestrian and vehicular traffic and he shall, in accordance with the Construction Task Catalog®, provide and maintain proper warnings and detour signs at all pedestrian and vehicular closures, intersections and along detours, directing traffic around closed portions of roadways. He shall, in accordance with the Construction Task Catalog®, at its own expense, wherever necessary or required, provide and maintain fences, temporary roadways, temporary crossing signs, watchmen, warning lights and take



such other precautions as may be necessary to protect life and property and shall be responsible for all damages occasioned in any way by its act or neglect. All barricades and obstructions shall be illuminated at night and all lights shall be kept on from one-half hour before sunset until one-half hour after sunrise.

- 16.4.3 Fall Protection: When performing any cutting, removal, creating openings or holes, etc., the Contractor, in accordance with the Construction Task Catalog<sup>®</sup>, by use of barricades, flagmen or other means, shall provide protective measures to assure that other workmen or the public are not exposed to potential injury by the operation being conducted.
- 16.4.4 Welding Protection: The Contractor, in accordance with the Construction Task Catalog<sup>®</sup>, shall provide, maintain and remove all shielding or similar precautions required to be taken adjacent to welding operations.
- 16.4.5 Personal Equipment: The Contractor at its sole expense shall provide and supervise the use of all proper safety and protective devices by its employees during any potentially dangerous phases of its Work.
- 16.4.6 Safety Orders: The Contractor shall have at the work site, copies or suitable extracts of: Construction Safety Orders, Electrical Safety Orders, and General Industrial Safety Orders issued by the State Division of Industrial Safety. The Contractor shall comply and shall require the compliance by all Subcontractors with provisions of these Safety Orders and all other applicable laws, ordinances, and regulations.
- 16.4.7 Trench Excavations: As required by Section 6705 of the California Labor Code and in addition thereto, whenever work under the Contract involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall submit for acceptance by the Owner, a detailed plan showing protection of the worker from the hazard of caving ground.
- 16.4.8 Use of Explosives: Explosives may be used only when authorized in writing by the Owner, or as otherwise stated in the Contract Documents. Explosives shall be handled, used, and stored in accordance with all applicable regulations. The Owner's approval of the use of explosives shall not relieve the Contractor from its liability for claims caused by its blasting operations.
- 16.4.9 Hazardous Materials: The Contractor shall immediately stop work if unforeseen suspected hazardous material conditions are encountered. The Contractor shall immediately report the unforeseen conditions in the written form of a request for information submitted to the Designated Representative. Work shall be resumed after the Owner has fully resolved the questions related to the unforeseen conditions and has remediated any hazardous materials determined to be present.

END OF GENERAL CONDITIONS

**JOB ORDER CONTRACTING  
SPECIAL CONDITIONS**

## JOB ORDER CONTRACTING SPECIAL CONDITIONS

### 1. Terminology

#### 1.1 Job Order Contracting Definitions

- A. Adjustment Factor - A competitively bid adjustment to be applied to the Unit Prices listed in the Construction Task Catalog<sup>®</sup>.
- B. Award Criteria Figure - The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
- C. Construction Task Catalog<sup>®</sup> - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
- D. County – Shall mean the County of Santa Barbara. Also, referred to as “Owner”.
- E. Detailed Scope of Work - A document setting forth the work the Contractor is obligated to complete for a particular Job Order.
- F. Job Order - A written order issued by the Owner, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A project may consist of one or more Job Orders.
- G. Job Order Completion Time - The time within which the Contractor must complete the Detailed Scope of Work.
- H. Job Order Price - The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.
- I. Job Order Price Proposal (Price Proposal) - A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- J. Job Order Proposal - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors and Materialmen; (d) Construction schedule; and (e) other requested documents.
- K. Joint Scope Meeting - A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- L. Maximum Contract Value - The maximum value of Job Orders that the Contractor may receive under this Contract.
- M. Minimum Contract Value - The minimum value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract.
- N. Non Pre-priced Task - A task that is not set forth in the Construction Task Catalog<sup>®</sup>.
- O. Normal Working Hours - Includes the hours from 7:00 a.m. to 4:00 p.m. Monday through Friday, except for Owner holidays.
- P. Notice to Proceed - A written notice issued by the Owner directing the Contractor to proceed with construction activities to complete the Job Order.
- Q. Other than Normal Working Hours - Includes the hours of 4:00 p.m. to 7:00 a.m. Monday through Friday and all day Saturday, Sunday, and Owner Holidays.

- R. Owner – Shall mean the County of Santa Barbara. Also, referred to as “County”.
- S. Pre-priced Task - A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog<sup>®</sup>.
- T. Project - The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.
- U. Request for Proposal - A written request to the Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein.
- V. Supplemental Job Order - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
- W. Job Order Contracting Technical Specifications - The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- X. Unit Price - The price published in the Construction Task Catalog<sup>®</sup> for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs<sup>®</sup>. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
- Y. Work - All materials, labor and use of tools, equipment and services necessary by the Contractor and/or Subcontractor to complete the Job Order.

## **2. Award of Individual Job Orders**

**2.1** The County may award an individual Job Order to any selected Contractor. Selection of the Contractor and award of the Job Order will be in compliance with established County procedures and based on one or more of the following criteria:

- A. Rotational selection among all Contractors, unless otherwise determined by the County.
- B. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
- C. Balancing of work load (Job Order dollar volume and construction backlog) among Contractors.
- D. Management of Job Order dollar volume within bonding limitations of the Contractor.
- E. Price, as it relates to the County’s independent cost estimate.
- F. Other appropriate criteria as deemed in the best interest of the County.
- G. County guarantees an initial guarantee only to receive the opportunity to perform Job Orders during the Term of the Contract, and with a potential maximum Contract Value of up to \$1,000,000

## **3. Procedure for Developing a Job Order**

### **3.1 Initiation of a Job Order**

- A. As the need exists, the County will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.

- B. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
- 1) the general scope of the work;
  - 2) alternatives for performing the work and value engineering;
  - 3) access to the site and protocol for admission;
  - 4) Parking;
  - 5) hours of operation;
  - 6) staging area;
  - 7) requirements for catalog cuts, technical data, samples and shop drawings;
  - 8) requirements for professional services, sketches, drawings, and specifications;
  - 9) construction duration;
  - 10) the presence of hazardous materials;
  - 11) liquidated damages;
  - 12) date on which the Job Order Proposal is due.
  - 13) Applicable Adjustment Factors
  - 14) Requirements for HUD-CDBG funding, if applicable
- C. Upon completion of the joint scoping process, the County will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the County will issue a Request for Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the County, will be the basis on which the Contractor will develop its Job Order Proposal and the County will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

### **3.2 Preparation of the Job Order Price Proposal.**

- A. The Contractor's Job Order Proposal shall include, at a minimum:
- 1) Job Order Price Proposal;
  - 2) Required drawings or sketches;
  - 3) List of anticipated Subcontractors and Materialmen;
  - 4) Construction schedule;
  - 5) Other requested documents.
- B. The Job Order Price shall be the value of the approved Job Order Price Proposal.
- C. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (unit price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- D. The Contractor will prepare Job Order Price Proposals in accordance with the following:
- 1) Pre-priced Task: A task described in, and for which a unit price is set forth in, the

Construction Task Catalog®.

