GENERAL CONDITIONS

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SECTION A

DEFINITIONS AND TERMS

1. General

Wherever the following abbreviations and terms, or pronouns in place of them, are used in these Conditions and other Contract Documents of which these Conditions are a part, the intent and meaning shall be interpreted as provided below.

1. Abbreviations

The following abbreviations may be used in the Contract Documents:

ACI The American Concrete Institute

AGC Associated General Contractors

AI The Asphalt Institute

ANSI American National Standards Institute, Inc.

APWA American Public Works Association

ASCE American Society of Civil Engineers

ASTM American Society for Testing and Materials

BHMA Builders Hardware Manufacturers Association

CEQA California Environmental Quality Act

CFR Code of Federal Regulations

ETL Electrical Testing Laboratory

FS Federal Specification

HBMWD Humboldt Bay Municipal Water District

IEEE The Institute of Electrical and Electronics Engineers

NBFU National Board of Fire Underwriters

NEC National Electrical Code

NEMA National Electrical Manufacturers Association

NFPA National Fire Protection Association

OSHA Occupational Safety and Health Act of 1970

SSPWC Standard Specifications for Public Works Construction

UL Underwriter's Laboratory

USAS The United States of America Standard Institute

"State" - State of California

"State Standard Specifications" - Standard Specifications issued by the State of California Business and Transportation Agency, Department of Transportation, dated 2010, and as amended, unless a specific edition is referenced.

1. Definitions
2. Acceptance - The formal written acceptance by the DISTRICT of the entire Contract which has been completed in all respects in accordance with the Specifications and any approved modifications.
3. Addenda - Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the Contract Documents, Drawings and Specifications by additions, deletions, clarifications or corrections.
4. As Approved - The words "as approved" unless otherwise qualified, shall be understood to be followed by the words "by the District."
5. Bid - The offer of the Bidder for the Work when made out and submitted on the prescribed bid form, properly signed and guaranteed. A Bid is also known as a Proposal.
6. Bid Bond - The cash, cashier's check, certified check, or bidder's bond accompanying the Bid submitted by the bidder, as a guarantee that the Bidder will enter into a Contract with the DISTRICT for the performance of work herein described.
7. Bidder - Any individual, firm, partnership or corporation submitting a bid for the work contemplated, and acting directly or through a duly authorized representative.
8. Board of Directors or Board – The Board of Directors of the Humboldt Bay Municipal Water District
9. Change Orders - A written order to the Contractor authorizing an addition, deletion, or revision in the work within the general scope of the Contract Documents or authorizing adjustment in the Contract price or Contract time.
10. Claim - A separate demand by the Contractor for (i) a time extension, (ii) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (iii) an amount the payment of which is disputed by the DISTRICT.
11. Contract - The written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment in the construction of the Work. The Contract shall include all Contract Documents and supplemental agreements amending or extending the work contemplated which may be required to complete the Work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations, amendments or extensions to the Contract and include Addenda and Contract Change Orders.
12. Contract Documents - The Contract Documents are any or all of the documents listed in Article I of the Contract.
13. Contract Price - Total monies payable to the Contractor under the terms and conditions of the Contract Documents.
14. Contract Time - The numbers of days stated in the Contract Documents for the completion of the Work.
15. Contractor - The person or persons, firm, partnership or corporation or other entity who has entered into the Contract with the DISTRICT to perform the Work.
16. Contract Drawings - "Contract Drawings" or "drawings" means and includes:
17. all drawings which have been prepared on behalf of the DISTRICT and which are included in the Contract Documents and all modifying drawings issued by addenda thereto;
18. all drawings submitted pursuant to the terms of the Contract by the Contractor with his proposal and by the Contractor to the DISTRICT during the progress of the Work when accepted by the DISTRICT. Except where a specific type of drawing is indicated, the terms "Drawings" and "Plans" are used interchangeably throughout the Contract Documents and the Plans are Drawings as defined above.
19. County - County of Humboldt, California.
20. Date of Execution of the Contract - The date on which the Contract is signed by the DISTRICT's authorized representative.
21. Days - Unless otherwise designated, days as used in the Contract Documents shall mean calendar days.
22. District - The HUMBOLDT BAY MUNICIPAL WATER DISTRICT, may also be referred to as the DISTRICT or OWNER.
23. Field Order - A written order effecting a change in the Work not involving an adjustment in the Contract Price or an extension of Contract Time, issued by the DISTRICT to the Contractor during construction.
24. His - "His" shall include "her" and "its".
25. Install - "Install" wherever and in whatever manner used shall mean the installation, complete in place of an item.
26. Notice of Award - The written notice of the acceptance of the Bid from the DISTRICT to the successful Bidder.
27. Notice to Proceed - Written communication issued by the DISTRICT to the Contractor authorizing him to proceed with the Work and establishing the date of commencement of the Work.
28. Or Equal - The terms "or equal" or "approved equal" shall be understood to indicate that the "equal" product be the same or better than the product named in function, performance, reliability, quality and general configuration. Determination of equality in reference to the project design requirement will be made by the DISTRICT.
29. District Project Representative – The authorized representative of the DISTRICT who is assigned to the project site or any part of thereof.
30. Plans or Specification Drawings - The term "Plans or Specification Drawings" refers to the official Plans, profiles, cross sections, elevations, details, and other working drawings and supplementary drawings, or reproductions thereof, which show the location, character, dimensions, and details of the work to be performed. Plans may either be bound in the same book as the balance of the Contract Documents or bound in separate sets, and are a part of the Contract Documents, regardless of the method of binding.
31. Project - The undertaking performed as provided by the Contract Documents.
32. Provide - "Provide" wherever and in whatever manner used shall be understood to mean furnish and install.
33. Resident Project Representative - Authorized representative of the District who is assigned to the Project or any part thereof.
34. Service of Notice - Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative thereof. Any such notice shall not be effective for any purpose whatsoever unless service in the following manner:
35. If the notice is given to the DISTRICT by personal delivery thereof, the DISTRICT'S Project Representative or by depositing the notice in the U.S. mail, enclosed in a sealed envelope addressed to HUMBOLDT BAY MUNICIPAL WATER DISTRICT, P.O. Box 95, Eureka, CA 95502-0095, postage prepaid, by certified mail return receipt requested.
36. If the notice is given to the Contractor, by personal delivery to the Contractor or its duly authorized representative at the project site or by depositing in the U.S. mail, enclosed in a sealed envelope address to the Contractor on the Contract Form, postage prepaid, by certified mail, return receipt request.
37. If the notice is given to the Surety or any other person, by personal delivery to such Surety or other person or by depositing in the U.S. mail, enclosed in a sealed envelope, addressed to the surety or other person at the address of such Surety or other person last communicated to the party giving the notice, postage prepaid, by certified mail return receipt requested.
38. Shall or Will - “Shall,” or “Will,” whenever used to stipulate anything, means shall or will be done or be performed by either the Contractor or the DISTRICT and means that the Contractor or the DISTRICT has thereby entered into a covenant with the other party to do or perform the same.
39. Shop Drawing - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.
40. Shown - “Shown,” “indicated,” “detailed,” and words of like import, wherever and in whatever manner used, with or without reference to the drawings, means shown, indicated or detailed on the Drawings or Plans.
41. Specifications - A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship, including the General Conditions and Supplemental General Conditions.
42. Specified - “Specified,” “described,” or “noted,” wherever and in whatever manner used, means as specified, described or noted in the Contract Documents.
43. Subcontractors - The term "Subcontractor", as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the Plans or Specifications of this Work, .
44. Substantial Completion - That date as certified by the DISTRICT when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it is intended.

The DISTRICT may, at its sole discretion, issue a written notice of substantial completion for the purpose of establishing the starting date for specific equipment guarantees, and to establish the date that the DISTRICT will assume the responsibility for the cost of operating such equipment. Said notice shall not be considered as final acceptance of any portion of the Work or relieve the Contractor from completing the remaining work within the specified time and in full compliance with the Contract Documents.

1. Sufficient - “Sufficient,” “necessary,” or “proper,” “acceptable,” “satisfactory,” “desirable,” and words of like import, wherever and in whatever manner used, with or without reference to the DISTRICT, means sufficient, necessary, proper, acceptable, satisfactory and desirable in the judgment of the DISTRICT.
2. Supplementary Conditions - Modifications to General Conditions required by a Federal Agency for participation in the PROJECT and approved by the Agency in writing prior to inclusion in the Contract Documents, or such requirements that may be imposed by applicable State laws.

References to “Supplemental General Conditions” in the General Conditions and elsewhere in the Contract Documents shall be construed to read “Supplementary Conditions.”

1. Supplier - Any person or organization who supplies materials or equipment for the Work, but who does not perform labor at the site.
2. Time Limits - All time limits stated in the Contract Documents are of the essence of the Contract.
3. Work - All the work specified, indicated, shown or contemplated in the Contract to construct the improvements, including all alterations, amendments or extensions thereto made by Contract Change Order or other written orders of the DISTRICT.
4. Written Notice - "Written Notice" shall be deemed to have been duly served when delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or if delivered at or sent by registered mail to the last business address known to it who gives the notice.
5. Whenever in the Specifications or upon the Drawings the words DIRECTED, REQUIRED, PERMITTED, ORDERED, DESIGNATED, PRESCRIBED, or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the DISTRICT is intended, and similarly the words APPROVED, ACCEPTABLE, SATISFACTORY, or words of like import, shall mean approved or acceptable to, or satisfactory to the District, unless otherwise expressly stated.

SECTION B

GENERAL CONDITIONS

ARTICLE I. SCOPE OF WORK

1. Intent of Contract Documents

The intent of the Contract Documents is to prescribe the details for the construction and completion of the Work which the Contractor undertakes to perform in accordance with the terms of the Contract. Where the Specifications and Plans describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. The Contractor shall furnish labor and materials as specified in the Technical Specifications. Contractor shall also provide tools, equipment and incidentals as needed to do their portion of the work involved in performing the Contract in a satisfactory and workman like manner.

The technical provisions are presented in sections for convenience. However, this presentation does not necessarily delineate trades or limits of responsibility. All sections of the Specifications and Plans are interdependent and applicable to the Project as a whole.

The Contract Documents are complementary, and what is called for in any one shall be as binding as if called for in all.

Anything shown on the Drawings and not mentioned in the Specifications or mentioned in the Specifications and not shown on the Drawings shall have the same effect as if shown or mentioned respectively in both. Any work shown on one drawing shall be construed to be shown in all drawings and the Contractor will coordinate the Work and the Drawings. If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: The DISTRICT-Contractor Contract; the Bid; any Supplementary or Special Conditions; Instructions to Bidders; the General Conditions; the Specifications; the Drawings. Technical Specifications take priority over general Specifications and detail Drawings take precedence over general Drawings. As between schedules and information given on Drawings, the Schedules shall govern. As between figures given on Drawings and the scales measurements, the figures shall govern. As between large-scale Drawings and small-scale Drawings, the larger scale shall govern. Any conflict or inconsistency between or in the Drawings shall be submitted to the DISTRICT through the DISTRICT'S Project Representative or Resident Project Representative in writing. Work done by the Contractor after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's own risk.

1. Contractor's Understanding

It is understood and agreed that the Contractor has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work under this Contract. No verbal agreement or conversation with any officer, agent or employee of the DISTRICT, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

Contractor shall comply with all Federal, State, and Local laws and regulations applicable to this scope of work and said project, as well as all permits and environmental conditions established for this project (see section B-10). Contractor is responsible for obtaining all necessary permits for construction except for those permits already obtained by the DISTRICT prior to construction. If a Contractor materially fails to comply with any term of this award, whether stated in a Federal statue or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the DISTRICT may take one or more of the actions outlined in 44 CFR Section 13.43, including termination of the project. Project awards may be terminated for convenience through the procedures outlined in 44 CFR Section 13.44.

1. Changes in the Work

The DISTRICT may, at any time, by written order make changes in the Work including but not limited to: (a) changes in the Specifications or Drawings; (b) changes in the sequence, method or manner of performance of the Work; (c) changes in the owner-furnished facilities, equipment, materials, services or site; or (d) changes directing acceleration of the Work. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract an equitable adjustment will be made and the Contract modified in writing accordingly.

Such modification will be in the form of a Contract Change Order which will set forth the work to be done or the method by which the change and cost adjustment, if any, will be determined, and the time of completion of the Work.

The compensation to be paid for any extra work or change shall be determined in one or more of the following ways or at DISTRICT's sole election:

1. By unit prices previously approved (unit prices previously approved shall be used in all cases for similar units unless mutually agreed that for some reason they are not applicable);
2. By estimate and acceptance of an agreed upon lump sum; or
3. On a time and materials basis involving the actual necessary expenses and other services necessary to complete the Work. In addition, there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual necessary expense to cover the cost of general overhead, general superintendence, other expenses and profit. In the events that items (a) and (b) above are not applicable, then this latter method (c) shall be used. Markup by Subcontractors on their work shall not exceed fifteen percent. Contractor's markup on Subcontractor's work shall not exceed five (5) percent.

The Contractor shall keep full and complete records of the actual cost of such work in the form and manner prescribed by the DISTRICT to have access to such records as may be necessary to assist in the determination of the compensation payable for such work.

The DISTRICT also may at any time by issuing a Field Order make changes in the details of the Work. The Contractor shall proceed with the performance of any change in the Work so ordered by the DISTRICT unless the Contractor believes that such Field Order entitles it to a change in the Contract Price or Time, or both in which event the Contractor shall give the DISTRICT written notice thereof within seven (7) calendar days after the receipt of the ordered change. The Contractor shall not execute such changes pending the receipt of an executed change order or further instruction from the DISTRICT.

If the Contractor is delayed in completing by reason of any change made pursuant to this section, the time for completion of the Work shall be extended by change order for a period agreed to, commensurate with such delay. The Contractor shall not be subjected to any claim for liquidated damages for this period of time, but the Contractor shall have no claim for any other compensation for any such delay.

1. Procedures and Allowable Costs on Changes
2. All changes which affect the cost or time of the construction of the project must be authorized by means of a Change Order. The Change Order will include extra work, work for which quantities have been altered from those shown in the bidding schedule, as well as decreases or increases in the quantities of installed units which are different than those shown in the bidding schedule because of final measurements. All changes should be recorded on a Change Order as they occur. Each Change Order must contain complete and detailed justification for all items addressed by the Change Order.
3. If the change in or addition to the Work will result in an increase in the contract sum, the DISTRICT shall have the right to require the performance thereof in any of the following ways, at DISTRICT's sole election:
4. By unit prices previously approved (unit prices previously approved shall be used in all cases for similar units unless mutually agreed that for some reason they are not applicable);
5. By estimate and acceptance of an agreed upon lump sum; or
6. On a time and materials basis involving the actual necessary expenses and other services necessary to complete the work. In addition, there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual necessary expense to cover the cost of general overhead, general superintendence, other expenses and profit. In the events that items (a) and (b) above are not applicable, then this latter method (c) shall be used. Markup by Subcontractors on their work shall not exceed fifteen percent. Contractor's markup on Subcontractor's work shall not exceed five percent (5%).
7. If the DISTRICT elects to have the Change in the Work performed on a lump sum basis, such election shall be based on a lump sum proposal which shall be submitted by the Contractor within ten (10) calendar days of the DISTRICT's request therefor. Request for a lump sum proposal shall not be deemed an election to have the Work performed on a lump sum basis. The Contractor's proposal shall be itemized and segregated by labor and materials for the various components of the change (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any Subcontractors which will perform any portion of the change, and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the Contractor's estimate of the time required to perform said changes or additional work.

The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include reasonably anticipated gross wages of Job Site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime labor, if overtime is anticipated, social security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such Subcontractor in connection with such labor) and up to fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as overhead and profit for the Contractor or any such Subcontractor, as applicable (such overhead and profit to include all supervision except foremen.)

The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales or use taxes and up to fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as overhead and profit for the Contractor or any such Subcontractor, as applicable (such overhead and profit to include all supervision except foremen.)

The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales or use taxes and up to fifteen percent (15%) of said direct material costs as overhead and profit for the Contractor or any such Subcontractor (such overhead and profit to include all small tools), and may further include the Contractor's and any of its Subcontractors' reasonably anticipated rental costs in connection with the Change in the Work (either actual rates or discounted local published rates), plus up to five percent (5%) thereof as overhead and profit for the Contractor or any such Subcontractors, as applicable. If any of the items included in the lump sum proposal are covered by unit prices contained in the Contract Document, the DISTRICT may, if it requires the Change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum proposal in which event and appropriate deduction will be made in lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

The lump sum proposal may include up to five percent (5%) of the amount which the Contractor will pay to any of its Subcontractors for the Change in the Work as a commission to the Contractor.

1. In the event that the Contractor fails to submit its proposal within the designated period, the DISTRICT may direct the Contractor to proceed with the Change or Addition to the Work and the Contractor shall so proceed. The District shall determine the reasonable costs and time to perform the Work in question, which determination when approved by DISTRICT shall be final and binding upon the Contractor.
2. In the event that the parties are unable to agree as to the reasonable costs and time to perform the change in or addition to the Work based upon the Contractor's proposal and DISTRICT does not elect to have the change in the Work performed on a time and material basis, the DISTRICT shall make a determination of the reasonable cost and time to perform the Change in the Work, based upon their own estimates, the Contractor's submission or combination thereof. A Change Order shall be issued for the amount of costs and time determined by the DISTRICT and shall become binding upon the Contractor unless the Contractor submits its protest in writing to the DISTRICT within thirty (30) calendar days of the issuance of the Change Order. The DISTRICT has the right to direct the Contractor in writing to perform the Change in the Work which is the subject of the Change Order. Failure of the parties to reach agreement regarding the costs and time of the performing the Change in the Work and/or any pending protest shall not relieve the Contractor from performing the Change in the Work promptly and expeditiously.
3. If the DISTRICT elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, at actual costs to the entity or entities performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendence of any nature whatsoever, including foremen, or the costs, use or rental of tools or plant), plus fifteen percent (15%) thereof as the total overhead and profit to the entity or entities actually performing the change (except that this fifteen percent (15%) shall not be applied against any payroll costs, defined herein with respect to lump sum proposals). If the entity or entities actually performing the work are Subcontractors or Sub-subcontractors, the Contractor shall be allowed five percent (5%) of the total charge of the performing entity or entities (including mark-up) as Contractor's mark-up. No other mark-ups shall be allowed hereunder. The Contractor shall submit to the DISTRICT daily work and material tickets, to include the identification number assigned to the Change in the Work, the location and description of the Change in the Work, the classification of labor employed (and names and social security numbers), the material used, the equipment rented (not tools) and such other evidence of cost as the DISTRICT may require. The DISTRICT may require authentication of all time and material tickets and invoices by persons designated by the DISTRICT for such purpose. The failure of the Contractor to secure any required authentication shall, if the DISTRICT elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the DISTRICT shall not constitute an acknowledgment by the DISTRICT that the items thereon were reasonably required for the Change in the Work.
4. No overhead and profit will be paid by the DISTRICT on account of a Change in the Work except as specifically provided in this Section B-4. Overhead and Profit, as allowed under this paragraph, shall be deemed to include all costs and expenses which the Contractor or any of its Subcontractors may incur in the performance of the Change in the Work and which are not otherwise specifically recoverable by them pursuant to this paragraph.
5. The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of this section, and which the Contractor, its Subcontractors and Sub-subcontractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all Changes in the Work performed pursuant to this section. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of its direct costs as compensable hereunder and an extension of the time of the Contract, but only in accordance with the provisions of the Contract Documents.

The Contractor agrees that it shall not be entitled to claim damages for anticipated profits on any portion of work that may be deleted. The amount of any adjustment for work deleted shall be estimated at the time deletion of work is ordered and the estimated adjustment will be deducted for the subsequent monthly pay estimates.

The DISTRICT reserves the right to contract with any person or firm other than the Contractor for any or all extra work.

1. Unilateral Change in or Addition to the Work

Notwithstanding the above, the DISTRICT may direct the Contractor in writing to perform changes in or additions to the scope of the Contract. The Contractor shall perform such work and the parties shall proceed pursuant to the provisions of Section B-4.