- 2) Non Pre-priced Task: A task that is not set forth in the Construction Task Catalog®. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:
- a) Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
  - b) If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the Contractor must submit three independent quotes from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable.
  - c) The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

For Non Pre-priced Tasks Performed with Contractor's Own Forces:

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three independent quotes for all materials.

Total for a Non Pre-priced Tasks performed with Contractor's Own Forces = (A+B+C) x appropriate Normal Working Hours Adjustment Factor

For Non Pre-priced Tasks Performed by Subcontractors:

If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent quotes for the work.

D = Lowest of three Subcontractor Quotes

Total Cost for Non Pre-priced Tasks performed by Subcontractors = D x appropriate Normal Working Hours Adjustment Factor

- d) After a Non Pre-priced Task is used on three separate Job Orders, the Unit Price for such task will be established, following approval by the County, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.
  - e) The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.
- E. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the County may permit the Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.

- F. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the County, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The cost of expediting services or equipment use fees are not reimbursable.
- G. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
- H. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
- I. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.
- J. By submitting a Job Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the County.
- K. If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

### **3.3 Review of the Job Order Proposal and Issuance of the Job Order**

- A. The County will evaluate the entire Job Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
- B. The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:
  - 1) Will constitute or create a hazard to the work, or to persons or property;
  - 2) Will not produce finished Work in accordance with the terms of the Contract; or
  - 3) Unnecessarily increases the price of the Job Order when alternative means and methods are available.
- C. The County reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a Job Order if it is determined to be in the best interests of the County. The County may perform such work by other means, including by using its own forces. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope

Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the County.

- D. By submitting a Job Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the County.
- E. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's Job Order Proposal. A signed copy of the Job Order will be provided to the Contractor.
- F. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the County. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures.

#### **4. Changes in the Work**

- 4.1 The County, without invalidating the Job Order, may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Job Order.
- 4.2 Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.

#### **5. Computer Requirements**

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

#### **6. Job Order Contracting Proprietary Information**

The Owner selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the Owner. The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™. The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors.



**7. Cooperative Purchasing**

Other agencies or members of cooperative purchasing entities (“Entities”) may purchase construction services from the Contractor utilizing this Contract. If the Contract is utilized by Entities, the Contractor agrees to pay Gordian a 6.25% license fee (License Fee) due and payable within five (5) days from the date the Contractor receives payment from an Entity. License Fees not paid by the specified deadline shall bear an interest rate of 1½% per month until paid. The Contractor shall include the License Fee as a Reimbursable Task without mark-up in its Job Order Price Proposal. Gordian and the Contractor shall mutually utilize ezIQC® to track utilization, fees, and payments. The Contractor shall have no claim or right to any portion of the License Fees. Failure to pay License Fees in a timely manner shall be considered a material breach of this Contract and, at the COUNTY’s sole discretion, may be deemed grounds for termination of this Contract.

The Contractor acknowledges that The Gordian Group, Inc. will administer cooperative purchases through this Contract and that the COUNTY has no obligation to administer purchases by Entities.

The County and Gordian authorize the Contractor the use of the Owner’s and Gordian’s names, logos, trademarks, and the Owner’s and Gordian provided materials solely for the presentation and promotion of the availability and use of this Contract by Entities and potential Entities. The Contractor authorizes the Owner and Gordian the use of the Contractor's name, logos, trademarks, and Contractor provided materials in the presentation and promotion of the availability and use of this Contract by Entities and potential Entities.

The COUNTY and Gordian shall not be liable or responsible for any obligation, including, but not limited to, payments due under a Job Order, Purchase Order or similar purchasing document issued to the Contractor by the Entity (“Purchase Order”).

Remittance of License Fees:	The Contractor shall remit License Fees as follows:
Payments Made Payable to:	The Gordian Group, Inc.
Mail Checks to:	PO Box 79341
	Baltimore, MD, 21279-0341

The Contractor shall, within two (2) business days of receipt of a Purchase Order from an Entity, provide notification to the COUNTY and Gordian of each Purchase Order by forwarding a copy of the Purchase Order via email to PO@ezIQC.com or via facsimile to (864) 233-9100.

The Contractor shall, within two (2) business days of sending an invoice to an Entity, provide notification to the COUNTY and Gordian of each invoice by forwarding a copy of the invoice via email to Invoice@ezIQC.com or via facsimile to (864) 233-9100.

The COUNTY and Gordian may request records from the Contractor for all cooperative purchasing through this Contract and payment of all License Fees. The Contractor hereby agrees and authorizes COUNTY and/or Entity to provide a copy of each Purchase Order issued to Gordian. If discrepancies exist between cooperative purchasing activity and License Fees paid, the COUNTY or Gordian will provide written notification to the Contractor of discrepancies and allow the Contractor ten (10) days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of the COUNTY and/or Gordian, the COUNTY and/or Gordian reserve the right to engage a third party to conduct an independent audit of the Contractor's records and, in the event Contractor is not in compliance with this Contract, Contractor shall reimburse the appropriate party for the cost and expense related to such audit.

## **License and User Agreement**

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Licensee Contract. Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

**IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.**

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that is a party to the Licensee Contract ("Client Contract"), and the terms and conditions of the Licensee Contract, Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Licensee Contract, or the term of the Client Contract, whichever is shorter, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Licensee Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's Cloud JOC information management applications and support documentation, Construction Task Catalog<sup>®</sup> and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Licensee Contract expires or terminates, or the Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian the applicable license fee ("Contractor License Fee") as provided for in either the Client Contract or Licensee Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job

Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Licensee Contract, the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.

**END OF JOC SPECIAL CONDITIONS**

**SPECIAL CONDITIONS APPLICABLE TO  
DETENTION FACILITY JOB ORDERS**

The following security measures govern job orders within detention facilities when the affected areas are actively secured. The detention facility factors will be used to price those job orders accordingly. Please note, job orders within detention facilities where access is unimpaired will be priced using the standard applicable factors, and will be mutually agreed upon as such during the bid formulation phase. Typical minor delays and lack of production experienced in a detention facility environment will be captured by the detention facility adjustment factor. Contractor will not be reimbursed for time lost unless, at the discretion of the County, is deemed to be special circumstances. Failure to comply with these measures may result in delays to the work schedule. Workers discovered to be in non-compliance with the requirements will be barred from the job, and it shall be the contractor's responsibility to replace them with compliant workers in a timely fashion.