1. Claims for Extra Costs
2. The Plans for Work show the conditions as they are supposed or believed by the DISTRICT to exist, but it is neither intended nor to be inferred that the conditions as shown thereon constitute a representation by the DISTRICT or its officers that such conditions are universally existent nor shall the DISTRICT or any of its officers or representatives be liable for any loss sustained by the Contractor as a result of any variance between conditions as shown on the Plans and alternate conditions revealed during the progress of the Work, or otherwise.
3. The DISTRICT assumes no responsibility for any representations made by any of its officers or agents during or prior to the execution of this Contract, unless (1) such representations are expressly stated in the Contract, and (2) the Contract expressly provides that the responsibility therefor is assumed by the DISTRICT.
4. It is hereby mutually agreed that the Contractor shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the DISTRICT, or the happening of any event, thing or occurrence, unless the Contractor shall have given the DISTRICT due written notice of potential claims as hereinafter specified.
5. The written notice of potential claims 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. If such notice is not given, the Contractor shall be barred from making any such claim for extra compensation.
6. The Contractor may submit a claim to the DISTRICT concerning any matter for which a protest under Section B-3 or a notice of potential claim is filed within sixty (60) calendar days following the submission of said protest or notice, unless, due to the nature of the claim or the uncompleted state of the work, it is impracticable to determine the amount or the extent of the claim within such period, in which case a claim may be submitted at the earliest time thereafter that such determination can be made, but in no event later than the final release by the Contractor provided for in Section B-63. The claims shall set forth clearly and in detail, for each item of additional compensation claimed, the reasons for the claim, reference to applicable provisions of the Specifications, the nature and the amount of the cost involved, the computations used in determining such costs, and all pertinent factual data. The Contractor shall maintain complete and accurate records of the cost or any portion of the Work for which additional compensation is claimed, and shall provide the DISTRICT with copies thereof, as required.
7. The DISTRICT will, within a reasonable time after submission of the Contractor's claim, make decisions in writing on all claims of the Contractor. All such decisions of the DISTRICT shall be final unless the Contractor shall within ten (10) calendar days after receipt of the DISTRICT’s decision, file with the DISTRICT a written protest, stating clearly and in detail the basis thereof. The DISTRICT will consider the issue in protest and will issue a decision upon each such protest, and the DISTRICT's decision will be final. Pending such decision, the Contractor shall proceed with its work in accordance with the determination or instructions of the DISTRICT. It is hereby agreed that the Contractor's failure to protest the DISTRICT's determination or instructions, within ten (10) calendar days from and after the DISTRICT's determinations or instructions, shall constitute a waiver by the Contractor of all its rights to further protest, judicial or otherwise.
8. It is the intention of this Section that the differences between the parties, arising under and by virtue of the Contract, be brought to the attention of the DISTRICT 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 it shall have no right to additional compensation for any claim that may be based on any act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was timely filed.
9. In the event of an emergency endangering life or property, the Contractor shall act as stated in Section B-54 herein, and after execution of the emergency work shall present an accounting of labor, materials and equipment in connection therewith. The procedure for any payment that may be due for emergency work will be as specified in Section B-3 herein.
10. Disputes

Except as otherwise specifically provided in the Contract Documents, the DISTRICT will initially decide all claims of the Contractor and all disputes arising under and by virtue of the Contract. Such claim or dispute will be processed and decided by the DISTRICT as soon as practicable after its submission and the submission or availability of any additional information necessary to its decision. If the Contractor is dissatisfied with the DISTRICT's decision, the Contractor may, within 15 calendar days from the date of the DISTRICT's decision, follow the procedures set forth in Section B-47. If the Contractor fails to follow the procedures set forth in Section B-47 within the 15 calendar day period, then the DISTRICT's decision shall be final, conclusive and binding on the Contractor.

1. Guarantee
2. In addition to warranties, representations and guarantees stated elsewhere in the Contract Documents, the Contractor unconditionally guarantees all materials and workmanship furnished hereunder, and agrees to replace at its sole cost and expense, and to the satisfaction of the DISTRICT, any and all materials which may be defective or improperly installed.
3. The Contractor shall repair or replace to the satisfaction of the DISTRICT any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work which may be damaged or displaced in so doing.
4. In the event of failure to comply with the above stated conditions within a reasonable time, the DISTRICT is authorized to have the defect repaired and made good at the expense of the Contractor who will pay the costs and charges therefor immediately upon demand, including any reasonable management and administrative costs, and engineering, legal and other consultant fees incurred to enforce this section.
5. The signing of the Contract by the Contractor shall constitute execution of the above guarantees. Except as otherwise provided in this Contract, the guarantees and warranties shall remain in effect through the one-year maintenance warranty period specified in the Faithful Performance Bond.

ARTICLE II. CONTROL OF WORK

1. Drawings
2. Drawings furnished herewith are for bidding purposes. Additional copies may be obtained by paying the actual cost of reproduction. The Contractor shall have no claim for excusable delay on account of the failure of the DISTRICT to deliver such drawings unless the DISTRICT shall have failed to deliver the same within fourteen (14) calendar days after receipt of written demand therefor from the Contractor. The Contractor shall keep one copy of said drawings, in good order, available to the DISTRICT and its representatives, and convenient to the working site. The Contractor shall maintain on the job site and make available to the DISTRICT on request, one current full-sized marked-up set of design drawings which accurately indicate all variations in the completed work that differ from the design information shown on the Plans. If the Contractor, in the course of the Work, finds any discrepancy between the Drawings and the physical condition of the locality, or any errors or omissions in the Drawings, or in the layout as given by points and instructions, it shall be the Contractor's duty to inform the DISTRICT in writing, and the DISTRICT will promptly verify the same. Any work done after such discovery, until authorized, will be done at the Contractor's risk. All Drawings, Specifications, and copies thereof furnished by the DISTRICT are the property of the DISTRICT and shall not be reused on other work and, with the exception of the signed Contract sets, are to be returned to the DISTRICT, on request, at the completion of the Work. The Contractor may be furnished additional instructions and detail drawings by the DISTRICT as necessary to carry out the work required by the Contract Documents.

The additional drawings and instructions thus supplied, will become part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.

1. The Drawings shall be supplemented by such shop drawings prepared by the Contractor as are necessary to adequately control the Work. No changes shall be made by the Contractor in any shop drawings after they have been reviewed by the DISTRICT.
2. Contractor agrees that shop drawings processed by the DISTRICT are not Contract Change Orders; that the purpose of shop drawings submitted by the Contractor is to demonstrate to the DISTRICT that the Contractor understands the design concept, that it demonstrates its understanding by indicating which equipment and material it intends to furnish and by detailing the fabrication methods it intends to use.
3. It is expressly understood, however, that favorable review of the Contractor's shop drawings shall not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreements of dimensions and details. It is mutually agreed that the Contractor shall be responsible for agreement and conformity of its shop drawings with the Specifications. Contractor further agrees that if deviations, discrepancies or conflicts between shop drawings and Specifications are discovered either prior to or after shop drawings are processed by the DISTRICT, the Specifications shall control and shall be followed.
4. Unless otherwise stated, the DISTRICT shall have thirty (30) calendar days from the date of receipt of shop drawings for review.
5. Full compensation for furnishing all shop drawings shall be considered as included in the prices paid for the Contract items of Work to which such drawings relate and no additional compensation will be allowed therefor. Any cost related to the DISTRICT's review of any particular set of shop drawings more than twice, due to incompleteness or unacceptability, shall be borne by the Contractor, and the DISTRICT reserves the right to withhold such costs from payments due the Contractor.
6. When submitted for the DISTRICT's review, Shop Drawings shall bear the Contractor's certification that he has reviewed, checked and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Documents.
7. That Portion of the Work requiring a shop drawing or sample submission shall not begin until the shop drawing or submission has been approved by the DISTRICT. A copy of each approved shop drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the DISTRICT.
8. Acceptance by the DISTRICT of any drawing, method of work, or any information regarding materials and equipment the Contractor proposes to furnish shall not relieve the Contractor of his responsibility for any errors therein and shall not be regarded as an assumption of risks or liability by the DISTRICT, or any officer or employee thereof, and the Contractor shall have no claim under the Contract on account of the failure or partial failure or inefficiency or insufficiency of any plan or method or work or material and equipment so accepted. Such acceptance shall be considered to mean merely that the DISTRICT has no objection to the Contractor using, upon his own full responsibility, the plan or method of work proposed, or furnishing the materials and equipment proposed.
9. Permits and Regulations

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as shown on the Plans and described in the Specifications. It shall promptly notify the DISTRICT in writing of any specification at variance therewith and any necessary changes shall be adjusted as provided in the Contract for Changes in the Work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the DISTRICT, it shall bear all costs arising therefrom.

1. Conformity with Contract Documents and Allowable Deviations

Work and materials shall conform to the Technical Specifications and Drawings shown in Contract Documents. Although testing may be considered evidence as to such conformity, the DISTRICT shall be the sole judge as to whether the work or materials deviate from the Specifications and Plans, and its decision as to any allowable deviations therefrom shall be final and conclusive.

Whenever a material, article or piece of equipment is identified on the Drawings or Specifications by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered as described in Section B-24. The Contractor may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the Contract Documents by reference to brand name or catalogue number, and if, in the opinion of the DISTRICT, such material, article, or piece of equipment is of equal substance and function to that specified, the DISTRICT may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the Contract Price and the Contract Documents shall be appropriately modified by Change Order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time.

1. Coordination and Interpretation of Contract Documents
2. The Contract Documents are complementary and a requirement occurring in one is as binding as though occurring in all.
3. In the event of conflict between the Plans and the Technical Specifications, the Technical Specifications shall govern, except that, where items are shown on the Plans and are not specifically included in the Technical Specifications, the Plans shall govern.
4. Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Specifications and Plans, the Contractor shall apply to the DISTRICT for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the Specifications and Plans, reference shall be made to the DISTRICT, whose decision thereon shall be final and conclusive.
5. In the event of any discrepancy between any plans and the figures written thereon, the figures shall be taken as correct. Detailed drawings shall prevail over general drawings.
6. Any reference made in these Specifications or on the plans to any Specification, standard, method, or publication of any scientific or technical society or other organization shall, in the absence of a specific designation to the contrary, be understood to refer to the Specification, standard, method, or publication in effect as of the date that the Work is advertised for Bids.
7. Subcontracts
8. The attention of the Contractor is directed to the provisions of Public Contract Code sections 4100-4113, regarding subcontracting and said provisions are by this reference incorporated herein and made a part hereof.
9. Each Subcontract shall contain a suitable provision for the suspension or termination thereof should the Work be suspended or terminated or should the Subcontractor neglect or fail to conform to every provision of the Contract Documents insofar as such provisions are relevant. No Subcontractor or supplier will be recognized as such, and all persons engaged in work will be considered as employees of the Contractor, and the Contractor will be held responsible for their work, which shall be subject to the provisions of the Contract Documents. The Contractor shall be fully responsible to the DISTRICT for the acts or omissions of its Subcontractors and of the persons either directly or indirectly employed by him. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the DISTRICT. If a legal action, including arbitration and litigation, against the DISTRICT is initiated by a Subcontractor or Supplier, the Contractor shall reimburse the DISTRICT for the amount of legal, engineering and all other expenses incurred by the DISTRICT in defending itself in said action.
10. The DISTRICT reserves the right to approve all Subcontractors. Such approval shall be a consideration to the awarding of the Contract and unless notification to the contrary is given to the Contractor prior to the signing of the Contract, the list of Subcontractors which is submitted with its proposal will be deemed to be acceptable.
11. Superintendence
12. The Contractor shall designate in writing before starting work an individual as authorized representative who shall have the authority to represent and act for the Contractor. This authorized representative shall be present at the site of the work at all times while work is actually in progress on the Contract. When work is not in progress and during periods when work is suspended, arrangements acceptable to the DISTRICT shall be made for any emergency work which may be required.
13. The Contractor is solely responsible, at all times, for the superintendence of the Work and for its safety and progress.
14. Whenever the Contractor or its authorized representative is not present on any particular part of the Work where it may be desired to give direction, orders will be given by the DISTRICT, which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given.
15. Any order given by the DISTRICT, not otherwise required by the Specifications to be in writing, will on request of the Contractor, be given or confirmed by the DISTRICT in writing.
16. Inspection of Work
17. Unless otherwise provided, all equipment, materials, and work shall be subject to inspection and testing by the DISTRICT. The DISTRICT will observe the progress and quality of the Work and determine, in general, if the Work is proceeding in accordance with the intent of the Contract Documents. The DISTRICT shall not be required to make comprehensive or continuous inspections to check the quality of the Work, and it shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. Visits and observations made by the DISTRICT shall not relieve the Contractor of its obligation to conduct comprehensive inspections of the Work and to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions, in conformance with the intent of the Contract.
18. Whenever the Contractor varies the period during which work is carried on each day, it shall give due notice to the DISTRICT so that proper inspection may be provided. Any work done in the absence of the DISTRICT shall be subject to rejection. Proper facilities for safe access for inspection to all parts of the Work shall at all times be maintained for the necessary use of the DISTRICT and other agents of the DISTRICT, and agents of the Federal, State, or Local governments at all reasonable hours for inspection by such agencies to ascertain compliance with laws and regulations.
19. One or more inspectors may be assigned to observe the Work and to act in matters of construction under this Contract. It is understood that inspectors shall have the power to issue instructions and make decisions within the limitations of the authority of the DISTRICT. Such inspection shall not relieve the Contractor of its obligation to conduct comprehensive inspections of the work, to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions in conformance with the intent of the Contract.
20. The DISTRICT and its Representative shall at all times have access to the Work wherever it is in preparation or progress, and the Contractor shall provide safe and convenient facilities for such access and for inspection. If the Specifications, the DISTRICT's instructions, laws, ordinances, or any public authority require any material, equipment or work to be specifically tested or approved, the Contractor shall give the DISTRICT timely notice of its readiness for inspection, and if the inspection is by an authority other than the DISTRICT, of the time fixed for inspection. Inspections by the DISTRICT will be made promptly.
21. Work performed without inspection may be required to be removed and replaced under proper inspection and the entire cost of removal and replacing, including the cost of DISTRICT-furnished materials used in the Work, shall be borne by the Contractor, regardless of whether or not the Work exposed is found to be defective. Examination of questioned work, other than that installed without inspection, may be ordered by the DISTRICT and, if so ordered, the work must be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, the DISTRICT will pay the cost of re-examination and replacement. If such work is found to be not in accordance with the Contract Documents, the Contractor shall pay such cost unless it can show that the defect in the work was caused by another Contractor, and in that event the DISTRICT will pay such costs.
22. The inspection of the Work shall not relieve the Contractor of its obligation to fulfill the Contract as herein prescribed, or in any way alter the standard of performance provided by the Contractor, and defective work shall be made good and unusable materials may be rejected, notwithstanding that such work and materials have been previously overlooked by the DISTRICT and accepted or estimated for payment. If the Work or any part thereof shall be found defective, Contractor shall, within ten (10) calendar days, make good such defect in a manner satisfactory to the DISTRICT. If the Contractor shall fail or neglect to make ordered repairs of defective work or to remove the condemned materials from the Work within ten (10) calendar days after direction by the DISTRICT in writing, the DISTRICT may make the ordered repairs, or remove the condemned materials, and deduct the cost thereof from any monies due the Contractor.
23. The Contractor shall furnish promptly without additional charge all facilities, labor and materials reasonably needed by the DISTRICT for performing all inspection and tests. Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.
24. Where any part of the Work is being done under an encroachment permit or building permit, or is subject to Federal, State, County or City codes, laws, ordinances, rules or regulations, representatives of the government agency shall have full access to the Work and shall be allowed to make any inspection or tests in accordance with such permits, codes, laws, ordinances, rules, or regulations. If advance notice of the readiness of the Work for inspection by the governing agency is required, the Contractor shall furnish such notice to the appropriate agency.
25. The DISTRICT may inspect production of the material, or the manufacture of products at the source of supply. Plant inspection, however, will not be undertaken until the DISTRICT is assured of the cooperation and assistance of both the Contractor and the material producer. . Adequate facilities shall be furnished free of charge to make the necessary inspection. The DISTRICT assumes no obligation to inspect materials at the source of supply.
26. Forty-eight (48) hours prior to work being accomplished, the Contractor will notify the DISTRICT of the proposed working hours to accomplish the work for that day. Overtime and shift work may be established as a regular procedure by the Contract and with the written permission of the DISTRICT. Such permission may be revoked at any time. No work other than overtime and shift work established as a regular procedure shall be done between the hours of 6 p.m. and 7 a.m., nor on Saturdays, Sundays, or legal holidays, except such work as is necessary for the proper care and protection of the work already performed or except in case of an emergency.

All costs for the overtime inspection, including those occurring as a result of overtime and shift work established as a regular procedure, shall be paid for by the Contractor. Overtime inspection shall include inspection required during holidays, Saturdays, Sundays, and any weekday between the hours of 6 p.m. and 7 a.m. Such costs will include, but will not necessarily be limited to, engineering, inspection, general supervision and other expenses which are directly chargeable to the overtime work. All such charges shall be deducted by the DISTRICT from payment due the Contractor.

1. A pre-final inspection of the Work will be made by the DISTRICT. This inspection shall be made as soon as practical after Contractor has notified the DISTRICT in writing that the Work is ready for this inspection. The pre-final inspection shall be made prior to acceptance of any portion of the Work as being substantially complete and prior to filing the Notice of Completion.
2. Pre-Parallel work to test, commission and perform pre-parallel requirements on the new relays and meters shall be done in coordination with PG&E representative. Upon commissioning of equipment a final inspection of all the Work will be made by the DISTRICT, and Contractor.
3. Tests, Settings and Calibrations

The Contractor shall complete all instrument testing and settings and coordination as required by PG&E Rule 21. The Contractor is responsible for payment for these tests as outlined in the Technical Specifications. The DISTRICT will perform such tests as it deems necessary to determine the quality of work or compliance with Contract Documents. The Contractor shall furnish promptly without additional charge all facilities, labor, and material reasonably required for performing safe and convenient tests as may be required by the DISTRICT. All tests by the DISTRICT will be performed in such a manner as will not unnecessarily delay the work. The Contractor shall not be required to reimburse the DISTRICT for tests performed by the DISTRICT. If equipment or materials fail to pass the specified tests, the Contractor shall pay for all subsequent tests.

1. Removal of Rejected and Unauthorized Work and Materials
2. All work or materials which have been rejected shall be remedied, or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed it for such removal, replacement, or remedial work.
3. Any work done beyond the lines and grades shown on the plans or established by the DISTRICT or any extra work done without written authority will be considered as unauthorized work and will not be paid for. Upon order of the DISTRICT, unauthorized work shall be remedied, removed, or replaced at the Contractor's expense.
4. Upon failure of the Contractor to comply with any order of the DISTRICT made under this Section, the DISTRICT may cause rejected or unauthorized work to be remedied, removed or replaced, and may deduct the costs therefor from any monies due or to become due the Contractor.
5. If following the installation of any equipment furnished hereunder, defects requiring correction by the Contractor are found, the DISTRICT shall have the right to operate such unsatisfactory equipment and make reasonable use thereof until the equipment can be shut down for correction of defects without injury to the DISTRICT.
6. Deductions for Uncorrected Work

If the DISTRICT deems it inexpedient to correct work damaged or not done in accordance with the Contract, an equitable deduction from the Contract price shall be made therefor, and such sum may be withheld by DISTRICT from Contractor's payment.

1. Equipment
2. If equipment is acquired by the contractor under this project and paid for by the DISTRICT, the use and disposition of the equipment shall be in compliance with 44 CFR Section 13.32.
3. The Contractor shall provide adequate and suitable equipment to meet the above requirements, and when ordered by the DISTRICT, shall remove unsuitable equipment from the Work.
4. In the case of termination of this Contract before completion from any cause whatever, the Contractor, if notified to do so by the DISTRICT, shall promptly remove any part or all of its equipment and supplies from the property of the DISTRICT. If the Contractor fails to do so, the DISTRICT shall have the right to remove such equipment and supplies at the expense of the Contractor.
5. Character of Worker

The Contractor shall employ only competent Subcontractors or skillful workers to do the work. If any Subcontractor, or person employed by the Contractor or any Subcontractor shall fail or refuse to carry out the directions of the DISTRICT or its agents or shall appear to the DISTRICT or its agents to be incompetent or to act in a disorderly or improper manner, it shall be removed from the project Work immediately on the requisition of the DISTRICT or its agents, and such person shall not again be employed on the Work. Such discharge shall not be the basis for any claim for compensation or damages against the DISTRICT, or any of its officers or agents.

1. Separate Contracts

The DISTRICT reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with the other contractor's work.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the DISTRICT any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of its work, except as to defects which may develop in the other contractor's work after the execution of its work.

To insure the proper execution of its subsequent work, the Contractor shall measure work already in place and shall at once report to the DISTRICT any discrepancy between the executed work and the Drawings.

The DISTRICT may perform additional Work related to the Project by itself, or they may let other contracts containing provisions similar to these. The Contractor will afford the other contractors who are parties to such contracts (or the DISTRICT, if it is performing the additional Work itself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work and shall properly connect and coordinate his Work with theirs.

If the performance of additional Work by other contractors or the DISTRICT is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to the Contractor prior to starting any such additional Work. If the Contractor believes that the performance of such additional Work by the DISTRICT or others involves him in additional expense or entitles him to an extension of the Contract Time, he may make a claim therefore as provided in Section B-6 of this Contract.

1. Materials, Services and Facilities
2. Unless otherwise specifically stated in the Contract Documents, the Contractor shall furnish all materials, labor, tools, equipment, transportation, supervision, temporary construction of any nature on all of the facilities necessary for the execution and completion of the Work. Unless otherwise specified, all materials shall be new and shall be manufactured, handled, and installed in a workmanlike manner to insure completion of the Work in accordance with the Contract Documents. The Contractor shall, upon request of the DISTRICT, furnish satisfactory evidence as to the kind and quality of materials.
3. Where materials are to be furnished by the DISTRICT, the type, size, quantity and location at which they are available will be stated in the Contract Documents.
4. Manufacturers' warranties, guarantees, instruction sheets and parts listed, which are furnished with certain articles or materials incorporated in the Work, shall be delivered to the DISTRICT before final acceptance of the WORK.
5. Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
6. Materials, supplies and equipment shall be in accordance with samples submitted by the Contractor and approved by the DISTRICT.
7. Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Contractor or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.
8. The completed Work shall include all necessary permanent safety devices. Further, any features of the Work subject to such safety regulations shall be fabricated, furnished, and installed in compliance with these requirements. Prior to performing Work specified herein, the Contractor shall request an inspection by a State Industrial Safety representative for the purpose of determining that the facilities provided are in compliance with the State and Federal safety requirements. Any facilities which are deemed necessary by official response following the above safety inspection shall be added or corrected as required as a part of the Contract Work. However, no payment will be made to the Contractor for such changes or additions to equipment furnished under this Contract since it is a requirement of these Specifications that such equipment be manufactured or fabricated in such a manner as to be in conformance with all Federal, State, and local safety requirements. The Contractor shall notify all manufacturers, equipment suppliers, and Subcontractors of the provisions of this article.
9. In approving equipment for installation in the project, the DISTRICT assumes no responsibility for injury or claims resulting from failure of the equipment to comply with applicable National, State, and local safety codes or requirements, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials.
10. All materials incorporated into the job shall be new, especially purchased for the project unless otherwise specified or agreed in writing. Unless otherwise noted, any equipment offered shall be current modifications which have been in successful regular operation under comparable conditions for a period sufficient to determine the reliability of the product. This time requirement, however, does not apply to minor details nor to thoroughly demonstrated improvements in design or in materials of construction.
11. Whenever the Contractor shall furnish materials or manufactured articles or shall do work for which no detailed specifications are set forth, the materials or manufactured articles shall be of the best grade in quality and workmanship obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards of first-class materials or articles of the kind required with due consideration of the use to which they are to be put. In general, the work performed shall be in full conformity and harmony with the intent to secure the best standard of construction and equipment of the work as a whole or in part.
12. Storage of Materials

Materials shall be so stored as to ensure the preservation of their quality and fitness for the Work. When considered necessary, they shall be placed on wooden platforms or other hard, clean surfaces, and not on the ground, and they shall be placed under cover. Stored materials shall be located so as to facilitate prompt inspection. Private property shall not be used for storage purposes without the written permission of the owner or lessee.