1. All contractor staff will be working in a locked down environment.
2. All Contractor employees expected to work on site will undergo a security check by the County of Santa Barbara Sheriff's Department. Contractor will supply completed security forms for each employee and should be prepared to replace staff that do not pass security checks.
3. Check in and check out is mandatory. Contractor employees may be escorted by a Sheriff's representative while on site.
4. Tool control is extremely important in a detention facility. If accessed by the inmates, the tools could be used as weapons or a means to assist an escape attempt.
  - a. All tools shall be inventoried prior to entering the facility and after completion of the work; this is the contractor's responsibility.
  - b. If a tool is discovered to be missing IMMEDIATELY notify the correctional staff.
  - c. NEVER leave tools unattended or unsecured. If a break is required, or contractor must leave to retrieve additional materials, contractor must secure tools in a locked area or take them with him or her.
5. When leaving the work area, contractor shall notify the officer in charge of that area. Contractor shall notify them of their return as well.
6. All areas shall be cleaned and cleared prior to departure at the end of the workday.
7. Contact is prohibited between contractor staff and inmates. Contractor should be aware that inmates will try to communicate with anyone who will speak to them. They may try to gain a person's sympathy and may attempt to manipulate or con a person into doing favors for them. If an inmate makes continuous attempts to talk to workers or begins harassing workers, notify the officer responsible for the area in which the work is taking place. Let the correctional staff deal with the inmates.
8. Contraband is defined as anything that comes into the possession of an inmate without first being approved by the detention staff. Vendors are not to bring in any items that are not specifically needed for the work they are doing. This includes tobacco products, matches, lighters, food, gum, etc.
9. Weapons are not permitted and are illegal to possess inside a detention facility. This includes knives of any type.
10. Drugs are not permitted. This includes everything from aspirin to prescription medication to illegal substances.
11. If information is received that any vendor/contractor is bringing any prohibited items into the facility, access may be denied until the claim can be properly investigated.
12. DO NOT GIVE ANYTHING TO INMATES!

**END OF DETENTION FACILITY SPECIAL CONDITIONS**

**CONSTRUCTION TASK CATALOG<sup>®</sup>**  
(available on file with General Services Department)

**JOB ORDER CONTRACTING  
TECHNICAL SPECIFICATIONS**

(available on file with General Services Department)

**HUD – CDBG EXHIBITS (APPLICABLE TO  
SPECIFIC JOB ORDERS IDENTIFIED AS SUCH  
DURING THE BID PROCESS)**



**COUNTY OF SANTA BARBARA  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

123 E. Anapamu St., Room 27  
Santa Barbara, CA 93101

**SECTION 3: ESTIMATED WORK FORCE BREAKDOWN**

*To be completed by contractors during the bidding process.*

Contractor Name and Address	2. County HCD Contract No.	3. Dollar Amount of Contract
	4. Contact Person:	5. Phone: (include area code)
	6. Reporting Period:	7. Date Report Submitted:
	9. Project Name	10. HUD No:
11. Person Completing Form: (if different from 4 above)		12. Phone: (if different from 5 above)

**Employment and Training**

Job Category	Total Estimated Positions Needed for Project	No. of Positions Occupied by Permanent Employees	Number of Positions not Occupied	Number of Positions to be filled with Section 3 Residents*
Professionals				
Technicians				
Office/Clerical				
Construction by Trade (List)				
Trade				
Trade				
Trade				
Trade				
Trade				
Other (List)				

*\*Section 3 Resident:* Public housing resident or resident of Santa Barbara County (preferably, but not necessarily, of the immediate or extended area served by the HUD funded project) who qualifies as a low-income person. HUD defines a low-income person as one whose household income does not exceed 80% of the median income for the region, with adjustments for family size.

EXHIBIT B - D/MBE/WBE IMPLEMENTATION  
SECTION 3 IMPLEMENTATION  
SECTION 3 DEFINITIONS

**D/MBE/WBE Implementation Guidelines**

The following information, as applicable, shall be retained by Contractor and produced upon request by General Services if determined by General Services to be necessary to establish the bidder's "good faith efforts" to meet the Disadvantaged/Minority/Women Business Enterprise (D/M/WBE) requirements.

1. The names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for D/M/WBE participation for this project was placed by the bidder.
2. The names and dates of notices of all certified D/M/WBEs solicited by direct mail for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the D/M/WBEs were interested.
3. The items of work for which the bidder requested subbids or materials to be supplied by D/M/WBEs, the information furnished interested D/M/WBEs in the way of plans, specifications and requirements for the work, and any breakdown of items of work into economically feasible units to facilitate D/M/WBE participation. Where there are D/M/WBEs available for doing portions of the work normally performed by the bidder with his own forces, the bidder will be expected to make portions of such work available for D/M/WBEs to bid on.
4. The names of D/M/WBEs who submitted bids for any of the work indicated in (3) above, which were not accepted, a summary of the bidder's discussions and/or negotiations with them, the name of the subcontractor or supplier that was selected for that portion of work, and the reasons for the bidder's choice. If the reason for rejecting the D/M/WBE bid was price, give the price bid by the rejected D/M/WBE and the price bid by the selected subcontractor or supplier.
5. Assistance that the bidder has extended to D/M/WBEs identified in (4) above to remedy the deficiency in their subbids.
6. To find a D/M/WBE certified firm, you may call (916) 445-3520, go on-line to: <http://www.dot.ca.gov/hq/bep>, or via mail at: D/M/WBE Listing for Santa Barbara County, CalTrans – Publications Distribution Unit, 1900 Royal Oaks, Sacramento, CA 95815-3800.

### **Section 3 Implementation Guidelines**

The following information, as applicable, shall be retained by Contractor and produced upon request by General Services if determined by General Services to be necessary to establish the bidder's "good faith efforts" to meet the Section 3 requirements.

7. The names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for Section 3 business concern participation for this project was placed by the bidder.
8. The names and dates of notices of all certified Section 3 business concerns solicited by direct mail for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the Section 3 business concerns were interested.
9. The items of work for which the bidder requested subbids or materials to be supplied by Section 3 business concerns, the information furnished interested Section 3 business concerns in the way of plans, specifications and requirements for the work, and any breakdown of items of work into economically feasible units to facilitate Section 3 business concerns participation. Where there are Section 3 business concerns available for doing portions of the work normally performed by the bidder with his own forces, the bidder will be expected to make portions of such work available for Section 3 business concerns to bid on.
10. The names of Section 3 business concerns who submitted bids for any of the work indicated in (9) above, which were not accepted, a summary of the bidder's discussions and/or negotiations with them, the name of the subcontractor or supplier that was selected for that portion of work, and the reasons for the bidder's choice. If the reason for rejecting the Section 3 business concern bid was price, give the price bid by the rejected Section 3 business concern and the price bid by the selected subcontractor or supplier.
11. Assistance that the bidder has extended to Section 3 business concern identified in (10) above to remedy the deficiency in their subbids.

## **Section 3 Definitions**

### **Section 3 covered project:**

Projects funded with more than \$200,000 in HUD funds are "Section 3 covered projects". Any contractors with which are contracted for more than \$100,000 on these projects, and any subcontractors with which those contractors contract for more than \$100,000 on these projects, are required to report on all contracts they make both with Section 3 business concerns and with businesses that are not Section 3 business concerns.

### **Section 3 resident:**

A Section 3 resident is a Public housing resident or resident of Santa Barbara County (preferably, but not necessarily, of the immediate or extended area served by the HUD funded project) who qualifies as a low-income person. HUD defines a low-income person as one whose household income does not exceed 80% of the median income for the region, with adjustments for family size. See accompanying Table for income limits set by HUD for the Santa Barbara region.