Electrical equipment and devices shall be placed in dry and warm storage.

All equipment and materials which are not to be painted (such as aluminum and stainless steel) and all factory finished or coated equipment and materials which are not to be painted, that are installed prior to completion of adjacent work, shall be completely covered and protected.

Articles or materials to be incorporated in the Work shall be stored in such a manner as to insure the preservation of their quality and fitness for the Work, and to facilitate inspection.

1. Trade Names and Alternatives

For convenience in designation in the Specifications and Plans, certain articles or materials to be incorporated in the Work may be designated under a trade name or the name of a manufacturer and its catalog information. The use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

1. The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor and it shall furnish all information necessary as required by the DISTRICT. The DISTRICT shall be the sole judge as to the quality and suitability of alternative articles or materials and its decision shall be final.
2. Whenever the Specifications and Plans permit the substitution of a similar or equivalent material or article, no tests or action relating to the approval of such substitute material or article will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the material or article proposed. Such request by the Contractor must be made within thirty-five (35) calendar days after award of Contract.
3. Assignment

The Contractor shall not assign the Contract or sublet it as a whole or in part without the prior written consent of the DISTRICT, nor shall the Contractor assign any monies due, or to become due to it hereafter, without the prior written consent of the DISTRICT.

1. Use of Completed Portions, Right to Operate Unsatisfactory Equipment or Facilities
2. The DISTRICT may, at any time, and from time to time, during the performance of the Work, enter the work site for the purpose of installing any necessary work by the DISTRICT labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, the DISTRICT shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other work being done by or on behalf of the DISTRICT.
3. If, prior to completion and final acceptance of all the Work, the DISTRICT takes possession of any structure or facility (whether completed or otherwise) comprising a portion of the Work with the intent to retain possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the DISTRICT is in possession of the same, the Contractor shall be relieved of liability for loss or damage to such structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the DISTRICT's shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure or facility.
4. If, following installation of any equipment or facilities furnished by the Contractor, defects requiring correction by the Contractor are found, the DISTRICT shall have the right to operate such unsatisfactory equipment or facilities and make reasonable use thereof until the equipment or facilities can be shut down for correction of defects without injury to the DISTRICT.
5. District's Right to Audit and Preservation of Records
6. The Contractor shall facilitate the completion of such an audit as it relates to the Contractor’s work on this project.
7. The Contractor shall maintain books, records and accounts of all costs in accordance with generally accepted accounting principles and practices. The DISTRICT, the Comptroller General of the United States, and its authorized representatives shall have the right to audit the books, records and accounts of the Contractor under any of the following conditions:
8. The Contract is terminated for any reason in accordance with the provisions of the Contract Documents in order to arrive at equitable termination costs;
9. In the event of a disagreement between the Contractor and the DISTRICT over the amount due the Contractor under the terms of the Contract;
10. To check or substantiate any amounts invoiced or paid which are required to reflect the costs of the Contractor, or the Contractor's efficiency or effectiveness under this Contract or in connection with extras, changes, claims, additions, back charges, or others, as may be provided for in this Contract; and/or
11. If it becomes necessary to determine the DISTRICT's rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim against the Contractor which may result in a charge against the DISTRICT;
12. To determine any difference in cost occasioned by a permissible substitution;
13. To make audits, examinations, excerpts, and transcriptions pertinent to the loan financing on this project.
14. For any other reason in the DISTRICT's sole judgment.
15. If any of the conditions stated in paragraph B- 27(b) are satisfied, Contractor shall provide the DISTRICT (or its representatives), unlimited, reasonable access during working hours to the Contractor's books and records under the conditions stated above. The DISTRICT's audit rights shall be liberally construed in the DISTRICT's favor.
16. The Contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to the DISTRICT for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor (but without any charge to the DISTRICT), all its books, records, documents, photographs, micro-photographs, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work hereunder.
17. The DISTRICT will make all payments required of it under this Contract subject to audit, under circumstances stated above, which audit may be performed at the DISTRICT's option, either during the Contract time period or during the record retention time period. Regardless of authorization, approval or acceptance, signatures or letters which are given by the DISTRICT and are part of the DISTRICT's control systems or are requested by the Contractor, the payments made under this Contract shall not constitute a waiver or agreement by the DISTRICT that it accepts as correct the billings, invoices or other charges on which the payments are based. If the DISTRICT's audit produces a claim against the Contractor, the DISTRICT may pursue all its legal remedies even though it has made all or part of the payments required by this Contract.
18. If any audit by the DISTRICT or its representative discloses an underpayment by the DISTRICT pursuant to the terms of the Contract Documents, the DISTRICT shall have the duty to pay any amount found by the audit to be owed to the Contractor. If such audit discloses an overpayment, the Contractor shall have the obligation to reimburse the DISTRICT for the amount of the overpayment. The DISTRICT's right to claim reimbursement from the Contractor of any overpayment shall not be terminated or waived until three years after the completion of the DISTRICT's audit or upon the termination of audit rights under paragraph B-27, whichever date is later. The obligation of the Contractor to make reimbursements hereunder shall not terminate except as provided by law.

The DISTRICT's right to audit and the preservation of records shall terminate at the end of three (3) years after the date final payment is made or termination of the Contract. The Contractor shall include this "Right to Audit and Preservation of Records" clause in all subcontracts issued by it shall require the same to be inserted by all lower tier Subcontractors in their subcontracts, for any portion of the Work. Should Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure the DISTRICT's rights hereunder, Contractor shall be liable to the DISTRICT for all costs, expenses and attorney's fees which the DISTRICT may have to incur obtaining or attempting to obtain an audit or inspection of or the restoration of records which otherwise have been available to the DISTRICT from said persons under this clause. Such audit may be conducted by the DISTRICT or its authorized representative.

ARTICLE III. PROGRESS AND COMPLETION OF WORK

1. Progress Schedule

The Contractor shall submit to the DISTRICT such schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data, where applicable, as are required by the Contract Documents for the Work to be performed.

Prior to the first partial payment estimate, the Contractor shall submit construction progress schedules showing the order in which it proposes to carry on the Work, including dates at which it will start the various parts of the WORK, estimated date of completion of each part and as applicable:

1. Respective dates for submission of shop drawings, the beginning of manufacture, the testing and the installation of materials, supplies, and equipment.
2. The Contractor shall also submit a schedule of payments that it anticipates it will earn during the course of the Work.

The progress schedules shall be submitted regularly and shall cover a time period satisfactory to the DISTRICT. The Contractor shall also forward to the DISTRICT, with the request for progress payment each month, a summary report of the progress of the various parts of the Work under the Contract in the shops and in the field, stating the existing status, rate of progress, estimated time of completion, and cause of delay, if any. If the Work is behind the submitted schedule, the Contractor shall submit in writing a plan acceptable to the DISTRICT for bringing the Work up to schedule.

1. Commencement and Progress of the Work and Time of Completion

Prior to the start of Work, the DISTRICT will conduct a preconstruction conference call with the Contractor and DISTRICT staff. The conference call discussion will review the planned work and schedule and all arrangements for prosecuting the Work.

The Contractor shall begin work within **Thirty (30) calendar days** after receiving a Notice to Proceed, and shall diligently prosecute the work to completion within **One Hundred Twenty (120) calendar days.**

1. Suspension of Work
2. The DISTRICT may at any time, by notice in writing to the Contractor, suspend any part of the Work for such period of time as may be necessary to prevent improper execution of the Work on the project by the Contractor, its Subcontractors or agents, and the Contractor shall have no claim for damages or additional compensation on account of any such suspension.
3. The DISTRICT may at any time suspend any part or all of the Work upon ten (10) calendar days written notice to the Contractor, who shall thereupon discontinue all Work suspended except for all operations to prevent loss or damage to Work already executed as may be directed by the DISTRICT. In the event a part of the Work is suspended, the Contractor, if the suspension is not through its fault or the fault of its Subcontractors or agents, shall be paid on the same basis as Extra Work for costs of work performed in accordance with such orders of the DISTRICT during such suspension, provided that this shall not include any cost pertaining to Work not suspended by said notice. Work shall be resumed by the Contractor after such suspension on written notice from the DISTRICT. In the event of suspension of the entire Work by the DISTRICT, the Contractor, if the suspension is not through fault of the Contractor or the fault of its Subcontractors or agents, shall be paid the sum of $500.00 for each calendar day during which the entire Work shall have been suspended. Said sum is hereby mutually agreed upon as fixed and liquidated damages in full settlement of all costs and expenses, losses and damages resulting to the Contractor from such suspension. Work shall be resumed by the Contractor after such suspension on written notice from the DISTRICT.
4. In the event of any suspension of the Work in whole or in part under subsection (b) above, the Contractor shall be entitled to an extension of time wherein to complete the Work to the extent of the delay caused the Contractor thereby.
5. In the event the entire Work shall be suspended by order of the DISTRICT, as hereinabove provided, and shall remain so suspended for a period of sixty (60) consecutive days, through no fault of the Contractor, and notice to resume the Work shall not have been served on the Contractor as hereinabove provided, Contractor may, at its option, by written notice to the DISTRICT, terminate the Contract in the same manner as if the termination had been initiated by the DISTRICT, and the DISTRICT shall have no claim for damages because of such termination of the Contract.
6. If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) calendar days by the DISTRICT or under an order of Court or other public authority, or the DISTRICT fails to act on any request for payment within thirty (30) calendar days after it is submitted, or the DISTRICT fails to pay the Contractor substantially the sum approved by the DISTRICT or any final award by arbitration or litigation within thirty (30) calendar days of its approval and presentation, then the Contractor may, after ten (10) calendar days from delivery of a written notice to the DISTRICT, terminate the Contract and recover from the DISTRICT payment for all Work executed and all expenses sustained.

In addition and in lieu of terminating the Contract, if the DISTRICT has failed to act on a request for payment or if the DISTRICT has failed to make any payment as aforesaid, the Contractor may upon ten (10) calendar days written notice to the DISTRICT stop the Work until he has been paid all amounts then due, in which event and upon resumption of the Work, Change Orders shall be issued for adjusting the Contract Price or extending the Contract Time or both to compensate for the costs and delays attributable to the stoppage of the Work.

If the performance of all or any portion of the Work is suspended, delayed, or interrupted as a result of a failure of the DISTRICT to act within the time specified in the Contract Documents, or if no time is specified, within a reasonable time, an adjustment in the Contract Price or an extension of the Contract Time, or both, shall be made by Change Order to compensate the Contractor for the costs and delays necessarily caused by the failure of the DISTRICT.

If the Contractor intends to file a claim for additional compensation for a delay caused by the DISTRICT at a particular time, he shall file a Notice of Claim with the DISTRICT within seven (7) calendar days of the beginning of the occurrence. The Notice of Claim shall be in duplicate, in writing, and shall state the circumstances and the reasons for the Claim, but need not state the amount. No Claim for additional compensation will be considered unless a Notice of Claim has been filed with the DISTRICT within the time and in the manner stated above. Contractor's failure to file a claim shall constitute a waiver.

1. Termination For Default - Damages For Delay - Timely Extension
2. The Contractor shall at all times employ such force, plant, materials, and tools as will be sufficient, in the opinion of the DISTRICT, to prosecute the Work at not less than the rates fixed under the terms of the Contract and to complete the Work or any part thereof within the time limits fixed therein. If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time specified in the Contract, or any extension thereof, or fails to complete said Work within such time, the DISTRICT may, after giving ten (10) calendar days written notice to the Contractor, terminate its right to proceed with the Work or such part of the Work as to which there has been delay.
3. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
4. The delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to Acts of God, acts of the public enemy, acts of the DISTRICT, acts of another contractor in the performance of a Contract with the DISTRICT, fires, floods, excluding site flooding due to groundwater, epidemics, quarantine restrictions, unusually severe weather, as determined by the DISTRICT; and
5. The Contractor shall, within 48 hours of the start of the occurrence, give notice to the DISTRICT of the cause of the potential delay and an estimate of the possible time extension involved. The Contractor, within seven (7) calendar days from the beginning of any such delay (unless the DISTRICT grants further period of time before the date of final payment under the Contract), notifies the DISTRICT in writing of the causes of delay and requests an extension of time.
6. The DISTRICT shall ascertain the facts and the extent of the delay and extend the time for completing the Work when, in its judgment, the findings of fact justify such an extension, and its findings of fact shall be final and conclusive on the parties.
7. A request for an extension of time, or the granting of an extension of time, shall not constitute a basis for any claim against the DISTRICT for additional compensation or damages unless caused by the DISTRICT or another contractor employed by the DISTRICT.
8. If the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for the Contractor on account of its insolvency and not be discharged within ten (10) calendar days after its appointment, or if the Contractor should fail to make prompt payments to Subcontractors or suppliers, or should it persistently disregard laws, ordinances, or the instructions of the DISTRICT, or otherwise commit a substantial violation of any provisions of the Contract, the DISTRICT may, after giving ten (10) calendar days written notice to the Contractor, terminate the Contract and the Contractor's right to proceed with the Work.
9. No extension of time will be considered for time lost due to weather conditions normal to the area. Unusual weather conditions, if determined by the DISTRICT to be of a severity that could not be predicted, may be considered as cause for an extension of Contract completion time.
10. Delays in delivery of equipment or material purchased by the Contractor or his Subcontractors shall not be considered as a just cause for delay. The Contractor shall be fully responsible for the timely ordering, scheduling, expediting delivery, and installation of all equipment and materials.
11. The rights and remedies of the DISTRICT provided in this section are in addition to any of the rights and remedies provided by law or under this Contract.
12. In addition to the DISTRICT's rights under this section, if at any time before completion of the work under the Contract, it shall be determined by the DISTRICT that reasons beyond the control of the parties hereto render it impossible or against the interests of the DISTRICT to complete the Work, or if the Work shall be stopped by an injunction of a court of competent jurisdiction or by order of any competent authority, the DISTRICT may, upon ten (10) calendar days written notice to the Contractor, discontinue the Work and terminate the Contract. Upon service of such notice of termination, the Contractor shall discontinue the Work in such manner, sequence, and at such times as the DISTRICT may direct. The Contractor shall have no claim for damages for such discontinuance or termination, nor any claim for anticipated profits on the Work thus dispensed with, nor any other claim except for the Work actually performed up to the time of discontinuance, including any extra work ordered by the DISTRICT to be done, nor for any claim for liquidated damages in accordance with the provisions of Section B-33.
13. Rights of DISTRICT Upon Termination
14. In the event the right of the Contractor to proceed with the Work, or any portion thereof, has been terminated because of the fault of the Contractor and the Contractor has been given ten (10) calendar days’ notice to cure such fault and has not done so, the DISTRICT may take over the Work and prosecute the same to completion by contract or any other method the DISTRICT deems expedient, and may take possession of and utilize in completing the Work such materials, appliances, equipment and plant as may be on the site of the Work and necessary therefor. Whether or not the Contractor's right to proceed with the Work is terminated, it and its sureties shall be liable for all damages including costs of managerial and administrative services, engineering, legal and other consultant fees, sustained or incurred by the DISTRICT in enforcing the provisions of Section B-31 and in completing or causing to complete the Contract Work.
15. Upon termination the Contractor shall not be entitled to receive any further payment until the Work is finished. If upon completion of the Work the total cost to the DISTRICT, including engineering, legal and other consultant fees, costs of managerial and administrative services, construction costs, and liquidated damages shall be less than the amount which would have been paid if the Work had been completed by the Contractor in accordance with the terms of the Contract, then the difference shall be paid to the Contractor in the same manner as the final payment under the Contract. If the total cost incurred by the DISTRICT on account of termination of the Contract and subsequent completion of the Work by the DISTRICT by whatever method the DISTRICT may deem expedient shall exceed said amount which the Contractor would otherwise have been paid, the Contractor and its sureties shall be liable to the DISTRICT for the full amount of such excess expense.
16. The rights and remedies of the DISTRICT provided in this section are in addition to any of the rights and remedies provided by the law or under this Contract.
17. Failure to Complete the Work in the Time Agreed Upon - Liquidated Damages
18. Liquidated Damages - It is agreed by the parties to the Contract that time is of the essence; and that in case all the Work is not completed before or upon the expiration of the time limit as set in the Bid, Contract and Progress Schedule, or within any time extensions that may have been granted, damage will be sustained by the DISTRICT; and that it may be impracticable to determine the actual amount of damage by reason of such delay; and it is, therefore, agreed that the Contractor shall pay to the DISTRICT as damages the amount of $500.00 per day for each and every day's delay in finishing the Work in excess of the number of days specified. The parties expressly agree that this liquidated damage clause is reasonable under the circumstances existing at the time the Contract was made. The DISTRICT shall have the right to deduct the amount of liquidated damages from any money due or to become due the Contractor.
19. In addition, the DISTRICT shall have the right to charge to the Contractor and to deduct from the final or progress payments for the Work the actual cost to the DISTRICT of legal, engineering, inspection, superintendence, and other expenses, which are directly chargeable to the Contract and which accrue during the period of such delay, except that the cost of final inspection and preparation of the final estimate shall not be included in the charges.
20. Exclusions - Notwithstanding the provisions of subsection (a), the Contractor shall not be liable for liquidated damages or delays caused by the removal or relocation of utilities when such removal or relocation is the responsibility of the DISTRICT or the owner of the utility under Government Code Section 4215.
21. Clean-up

During the progress of the Work, the Contractor shall maintain the site and related structures and equipment in a clean, orderly condition and free from unsightly accumulation of rubbish. Upon completion of Work and before the final estimate is submitted, the Contractor shall at its own cost and expense remove from the vicinity of the Work all plants, buildings, rubbish, unused work materials, and other like materials, belonging to it or used under its direction during the construction, and in the event of its failure to do so, the same may be removed by the DISTRICT after ten (10) calendar days notice to the Contractor, such removal to be at the expense of the Contractor. Where the construction has crossed yards or driveways, they shall be restored by the Contractor to the complete satisfaction of the DISTRICT, at the Contractor's expense.

ARTICLE IV. LEGAL RELATIONS AND RESPONSIBILITY

1. Compliance with Laws - Permits, Regulations, Taxes

Contractor is an independent contractor and shall at its sole cost and expense comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work, obtain all necessary permits and licenses therefor, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all Federal and State taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries or any remuneration paid to Contractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Contractor shall also pay all property tax assessments on materials or equipment used until acceptance by the DISTRICT. If any discrepancy or inconsistency is discovered in the Plans or Specifications, or in this Contract in relation to any such law, rule, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the DISTRICT in writing. It shall also protect and indemnify the DISTRICT, and all of the DISTRICT's officers, agents, and servants against any claim or liability arising from or based upon the violation of any such law, rule, ordinance, regulation, order or decree, whether by the Contractor itself or by its employees. Particular attention is called to the following:

1. Without limitation, materials furnished and performance by Contractor hereunder shall comply with Safety Orders of the Division of Industrial Safety, State of California, Federal Safety regulations of the Bureau of Labor, Department of Labor; and any other applicable Federal or State of California regulations.

The Contractor, upon request, shall furnish evidence satisfactory to the DISTRICT that any or all of the foregoing obligations have been or are being fulfilled. The Contractor warrants to the DISTRICT that it is licensed by all applicable governmental bodies to perform this Contract and will remain so licensed throughout the progress of the Work, and that it has, and will have, throughout the progress of the Work, the necessary experience, skill and financial resources to enable it to perform this Contract.

1. Prevailing Wage
2. The Contractor shall forfeit as penalty to the DISTRICT not more than Two Hundred Dollars ($200) for each calendar day or portion thereof for each worker (whether employed by the Contractor or Subcontractor) paid less than the stipulated prevailing rates for any Work done under the Contract in violation of the provisions of the Labor Code and in particular, Section 1775.
3. The DISTRICT will not recognize any claims for additional compensation because of the payment of the wages set forth in the Contract Documents. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its proposal, and will not under any circumstances be considered as the basis of a claim against the DISTRICT.
4. Labor Compliance

Pursuant to Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

1. On each job site that is subject to compliance monitoring and enforcement by the Department of Industrial Relations under this subchapter, the prime contractor shall post a Notice containing the following language:

“This public works project is subject to monitoring and investigative activities by the Division of Labor Standards Enforcement (DLSE), Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the DLSE to ensure compliance with and enforcement of prevailing wage laws on public works projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the DLSE.