### **Section 3 Business Concern:**

Section 3 business concerns are businesses that can provide evidence that they meet one of the following:

1. That is 51 percent or more owned by Section 3 residents; or
2. Whose permanent full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or who are within 3 years of the date of first employment with the business were Section 3 residents; or
3. That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to businesses that meet qualifications set forth in conditions (1) or (2) of this paragraph.

**FEDERAL TERMS AND CONDITIONS**

This Project is being assisted by the United States of America. The following Federal provisions must be included into the contract pursuant to the provisions applicable to such Federal assistance. During the performance of the contract, the Contractor must agree to comply with all applicable Federal laws and regulations including but not limited to each of the following:

**A. Equal Opportunity**

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will comply with Executive Order 11246 of September 24, 1965 entitled Equal Employment Opportunity as amended by Executive Order 11375 of October 1967 as supplemented in Department of Labor regulations (41 CFR chapter 60).
2. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County of Santa Barbara setting forth the provisions of this nondiscrimination clause.
3. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked

as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The Contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
9. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
10. Whenever the Contractor or subcontractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided,* That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
11. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts

have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

12. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**B. Disadvantaged/Minority/Women Business Enterprise Federal Regulatory Requirements under 24 CFR 85.36(e)**

1. The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps shall include:
  - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
  - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
  - v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

**C. Section 3 Clause in accordance with Federal Regulatory Requirements under 24 CFR 135.38**

1. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
2. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
3. The Contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment

positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
5. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**D. Copeland "Anti-Kickback" Act (18 U.S.C. 874)**

Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

**E. Compliance with Labor Standard Provisions**

Contractor shall comply with all provisions contained in the form HUD-4010, Federal Labor Standards Provisions, attached as **Exhibit C** and incorporated by this reference.

**F. Compliance with Sections 103 and 107 of the Contract Work Hours and safety Standards Act (40 U.S.C. 327-330)**

General Services will comply with Sections 103 and 107 of the Contract Work Hours and safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Requires the contracting officer to insert the clauses set forth in 29 CFR part 5, Construction contracts awarded by grantees and subgrantees in excess of



\$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

**G. Requirements and Regulations pertaining to Data and Design**

All data and design and engineering work created under this Agreement shall be owned by the County and shall not be subject to copyright protection. The rights to any invention which is developed in the course of this Agreement shall be the property of the County.

**H. Requirements and Regulations Pertaining to Reporting**

The County of Santa Barbara, HUD and the Comptroller General of the United States or any of their duly authorized representatives shall be granted access to any books, documents, papers and records of Contractor which are directly pertinent the contract.

**I. Compliance with Clean Air Act and Clean Water Act.**

1. Contractor shall comply with all applicable standards, orders and requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)).
2. Contractor shall comply with all applicable standards, orders and requirements issued under Section 508 of the Clean Air Act (33 U.S.C. 1368).
3. Contractor shall comply with Executive Order 11738 and Environmental Protection Agency regulations (40 CFR part 15).

**J. Compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).**

General Services shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94- 163, 89 Stat. 871).

## EXHIBIT D - APPLICABILITY

### Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** 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 29 CFR 5. 5(a)(1)(iv); 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 29 CFR 5. 5(a)(1)(ii) and the Davis-Bacon poster (WH- 1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor, Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215- 0140.)

**2. Withholding.** HUD or its designee 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, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215 -0140 and 1215- 0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. 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 HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph 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 HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A. 3.(ii)(b).

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

(iii) The contractor or subcontractor shall make the records required under subparagraph A. 3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency ( where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise

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

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses 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 this paragraph.

**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 HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** 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) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3 (a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001. Additionally, U. S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration.... makes, utters or publishes any statement knowing the same to be false shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. 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 the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, 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 subparagraph (1) of this paragraph, 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 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.**

HUD or its designee 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 subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph 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 subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91- 54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

# **EXHIBIT “B”**

- Bidders Form

## BID FORM

1. Pursuant to and in compliance with your Notice to Bidders and the Contract Documents relating to:

County of Santa Barbara  
**General Building Construction Job Order Contract**  
**Project 23000-JOC**  
Bid Date: November 13, 2023

including Addendum No(s). 1, 2, \_\_, \_\_, \_\_, \_\_, the undersigned bidder, having become thoroughly familiar with the terms and conditions of the Contract Documents and with local conditions affecting the performance and the costs of Work in the County of Santa Barbara, hereby proposes and agrees to fully perform the Work of each Job Order within the Job Order Completion Time stated in and in strict accordance with the Contract Documents including the furnishing of any and all labor, materials, tools, expendable equipment and utility and transportation services necessary to fully perform the work and complete it in a workmanlike manner.

2. The Bidder shall set forth Adjustment Factors in legible figures in the respective space provided. Failure to submit all Adjustment Factors will result in the Bid being deemed non-responsive. The CONTRACTOR shall perform the Tasks required by each individual Job Order using the Adjustment Factors.
3. Specify lines 1 through 9 to four (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5th decimal place is 0-4, the number in the 4th decimal remains unchanged; if the number in the 5th decimal place is 5-9, the number in the 4th decimal is rounded upward).
4. **The Other Than Normal Working Hours Adjustment Factors must be greater than or equal to the corresponding Normal Working Hours Adjustment Factors.**
5. The weighted multipliers are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the Owner that Work will be ordered under the Contract in a distribution consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid.
6. When submitting Job Order Price Proposals related to specific Job Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.



sham; that the undersigned bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid and has not directly or indirectly colluded, conspired, connived or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding; that the undersigned bidder has not directly or indirectly sought by agreement, communication or conference with anyone to fix his bid price or the bid price of any other bidder or to fix any overhead, profit or cost element of such bid price or of that of any other bidder or to secure any advantage against the COUNTY of Santa Barbara of anyone interested in the proposed contract; or all statements contained in this proposal are true; and that the undersigned bidder has not directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay any fee to any corporation, partnership, company association, organization, Bid Depository or to any member or agent thereof to effectuate a collusive or sham bid. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12. Wherever in this proposal an amount is stated in both words and figures, in case of discrepancy between words and figures the words shall prevail; if all or any portion of the proposal is required to be given in unit prices and totals and a discrepancy existing between any such unit prices and totals so given, the unit prices shall prevail.
13. In accordance with the provisions of Sections 1860 and 1861 of the California Labor Code, every CONTRACTOR will be required to secure the payment of compensation of his or her employees. Each CONTRACTOR to whom a public works contract is awarded shall sign the following certification prior to performing the work of the contract: "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."
14. Protests of any bid(s) received must be in writing, must specify all grounds for the protest, and must be filed within ten (10) working days after the opening of bids.

	<b>Adjustment Factor Name</b>	<b>Adjustment Factor Bid</b>	<b>X Multiplier (% weight)</b>	<b>= Total</b>
1.	Adjustment Factor for Normal Working Hours for <b>General or Court Facility</b> Projects located in North County (Monday through Friday 7:00 am to 4:00 pm except County holidays)	<u>1.03</u>	X 0.25	= <u>0.2575</u>
2.	Adjustment Factor for Other Than Normal Working Hours for <b>General or Court Facility</b> Projects located in North County (Monday through Friday 4:00 pm to 7:00 am and all day Saturday, Sunday and County holidays)	<u>1.08</u>	X 0.10	= <u>0.108</u>
3.	Adjustment Factor for Normal Working Hours for <b>General or Court Facility</b> Projects located in South County (Monday through Friday 7:00 am to 4:00 pm except County holidays)	<u>1.05</u>	X 0.25	= <u>0.2625</u>
4.	Adjustment Factor for Other Than Normal Working Hours for <b>General or Court Facility</b> Projects located in South County (Monday through Friday 4:00 pm to 7:00 am and all day Saturday, Sunday and County holidays)	<u>1.10</u>	X 0.10	= <u>0.110</u>
5.	Adjustment Factor for Normal Working Hours for <b>Detention Facility</b> Project located in North County (Monday through Friday 7:00 am to 4:00 pm except County holidays)	<u>1.04</u>	X 0.05	= <u>0.052</u>
6.	Adjustment Factor for Other Than Normal Working Hours for <b>Detention Facility</b> Projects located in North County (Monday through Friday 4:00 pm to 7:00 am and all day Saturday, Sunday and County	<u>1.1</u>	X 0.05	= <u>0.055</u>

	holidays)			
7.	Adjustment Factor for Normal Working Hours for <b>Detention Facility</b> Projects located in South County (Monday through Friday 7:00 am to 4:00 pm except County holidays)	<u>1.05</u>	X 0.15	<del>= 0.0525</del> <u>0.1575</u>
8.	Adjustment Factor for Other Than Normal Working Hours for <b>Detention Facility</b> Projects located in South County (Monday through Friday 4:00 pm to 7:00 am and all day Saturday, Sunday and County holidays)	<u>1.12</u>	X 0.05	= <u>0.056</u>
9.	<b>Add all the Total amounts in the right column. The Sum of these Total amounts is the Award Criteria Figure.</b>			= <u>1.0585</u>

8. It is understood that the COUNTY reserves the right to reject the proposal and that it shall remain open and not be withdrawn for a period of ninety (90) calendar days from the date prescribed for its opening.
9. It is understood and agreed that if written notice of the acceptance of this proposal is mailed or delivered personally to the undersigned bidder within thirty (30) calendar days after the opening of the proposal, or at any time thereafter before it is withdrawn, the undersigned bidder will execute and deliver the Contract Documents to the COUNTY in accordance with the proposal as accepted, and will also furnish and deliver to the COUNTY any Payment Bond required under the provisions of California Civil Code and Performance Bond as required under the provisions of the California Government Code and/or California Public Contract Code all within fourteen (14) calendar days after personal delivery or deposit in the mails, as the case may be, of the notifications of award. The work under the contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The CONTRACTOR is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.
10. Notice of acceptance or request for additional information may be addressed to the undersigned bidder at the business address set forth below.
11. The bid, contract or other submittal of the CONTRACTOR identified below in connection with the foregoing project is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; and that the bid is genuine, and not collusive or

**CONTRACTOR**

R. Burke Corporation  
Company

IRS No.: 95-2665064

P.O. Box 957,  
Street Address

CA LIC# 264193  
License# and Classification(s): Class A & B

San Luis Obispo, CA 93406  
City

Phone Number: 805-543-8568

BY:   
Signature

Robert E. Burke, President  
Printed Name, Title

# NONCOLLUSION AFFIDAVIT

In accordance with Public Contract Code § 7106, the undersigned, Robert E. Burke  
(Bidder's signatory's full name)

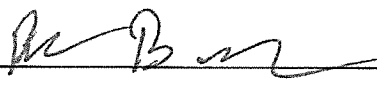
being first duly sworn, deposes and says that the undersigned is President  
(Bidder's title)

of R. Burke Corporation  
(Company's name)

the party making the foregoing Bid, that the Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham Bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or that anyone shall refrain from bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed Contract; that all statements contained in the Bid are true; and further, that the Bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, is duly authorized by bidder to execute, and does execute, this declaration on behalf of the bidder.


I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE BLOCK <i>(Signature Block must be completed in ink &amp; changes must be initialed.)</i>	
Bidder's Signature: <u></u>	Date: <u>11/11/23</u>
Bidder's Name & Title (Print): <u>Robert E. Burke, President</u>	
At CITY: <u>San Luis Obispo</u>	STATE: <u>CA</u>

## CERTIFICATE OF COMPLIANCE

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

11-13-2023  
Dated

  
\_\_\_\_\_  
Signature of Principal

Robert E. Burke, President  
Printed Name, Title of Principal

R. Burke Corporation  
Company

P.O. Box 957  
Address

San Luis Obispo, CA 93406  
City, State & Zip

## BIDDER'S STATEMENTS

### REGARDING INSURANCE COVERAGE:

Bidder hereby certifies that Bidder has reviewed the insurance coverage requirements specified in the Contract Forms. Should Bidder be awarded the Contract for the work, Bidder further certifies that Bidder can meet all the Contract Specification requirements for insurance including insurance coverage of Bidder's subcontractors.

### REGARDING PUBLIC CONTRACT CODE SECTION 10232:

In accordance with Public Contract Code Section 10232, the Bidder hereby states, under penalty of perjury, that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against such Bidder within the immediately preceding two-year period because of the Bidder's failure to comply with an order of a Federal Court which orders such Bidder to comply with an order of the National Labor Relations Board.

### REGARDING PUBLIC CONTRACT CODE SECTION 10162:

In accordance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the Bidder, any officer of the Bidder, or any employee of the Bidder who has proprietary interest in the Bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing, a federal, state, or local government project because of a violation of law or safety regulation?

Yes \_\_\_\_\_ No

(If the answer is yes, explain the circumstances on a separate sheet of paper and attach to this bid)

11/13/2023  
Date

  
Signature of Principal

Robert E. Burke, President  
Printed Name, Title of Principal

R. Burke Corporation  
Company

P.O. Box 957  
Address

San Luis Obispo, CA 93406  
City, State & Zip

# ANTI-FRAUD CERTIFICATION


COUNTY OF SANTA BARBARA  
General Building Construction Job Order Contract 2023-2024  
Project No. 23000-JOC  
Bid Due Date: Monday, November 13<sup>th</sup> at 10:00A.M.

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury that the bidder **has**   , **has not** , been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or Trustees of the California State University.

The term "bidder" is understood to include bidder and any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

**NOTE: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided above.**

11/13/2023  
Date

  
Signature of Principal

Robert E. Burke, President  
Printed Name, Title of Principal

R. Burke Corporation  
Company

P.O. Box 957  
Address

San Luis Obispo, CA 93406  
City, State & Zip



# **EXHIBIT “C”**

Indemnification and Insurance Requirements

## EXHIBIT C

### Indemnification and Insurance Requirements (For Construction Contracts)

#### INDEMNIFICATION

CONTRACTOR agrees to 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.

#### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

#### INSURANCE

CONTRACTOR shall 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 that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. 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:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$2,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance 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. **Contractor's 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 the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

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

1. **Additional Insured** – 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 or on behalf of the CONTRACTOR 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 the CONTRACTOR'S insurance at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR'S insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 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 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** – **CONTRACTOR hereby agrees to waive rights of subrogation which any insurer of CONTRACTOR may acquire** from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees 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 the CONTRACTOR, its 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 the option of the COUNTY, either: the CONTRACTOR shall 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 the CONTRACTOR shall 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** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to 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 the CONTRACTOR'S obligation to provide them. The CONTRACTOR shall 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** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall 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, the CONTRACTOR 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. CONTRACTOR agrees 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.



## CERTIFICATE OF INSURANCE TRANSMITTAL FORM

FOR THE FOLLOWING DESCRIBED PROJECT:

County of Santa Barbara  
**General Building Construction Job Order Contract 2023-2024**  
Project No. 23000-JOC

CONTRACTOR:

**R. Burke Corporation**

\_\_\_\_\_  
Name

**P.O. Box 957**

\_\_\_\_\_  
Address

**San Luis Obispo, CA 93406**

\_\_\_\_\_  
City, State & Zip Code

The successful bidder shall furnish satisfactory proof of the maintenance of adequate Worker's Compensation Insurance, and the maintenance of Comprehensive General and Automobile Liability Insurance, in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The County of Santa Barbara (COUNTY), its officers, employees, and agents shall be named as additional insured on all certificates. A copy of the endorsement evidencing that the County has been added to the policy must be attached to the certificate of insurance. Each such policy shall provide that the COUNTY shall be given thirty (30) days' prior written notice prior to cancellation or expiration of such policy or reduction in coverage. Refer to section 5.18 of the General Conditions.

In addition to the above, the following information must appear on the certificates:

County of Santa Barbara  
**General Building Construction Job Order Contract 2023-2024**  
Project No. 23000-JOC

This form must be attached to all insurance forms sent to the County of Santa Barbara, General Services Department:

\_\_\_\_\_  
Authorized Insurance Company Representative's Signature

*This form may be reproduced as required.*



RBURKEC-01

PATRA08

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/14/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER License # 0305584 Morris & Garritano Insurance Agency, Inc. CONTACT Name: Jocelyn Wild PHONE (A/C, No., Ext): (805) 543-6887 304 FAX (A/C, No): E-MAIL ADDRESS: jwild@morrisingarritano.com

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liab, Excess Liab, Workers Compensation and Employers' Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Re: Project No. 23000-JOC, Job Order Contract #2023-2024, General Building Construction, Santa Barbara County, CA.

CERTIFICATE HOLDER CANCELLATION

County of Santa Barbara 1105 Santa Barbara St Santa Barbara, CA 93101 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BLANKET ADDITIONAL INSURED**  
**(Includes Products-Completed Operations If Required By Contract)**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

**PROVISIONS**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.
- b. The insurance provided to such additional insured does not apply to:

- (1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and

- (b) Supervisory, inspection, architectural or engineering activities.

- (2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

- c. The additional insured must comply with the following duties:

- (1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

- (a) How, when and where the "occurrence" or offense took place;

- (b) The names and addresses of any injured persons and witnesses; and

- (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- (2) If a claim is made or "suit" is brought against the additional insured:

## COMMERCIAL GENERAL LIABILITY

- (a) Immediately record the specifics of the claim or "suit" and the date received; and
  - (b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.



# COUNTY OF SANTA BARBARA UNLAWFUL DISCRIMINATION ORDINANCE

Section 2-95. Prohibition of unlawful discrimination in employment practices. The COUNTY reserves the right to terminate forthwith each and every written contract and agreement (except purchase orders) respecting real property for goods and/or services entered into by the COUNTY or by its joint powers, agencies, or agents with the consent of the other parties (hereinafter called "CONTRACTOR") 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 employee or applicant for employment 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 handicap when otherwise qualified, Vietnam war veteran/disabled, age, medical condition, marital status, ancestry, sexual orientation, or other legally protected status.

Such finding may only be made after CONTRACTOR has had a full and fair hearing on notice of thirty (30) days before an impartial hearing officer at which hearing CONTRACTOR may introduce evidence, produce witness, 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 expense of such hearing, including reasonable attorney's fees to CONTRACTOR in accordance with current Santa Barbara County Superior Court schedule of attorney's 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 attorney's 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 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 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.

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 selection for training and apprenticeship and probationary periods.

CONTRACTOR shall permit access at all reasonable time and places to all of its records of employment, advertising, application forms, tests, and all other pertinent employment data and records, to the COUNTY, 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 Supervisor 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 relating to unlawful discrimination in employment practices shall be deemed to be a material breach of any contract or agreement with the COUNTY. All persons contracting with or who have contracts for goods or services with the COUNTY shall be notified that this chapter applied to their contract or agreement with the COUNTY (Ordinance No. 2946, SS1; Ordinance No. 2993, SS1; and Ordinance No. 3018, SS1).

Section 2-95.5. Exceptions. Notwithstanding any other provisions in this article, any party contracting with the COUNTY having an affirmative action program which has been approved within twelve (12) 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.

Section 2-96. Purchase orders. Purchase orders shall contain the following clause as grounds for termination of such purchase orders:

"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 may forthwith terminate this order." (Ordinance No. 2946, SS 1)

Section 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 is engaging, or during the term of a contract or agreement with the COUNTY 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 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 expense 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 (Ordinance No. 2946, SS 1)

# **EXHIBIT “D”**

# **EXHIBIT “D”**

Federal Clauses and Anti-Byrd Form

**EXHIBIT D**  
**Federal Clauses**

1. Additional Federal Clauses Applicable for Federal Funding under this Agreement.  
(2 CFR § 200.326; 2 CFR Part 200, Appendix II, Required Contract Clauses)

**A. REMEDIES FOR NONCOMPLIANCE.**

- i. In the event COUNTY determines, at 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.

2. **EQUAL EMPLOYMENT OPPORTUNITY.**

- A. During the performance of this Agreement, CONTRACTOR agrees as follows:  
CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- C. CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency

and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- F. In the event of CONTRACTOR'S noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

### **3. CLEAN AIR ACT.**

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. CONTRACTOR agrees to report each violation to the California Environmental Protection Agency and understands and agrees that the California Environmental Protection Agency will, in turn, report each violation as required to assure notification to the COUNTY, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### **4. FEDERAL WATER POLLUTION CONTROL ACT.**

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. CONTRACTOR agrees to report each violation to the California State Water Resources Control Board and understands and agrees that the California State Water Resources Control Board will, in turn, report each violation as required to assure notification to the COUNTY, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

C. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**5. DEBARMENT AND SUSPENSION.**

A. CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

B. This certification is a material representation of fact relied upon by COUNTY. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the California Governor's Office of Emergency Services and COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

C. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such CONTRACTOR is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

D. CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

E. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**6. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED).**

CONTRACTOR shall file the required certification attached as Exhibit \_\_\_\_, Certification for Contracts, Grants, Loans, and Cooperative Agreement (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (As Amended), which is incorporated herein by this reference. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**7. PROCUREMENT OF RECOVERED MATERIALS.**

A. In the performance of this Agreement, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired.

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

**B.** 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>.

## **8. CHANGES.**

**A. Notice.** The primary purpose of this clause is to obtain prompt reporting of COUNTY conduct that CONTRACTOR considers to constitute a change to this contract. Except for changes identified as such in writing and signed by COUNTY, the Contractor shall notify the COUNTY in writing promptly, within five (5) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the CONTRACTOR regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state:

- i. The date, nature, and circumstances of the conduct regarded as a change;
- ii. The name, function, and activity of each Government individual and CONTRACTOR official or employee involved in or knowledgeable about such conduct;
- iii. The identification of any documents and the substance of any oral communication involved in such conduct;
- iv. In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- v. The particular elements of contract performance for which CONTRACTOR may seek an equitable adjustment under this clause, including:
  - a. What line items have been or may be affected by the alleged change;
  - b. What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
  - c. To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
  - d. What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
- vi. CONTRACTOR'S estimate of the time by which COUNTY must respond to CONTRACTOR'S notice to minimize cost, delay or disruption of performance.

**B. Continued Performance.** Following submission of the required notice, CONTRACTOR shall diligently continue performance of this Agreement to the maximum extent possible in accordance with its terms and conditions as construed by the CONTRACTOR.

**C. COUNTY Response.** COUNTY shall promptly, within ten (10) calendar days after receipt of notice, respond to the notice in writing. In responding, COUNTY shall either:

- i. Confirm that the conduct of which CONTRACTOR gave notice constitutes a change and when necessary direct the mode of further performance;
- ii. Countermand any communication regarded as a change;



- iii. Deny that the conduct of which CONTRACTOR gave notice constitutes a change and when necessary direct the mode of further performance; or
- iv. In the event the Contractor's notice information is inadequate to make a decision, COUNTY will advise CONTRACTOR what additional information is required, and establish the date by which it should be furnished and the date thereafter by which COUNTY will respond.

**D. Equitable Adjustments.**

- i. If the COUNTY confirms that COUNTY conduct effected a change as alleged by the CONTRACTOR, and the conduct causes an increase or decrease in the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Agreement, whether changed or not changed by such conduct, an equitable adjustment shall be made:
  - a. In the contract price or delivery schedule or both; and
  - b. In such other provisions of the Agreement as may be affected.
- ii. The Agreement shall be modified in writing accordingly. The equitable adjustment shall not include increased costs or time extensions for delay resulting from CONTRACTOR'S failure to provide notice or to continue performance as provided herein.

**9. ACCESS TO RECORDS.** The following access to records requirements applies to this Agreement:

- A. 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.
- B. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. 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.

**10. 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.

**11. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS.**

This is an acknowledgement that FEMA financial assistance will 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.

**12. 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.

**13. 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.

**14. 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](http://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.)

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,  
AND COOPERATIVE AGREEMENTS**

(Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (As Amended))

The undersigned CONTRACTOR certifies, to the best of his or her knowledge, that:

1. 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 an 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.
2. 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 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.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 (as amended by the Lobbying Disclosure Act of 1995). 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.

CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

**EXHIBIT E**  
**CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUND REQUIRED**  
**TERMS**

This Agreement is funded through the Coronavirus State and Local Fiscal Recovery Fund (SLFRF), a part of the American Rescue Plan Act (ARPA or Act), Pub. L. No. 117-2 (March 11, 2021) (codified as 42 U.S.C. § 801 *et seq.*). ARPA imposes certain requirements through the Act, its implementing regulations at 2 CFR Part 200, the Award Terms and Conditions imposed by the U.S. Department of the Treasury (Treasury) onto the COUNTY, and Treasury's *Coronavirus State and Local Fiscal Recovery Funds Compliance and Reporting Guidance*. In recognition of these funding requirements, CONTRACTOR agrees to the following provisions:

**1. GENERAL COMPLIANCE.**

CONTRACTOR shall comply with the requirements of the Act; the SLFRF; the United States Department of the Treasury Coronavirus State Fiscal Recovery Fund Award Terms and Conditions imposed by the U.S. Department of the Treasury (Treasury) onto the COUNTY; and all other applicable federal, state, and local laws, regulations, ordinances, orders, rules, guidelines, directives, circulars, bulletins, notices, and policies governing SLFRF currently and as they may be amended from time to time.

**2. USE OF FUNDS.**

- A. CONTRACTOR agrees that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of this Agreement.
- B. CONTRACTOR understands and agrees the funds disbursed under this contract may only be used in compliance with Sections 603(c) of the Act and Treasury's regulations implementing those sections and guidance.

**3. REPORTING.**

CONTRACTOR shall comply with any reporting obligations established by the Treasury, as they relate to this Agreement, upon request from COUNTY.

**4. MAINTENANCE OF AND ACCESS TO RECORDS.**

- A. Pursuant to 2 CFR section 200.337 and Section 4 of the Award Terms and Conditions, CONTRACTOR shall maintain records and financial documents sufficient for COUNTY to show compliance with Sections 602(c) and 603(c) of the Act, Treasury's regulations implementing those sections, and guidance regarding the eligible uses of funds.
- B. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of CONTRACTOR in order to conduct audits or other investigations.

- C. Irrespective of Section 6 – Right to Audit of the Agreement, records shall be maintained by CONTRACTOR for a period of five (5) years after final payment for the Services.

**5. CONFLICT OF INTEREST.**

- A. 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 COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.
- B. CONTRACTOR understands and agrees it must maintain a conflict of interest policy consistent with 2 CFR section 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. CONTRACTOR must disclose in writing to COUNTY, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 CFR section 200.112.

**6. TERMINATION.**

- A. By COUNTY. COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.
  - i. **For Convenience.** COUNTY may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, CONTRACTOR shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services.
  - ii. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.
  - iii. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in

part by written notice. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance. The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.

- B. Upon termination, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

## **7. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.**

- A. COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY.
- B. Unless otherwise specified in the Agreement, CONTRACTOR hereby assigns to COUNTY all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon intellectual or other

proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

## **8. EQUAL EMPLOYMENT OPPORTUNITY.**

During the performance of this Agreement, CONTRACTOR agrees as follows:

- A. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
  - i. CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - ii. CONTRACTOR agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor regulations (41 CFR Part 60) and all other applicable rules, regulations, and relevant orders of the Secretary of Labor. Title 41 CFR section 60.14 applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the regulation were specifically set out herein and CONTRACTOR agrees to comply with said regulation.
  - iii. CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - iv. In the event of CONTRACTOR'S noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders,

this Agreement may be cancelled, terminated, or suspended in whole or in part and CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- v. CONTRACTOR will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (F) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

## 9. NONDISCRIMINATION.

- A. CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement.
- B. CONTRACTOR shall report any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome.
- C. CONTRACTOR shall incorporate the language in Section 10 (A) through (B). in every agreement with a contract or purchase order funded under this Agreement.
- D. CONTRACTOR shall comply with the Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., as codified at 45 CFR Part 91, which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.
- E. CONTRACTOR shall comply with Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, 1682, 1683, 1685, and 1686, as codified at 45 CFR Part 86, which



provides that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

**10. CLEAN AIR ACT.**

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. CONTRACTOR agrees to report each violation to the California Environmental Protection Agency and understands and agrees that the California Environmental Protection Agency will, in turn, report each violation as required to assure notification to the COUNTY, the Federal Agency which provided funds in support of this Agreement, and the appropriate Environmental Protection Agency Regional Office.
- C. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

**11. FEDERAL WATER POLLUTION CONTROL ACT.**

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. CONTRACTOR agrees to report each violation to the California State Water Resources Control Board and understands and agrees that the California State Water Resources Control Board will, in turn, report each violation as required to assure notification to the COUNTY, the Federal Agency which provided funds in support of this Agreement, and the appropriate Environmental Protection Agency Regional Office.
- C. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

**12. DEBARMENT AND SUSPENSION.**

- A. As required by 2 CFR section 200.214, CONTRACTOR warrants that it is not subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180, which restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.
- B. This certification is a material representation of fact relied upon by COUNTY. If it is later determined that CONTRACTOR did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to the California Governor's Office of Emergency Services and COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- C. This Agreement is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000. As such CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 CFR section 180.995), or its affiliates (defined at 2 CFR section 180.905) are excluded (defined at 2 CFR section 180.940) or disqualified (defined at 2 CFR section 180.935).
- D. CONTRACTOR must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- E. The bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**13. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED).**

CONTRACTOR shall file the required certification attached as Attachment A Certification for Contracts, Grants, Loans, and Cooperative Agreement (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (As Amended), which is incorporated herein by this reference. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**14. PROCUREMENT OF RECOVERED MATERIALS.**

- A. In the performance of this Agreement, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
  - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - i. Meeting contract performance requirements; or
  - ii. At a reasonable price.

- B. 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>.

**15. DOMESTIC PREFERENCES FOR PROCUREMENTS.**

- A. As appropriate and to the extent consistent with law, the CONTRACTOR should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or

use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontractor agreements.

B. For purposes of this section:

- i. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- ii. “Manufactured products” means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**16. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

A. CONTRACTOR is prohibited from obligating or expending loan or grant funds to:

- i. Procure or obtain;
  - ii. Extend or renew a contract to procure or obtain; or
  - iii. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- B. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- C. Telecommunications or video surveillance services provided by such entities or using such equipment.
- D. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- E. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy

programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

F. See Public Law 115-232, section 889 for additional information.

G. See also 2 CFR section 200.471.

#### **17. 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](http://www.sam.gov). Failure to make required disclosures can result in any of the remedies described in 2 CFR section 200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR Part 180 and 31 U.S.C. 3321.)

#### **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. Wholly or partly suspend or terminate the Agreement.
- B. Require payments as reimbursements rather than advance payments;
- C. Withhold authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- D. Require additional, more detailed financial reports;
- E. Require additional project monitoring;
- F. Requiring CONTRACTOR to obtain technical or management assistance; or
- G. Establish additional prior approvals.
- H. Take other remedies that may be legally available.

#### **19. PREVAILING WAGE**

If this project meets the requirements under U.S. Treasury's FAQ dated April 27, 2022, section 6.15, the Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with ARPA awarded funds. Subrecipients and contractors may be otherwise subject to the requirements of Davis-Bacon Act, when APRA funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act. State of California Prevailing Wage Laws will apply to these funds.

**20. COPELAND ACT.**

The CONTRACTOR shall comply with the requirements of 29 CFR Part 3 as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States") which are hereby incorporated by reference in this Agreement.

CONTRACTOR is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. In the case of a conflict with California Prevailing Wage law, California Prevailing Wage Law shall apply.

**21. CONTRACT WORK HOURS AND SAFETY STANDARDS - OVERTIME COMPENSATION.**

- A. Overtime requirements. No CONTRACTOR or subcontractor employing laborers or mechanics shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- B. Violation; liability for unpaid wages; liquidated damages. The responsible CONTRACTOR and subcontractor are liable for unpaid wages if they violate the terms in paragraph A. of this clause. In addition, the CONTRACTOR and subcontractor are liable for liquidated damages payable to the Government. The COUNTY will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).
- C. Withholding for unpaid wages and liquidated damages. The COUNTY will withhold from payments due under the contract sufficient funds required to satisfy any CONTRACTOR or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy CONTRACTOR or subcontractor liabilities, the COUNTY will withhold payments from other Federal or Federally assisted contracts held by the same CONTRACTOR that are subject to the Contract Work Hours and Safety Standards statute.
- D. Payrolls and basic records.
  - i. The CONTRACTOR and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

- ii. The CONTRACTOR and its subcontractors shall allow authorized representatives of the COUNTY or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph D.1. of this clause. The CONTRACTOR or subcontractor also shall allow authorized representatives of the COUNTY or Department of Labor to interview employees in the workplace during working hours.

E. Subcontracts. The CONTRACTOR shall insert the provisions set forth in paragraphs A. through D. of this clause in subcontracts may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The CONTRACTOR shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs “A” through “D” of this clause.

F. In the case of a conflict with California Prevailing Wage law, California Prevailing Wage Law shall apply.

**22. UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.**

Except as provided in the Assistance Listing available at <https://sam.gov/fal/7cecfdef62dc42729a3fdcd449bd62b8/view>, CONTRACTOR shall comply with the requirements of Title 2, Code of Federal Regulations, Part 200, which are hereby incorporated by reference in this Agreement.

**23. TABLE 1: FEDERAL AWARD INFORMATION: COUNTY.**

The following Federal Award Information is provided in accordance with 2 CFR section 200.332.

Federal Award Identification		
1	Contractor Name	
2	Place of Performance (address, city, state, zip)	
3	Contractor Contact (email)	
4	Contractor Unique Entity Number (UEI Number)	
5	Federal Award Identification Number (FAIN)	SLFRP5502
6	Federal Award Date	September 2021
7	Period of Performance & Budget Period- Start Date	
8	Period of Performance & Budget Period- End Date	
9	Federal Award Project Description	
10	Federal Awarding Agency	Department of the Treasury
11	Pass-Through Entity	County of Santa Barbara
12	Contact Information for Awarding Official of Pass-Through Entity	Mona Miyasato, County Executive Officer, (805) 568-3400
13	CFDA Number	21.027
14	CFDA Name	Coronavirus State and Local Fiscal Recovery Funds
15	Is the Contractor Registered on SAM.gov (Yes/No)	
16	If not registered on SAM.gov (Question #24) did the contractor receive 80% or more of its annual gross	

	revenue from federal funds in the preceding fiscal year (Yes/No)	
17	If not registered on SAM.gov (Question #24) did the contractor receive \$25 million or more of its annual gross revenue from federal funds in the preceding fiscal year (Yes/No)	

**Attachment A**

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

**(Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (As Amended))**

The undersigned CONTRACTOR certifies, to the best of his or her knowledge, that:

1. 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 an 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.
2. 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 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.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly.

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 (as amended by the Lobbying Disclosure Act of 1995). 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.

CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of CONTRACTOR's Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of CONTRACTOR's Authorized Official