Local Office Contact Information:

Telephone Number: 844-522-6734

Address: BOFE – Public Works

Attn: Complaints Unit

2031 2031 Howe Ave, Suite 100

Sacramento, CA 95825

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the project that the DLSE may take legal action against those responsible.

Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations website found at www.dir.ca.gov/dlse/PublicWorks.html.”

1. Labor Discrimination

Attention is directed to Section 1735 of the Labor Code, which reads as follows:

No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every Contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter.

Federal Equal Opportunity Clauses from 41 CFR 60 1.4(b) also apply.

1. Eight-Hour Day Limitation
2. In accordance with the provisions of the Labor Code, and in particular, Sections 1810 to 1815 thereof, inclusive, eight hours labor shall constitute a day's work, and no worker, in the employ of said Contractor, or any Subcontractor, doing or contracting to do any part of the Work contemplated by this Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of those provisions; provided that subject to Labor Code Section 1815, a worker may perform work in excess of either eight (8) hours per day or forty (40) hours during any one week upon compensation for all hours worked in excess of eight (8) hours per day or forty (40) hours during any one week at not less than one and one-half times the basic rate of pay.
3. The Contractor and each Subcontractor shall also keep an accurate record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and by the Subcontractor in connection with the work specified herein, which record shall be open at all reasonable hours to the inspection of the DISTRICT, State and Federal officers and agents; and it is hereby further agreed that, except as provided in (a) above, the Contractor shall forfeit as a penalty to the DISTRICT not more than twenty-five dollars ($25) for each worker employed in the performance of this Contract by it or by any Subcontractor under it for each calendar day during which such worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of Sections 1810 through 1815.
4. Compliance with State Requirements for Employment of Apprentices

The Contractor's attention is directed to Section 1777.5 through 1777.2 of the Labor Code; provisions of those Sections pertaining to employment of registered apprentices are hereby incorporated by reference into these Specifications. As applicable, the Contractor or any Subcontractor employed by it in the performance of the Contract work shall take such actions as necessary to comply with the provisions of Section 1777.5. and provide documentation of compliance to the DISTRICT.

1. Payment of Taxes

The Contract prices paid for the Work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State, or local governments.

1. Permits and Licenses

Except as otherwise provided in this Contract, the Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the lawful prosecution of the Work.

1. Patents

The Contractor shall pay all applicable royalties and license fees and assume all costs arising from the use of patented materials, equipment and devices. The Contractor shall defend all suits or claims for infringement of any patent rights and save the DISTRICT and their duly authorized representatives harmless from loss on account thereof, except that the DISTRICT shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified; however if the Contractor has reason to believe that 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 DISTRICT.

1. Safety
2. General - The Contractor shall be solely and completely responsible for the conditions of the job site, including safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable Federal, State, and local laws, ordinances, and codes, and to the rules and regulations established by the California Division of Industrial Safety, and to other rules of law applicable to the Work.
3. The DISTRICT in conducting construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's work methods, equipment, bracing or scaffolding or safety measures, in, on, or near the construction site, and shall not be construed as supervision of the actual construction nor make the DISTRICT responsible for providing a safe place for the performance of work by the Contractor, Subcontractors, or suppliers; or for access, visits, use work, travel or occupancy by any person.
4. The Contractor shall carefully instruct all personnel working in potentially hazardous work areas as to the potential dangers and shall provide such necessary safety equipment and instruction as is necessary to prevent injury and damage to property. The Contractor shall appoint for the duration of this Contract, a qualified supervisor employee to develop and/or supervise the Contractor's job safety program that will effectively implement the safety provisions of the above agencies.
5. The Contractor, as a part of his safety program, shall maintain at its office or other well-known place at the job site, safety equipment applicable to the Work as prescribed by the aforementioned authorities, all articles necessary for giving first aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the job site.
6. If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the DISTRICT. In addition, the Contractor must promptly report in writing to the DISTRICT all accidents whatsoever arising out of, or in connection with, the performance of the Work whether on, or adjacent to, the site, giving full details and statements of witnesses.
7. If any claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the DISTRICT, giving full details of the claim.
8. All work and materials shall be in strict accordance with all applicable State, Federal and local laws, rules, regulations, and codes.
9. Nothing in this Contract is to be construed to permit work not conforming to governing law. When Contract Documents differ from governing law, the Contractor shall furnish and install the higher standards called for without extra charge. All equipment furnished shall be grounded and provided with guards and protection as required by safety codes. Where vapor-tight or explosion-proof electrical installation is required by law, this shall be provided.
10. The Contractor shall perform all Work in a fire-safe manner. He shall supply and maintain onsite adequate firefighting equipment capable of extinguishing incipient fires. The Contractor shall comply with applicable Federal, State, and local fire prevention regulations and where the regulations do not cover, with applicable parts of the National Fire Prevention Standard for "Safeguarding Building Construction Operations," (NFPA No. 241).
11. Protection of Person and Property
12. The Contractor shall take whatever precautions are necessary to prevent damage to all existing improvements, including above ground and underground utilities, trees, shrubbery that is not specifically shown to be removed, fences, signs, mailboxes, survey markers and monuments, buildings, structures, the DISTRICT's property, adjacent property, and any other improvements or facilities within or adjacent to the Work. If such improvements or property are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition at least as good as the condition they were in prior to the start of the Contractor's operations.
13. The Contractor shall adopt all practical means to minimize interference to traffic and public inconvenience, discomfort or damage. The Contractor shall protect against injury any pipes, conduits or other structures, crossing the trenching or encountered in the Work and shall be responsible for any injury done to such pipes or structures, or damage to property resulting therefrom. The Contractor shall support or replace any such structures without delay and without any additional compensation to the entire satisfaction of the DISTRICT. All obstructions to traffic shall be guarded by barriers illuminated at night. The Contractor shall be responsible for all damage to persons and property directly or indirectly caused by its operations and, under all circumstances, the Contractor must comply with the laws and regulations of the County and the State of California relative to safety of persons and property and the interruption of traffic and the convenience of the public within the respective jurisdictions.
14. Responsibility for Repair of Facilities

All public or private facilities, including but not limited to structures, telephone cables, roadways, parking lots, private drives, levees and embankments disturbed during construction of the Work shall be repaired and/or replaced by the Contractor to match facilities existing prior to construction. In addition, the Contractor shall be responsible for any settlement damage to such facilities or adjoining areas for a period of one year after acceptance of such required facilities.

The Contractor's attention is directed to the many water services crossing the road. It is the Contractor's responsibility to protect these laterals and repair damage. DISTRICT crews are not available to repair water services disturbed by construction.

1. Resolution of Construction Claims
2. For any claim arising under this Contract, the following procedures will apply:
3. The claim must be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the day of final payment. Nothing in this subsection is intended to extend the time limit or supersede notice requirements for the filing of claims as set forth elsewhere in this Contract.
4. The Contractor shall proceed with the Work in accordance with the Plans and Specifications and determinations and instructions of the DISTRICT during the resolution of any claims disputes.
5. DISTRICT's Repair

In the event the Contractor refuses or neglects to make good any loss or damage for which the Contractor is responsible under this Contract, the DISTRICT may itself, or by the employment of others, make good any such loss or damage, and the cost and expense of doing so, including any reasonable engineering, legal and other consultant fees, and any costs of administrative and managerial services, shall be charged to the Contractor. Such costs and expenses may be deducted by the DISTRICT from claims for payment made by the Contractor for Work completed or remaining to be completed.

1. Antitrust Claim Assignment

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor and all subcontractors shall offer and agree to assign to the DISTRICT all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time the DISTRICT tenders final payment to the Contractor, without further acknowledgement by the parties.

1. Waiver of Right to Rescind For Material Breach

The Contractor agrees that it can be adequately compensated by money damages for any breach of this Contract which may be committed by the DISTRICT and hereby agrees that no default, act, or omission of the DISTRICT, except for failure to make progress payments as a required by Section B-68, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract or (unless the DISTRICT shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which it might otherwise be or become entitled, save only its right to money damages.

1. Contractor's License Notice

Contractors are required by law to be licensed and regulated by the contractors' state license board which has jurisdiction to investigate complaints against contractors of a complaint if filed within three (3) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the registrar, Contractors' state license board, 9821 Business Park Drive, Sacramento, California. Mailing address: P.O. Box 26000, Sacramento, California 95826.

ARTICLE V. INSURANCE AND LIABILITY

1. Insurance
2. Neither the Contractor nor any Subcontractors shall commence any work until all required insurance has been obtained at their own expense. Such insurance must have the approval of the DISTRICT as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A:VII.
3. Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guarantee period.
4. Prior to execution of the Contract, the Contractor shall furnish the DISTRICT with original endorsements effecting coverage for all policies required by the Contract. The Contractor shall not permit any Subcontractor identified in the Designation of Subcontractors form to commence work on this project until such Subcontractor has furnished the DISTRICT with original endorsements effecting coverage for all insurance policies required by the Contract. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the DISTRICT. As an alternative to the DISTRICT's forms, the Contractor's insurer may, subject to the approval of the DISTRICT, provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this paragraph. The Contractor agrees to furnish one copy of each policy to the DISTRICT, and additional copies as requested in writing, certified by an authorized representative of the insurer.
5. All of the Contractor's policies shall contain an endorsement providing that written notice shall be given to the DISTRICT at least sixty (60) calendar days prior to termination, cancellation, or reduction of coverage in the policy.
6. Any policy or policies of insurance that the Contractor elects to carry as insurance against loss or damage to its construction equipment and tools shall include a provision therein providing a waiver of the insurer's right to subrogation against the DISTRICT.
7. The requirements as to the types, limits, and the DISTRICT's approval of insurance coverage to be maintained by the Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.
8. In addition to any other remedy the DISTRICT may have, if the Contractor or any of the Subcontractors fails to maintain the insurance coverage as required in this Section, the DISTRICT may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as required herein, and the DISTRICT may deduct the cost of such insurance from any amounts due or which may become due the Contractor under this Contract.
9. The Contractor and all Subcontractors shall, at their expense, maintain in effect at all times during the performance or work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the DISTRICT. The maintenance by the Contractor and all Subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of the Contractor or any Subcontractor to maintain or renew coverage or to provide evidence of renewal may be treated by the DISTRICT as a material breach of this Contract.
10. Worker's Compensation and Liability Insurance.
11. Worker's Compensation - Insurance to protect the Contractor or Subcontractor from all claims under Worker's Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Worker's Act. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable State and Federal statutes and regulations. The Contractor shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in the Contract Documents.
12. Claims Against DISTRICT - If an injury occurs to any employee of the Contractor or any of the Subcontractors for which the employee or its dependents, in the event of its death, may be entitled to compensation from the DISTRICT under the provisions of the said Acts, or for which compensation is claimed from the DISTRICT, there will be retained out of the sums due the Contractor under this Contract, an amount sufficient to cover such compensation as fixed by said Acts, until such compensation is paid or it is determined that no compensation is due. If the DISTRICT is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due the Contractor.
13. Comprehensive General and Automobile Liability Insurance - The insurance shall include, but shall not be limited to, protection against claims arising from death, bodily or personal injury, or damage to property resulting from actions, failures to act, operations or equipment of the insured, or by its employees, agents, consultants, or by anyone directly or indirectly employed by the insured. Insurance shall be written with a limit of liability not less than $1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than $1,000,000 aggregate for any damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than $500,000 for all property damage sustained by one person in any one accident; and a limit of liability not less than $500,000 aggregate for any such property damage sustained by two or more persons in any one accident. Any deductibles must be declared to and approved by the DISTRICT. At the option of the DISTRICT, either: the insurer shall reduce or eliminate such deductibles as respects the entity, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The comprehensive general and automobile liability insurance coverage shall also include the following:

1. Provision or endorsement naming the DISTRICT, and its consultants, and each of their officers, employees, and agents, each as additional insureds using form CG 20 10 11 85 in regards to liability arising out of the performance of any work under the Contract and providing that such insurance is primary insurance as respects the interest of the DISTRICT and that any other insurance maintained by the DISTRICT is excess and not contributing insurance with the insurance required hereunder.
2. "Cross Liability" or "Severability of Interest" clause.
3. Broad Form Property Damage, Personal Injury, Contractual Liability, Protective Liability Completed Operations coverages and elimination of any exclusion regarding loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU" hazards.
4. Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Contractor under the Contract, including, without limitation, that set forth in Section B-62, Indemnity and Litigation Costs.
5. Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the DISTRICT, its officers, officials, employees, or volunteers.
6. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
7. Indemnity and Litigation Cost
8. Promptly upon execution of the Contract, the Contractor specifically obligates itself and hereby agrees to protect, hold free and harmless, defend and indemnify the DISTRICT, and its consultants, and each of their officers, officials, employees and agents, from and against any and all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including without limitation attorneys' fees and other costs of litigation, which arise out of or are in any way connected with the Contractor's, or its Subcontractors' or suppliers', performance of Work under this Contract or failure to comply with any of the obligations contained in the Contract. This indemnity shall not extend, however, to attorney fees and costs incurred by the DISTRICT in prosecuting or defending against the Contractor in any proceeding under Section B-7, and shall imply no reciprocal right of the Contractor in any action on the contract pursuant to California Civil Code section 1717 or section 1717.5. To the extent legally permissible, this indemnity and hold harmless agreement by the Contractor shall apply to any acts or omissions, whether active or passive, on the part of the Contractor or its agents, employees, representatives, or Subcontractor's agents, employees and representatives, resulting in liability, irrespective of whether or not any acts or omissions of the parties to be indemnified hereunder may also have been a contributing factor to the liability, except such loss or damage which was caused by the active negligence, sole negligence or willful misconduct of the DISTRICT.
9. In any and all claims against the DISTRICT or its consultants, and each of their officers, employees and agents by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Worker's Compensation statutes, disability benefit statutes or other employee benefit statutes.
10. Each party to this Contract has been represented by counsel in the negotiation and execution of this Contract.
11. Protection of Work
12. The Contractor shall be responsible for the care of all work until completion and final acceptance; and the Contractor shall, at its own expense replace damaged or lost material and repair damaged parts of the Work or the same may be done at the Contractor's expense by the DISTRICT and the Contractor and its sureties shall be liable therefore. The Contractor shall make its own provisions for properly storing and protecting all material and equipment against theft, injury, or damage from any and all causes. Damaged material and equipment shall not be used in the Work. The Contractor shall take all risks from floods and casualties except as provided by law, and shall make no charge for the restoration of such portions of the Work as may be destroyed or damaged by flood or other casualties or because of danger from flood or other casualties or for delays from such causes. The Contractor may, however, be allowed a reasonable extension of time on account of such delays, subject to the conditions hereinbefore specified. The Contractor shall not be responsible for the cost, in excess of five percent (5%) of the contracted amount, of repairing or restoring damage to the Work, if the damage was proximately caused by an earthquake in excess of a magnitude of 3.5 on the Richter Scale or by tidal waves; provided that the Work damaged was built in accordance with accepted and applicable building standards, and the Plans and Specifications of the DISTRICT.
13. The Contractor shall effectively secure and protect adjacent property and structures, livestock, crops, and other vegetation. If applicable, the Contractor shall open fences on or crossing the right-of-way and install temporary gates of sound construction thereon so as to prevent the escape of livestock. Adjacent fence posts shall be adequately braced to prevent the sagging or slackening of the wire. Before such fences are opened, the Contractor shall notify the owner or tenant of the property and, where practicable, the opening of the fence shall be in accordance with the wishes of said owner or tenant. The Contractor shall be responsible that no loss or inconvenience shall accrue to the owner or tenant by virtue of its fences having been opened or the gate not having been either shut or attended at all times. Where special types of fences are encountered, the Contractor shall install temporary gates made of similar materials and of suitable quality to serve the purposes of the original fences. In all cases where the Contractor removes fences to obtain work room, it shall provide and install temporary fencing as required, and on completion of construction shall restore the original fence to the satisfaction of the DISTRICT. All costs of providing, maintaining and restoring gates and fencing shall be borne by the Contractor. It shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority or local conditions.
14. The Contractor shall use extreme care during construction to prevent damage from dust to crops and adjacent property. The Contractor, at its own expense, shall provide adequate dust control for the right-of-way and take other preventive measures as directed by the DISTRICT.
15. The Contractor shall be responsible for all damage to any property resulting from trespass by the Contractor or its employees in the course of their employment, whether such trespass was committed with or without the consent or knowledge of the Contractor.
16. The Contractor shall see that the work site is kept drained and free of all ground water and any other water which may impede the progress or execution of the Contract work.
17. The Contractor shall be responsible for any damage caused by drainage or water runoff from construction areas and from construction plant areas. In an emergency affecting the safety of life, or of the Work, or of adjoining property, the Contractor, without special instruction or authorization from the DISTRICT, is hereby permitted to act at the Contractor's discretion to prevent such threatened loss or injury, and it shall so act without appeal if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work shall be determined as specified under Section B-3. Should the DISTRICT deem an emergency condition to exist, the Contractor shall immediately do those things and take those steps ordered by the DISTRICT. The decision of the DISTRICT in this respect shall be final and conclusive. Any claims for compensation made by the Contractor on account of emergency work shall be determined as specified under Section B-3.
18. Except as provided by Government Code Section 4215, the Contractor shall be responsible for the removal, relocation and protection of all public and private utilities, including irrigation facilities in the nature of utilities, located on the site of the construction project if and to the extent that the same are identified in the Contract Documents, and the Contractor shall not be entitled to any extension of time or claim for damages for extra compensation in connection therewith. If and to the extent that such utilities or facilities are not identified in the Contract Documents, as between the Contractor and the DISTRICT, the DISTRICT will be responsible for the cost of their removal, relocation or protection, as the case may be, but the Contractor shall perform any such work in conformance with applicable provisions of Sections B-3 and B-4, if so directed by the DISTRICT and in such situation the Contractor shall not be responsible for delay in completion of the project caused by the failure of the DISTRICT or the owner of the utility to provide for such removal or relocation. If the Contractor, while performing the Contract, discovers utility or irrigation facilities not identified by the DISTRICT in the Contract Documents, it shall immediately notify the DISTRICT in writing.
19. Subject to the provisions of this Section, where the Work to be performed under the Contract crosses or otherwise interferes with existing streams, watercourses, canals, farm ditches, pipelines, drainage channels, or water supplies, the Contractor shall provide for such watercourse or pipelines and shall perform such construction during the progress of the Work so that no damage will result to either public or private interests, and the Contractor shall be liable for all damage that may result from failure to so provide during the progress of the Work.
20. No Personal Liability

Neither the DISTRICT, nor any of their other officers, agents, or employees nor any other public office shall be personally responsible for any liability arising under the Contract, except such obligations as are specifically set forth herein.

ARTICLE VI. MEASUREMENT AND PAYMENT

1. Measurement of Quantities
2. Where the Contract provides for payment on a lump sum price basis, the Contractor shall submit a price breakdown to the DISTRICT immediately after award of the Contract. The price breakdown as agreed upon between the Contractor and the DISTRICT shall be used for preparing future estimates for partial payments to the Contractor and shall list the major items of Work and a price for each item. Overhead and other general costs and profit shall be prorated to each item so that the total of all items equals the lump sum price. The price breakdown shall be subject to the approval of the DISTRICT and Contractor may be required to verify the prices for any or all items.

Where the Contract provides for payment on a unit price basis, the quantities of work performed will be computed by the DISTRICT on the basis of measurements taken by the DISTRICT.

1. Whenever the estimated quantities of Work to be done and materials to be furnished under this Contract are shown in any of the documents including the Proposal, they are given for use in comparing bids and the right is especially reserved, except as herein or otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the DISTRICT to complete the Work contemplated by this Contract and such increase or diminution shall in no way violate this Contract, nor shall any such increase or diminution give cause for claims, liability for damage or adjustment to the Contract time bid price.
2. Scope of Payment
3. The Contractor shall accept the compensation provided in the Contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed Work and for performing all Work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the acceptance by the DISTRICT and for all risks of every description connected with the prosecution of the Work, also for all expenses incurred in consequence of the suspension or discontinuance of the Work as provided in the Contract; and for completing the Work according to the Specifications and Plans. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.
4. No compensation will be made in any case for loss of anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as provided in such agreements.
5. Progress Estimate

At least ten (10) days before each progress payment falls due (but not more often than once a month) the Contractor will submit to the DISTRICT a partial payment estimate filled out and signed by the Contractor covering the Work performed during the period covered by the partial pay estimate and supported by such data as the DISTRICT may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the DISTRICT, as will establish the DISTRICT'S title to the material, and equipment and protect its interest therein, including, applicable insurance. The DISTRICT will within seven (7) calendar days after receipt of each partial payment estimate either recommend payment or return the estimate to the Contractor indicating in writing its reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial pay estimate.

Payroll certification forms provided by the Contractor and fully executed shall be filed with the DISTRICT at the time of submission of each partial payment estimate and also when the claim for final payment is submitted. Wage Report forms shall be completed and submitted as set forth in Parts 4 and 5.

1. Progress Payments
2. The Contractor is made aware that the DISTRICT will approve all partial payments.
3. Upon receipt of an undisputed, properly submitted progress estimate from the Contractor, the DISTRICT shall act in accordance with the following:
4. Each payment request shall be reviewed by the DISTRICT as soon as practicable after receipt for the purpose of determining that the progress estimate is a proper payment request.
5. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable but not later than seven (7) calendar days after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.
6. The number of days available to the DISTRICT to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the DISTRICT exceeds the ten-day return requirement set forth herein.
7. The DISTRICT will pay the Contractor ninety percent (95%) of the amount of each progress estimate within thirty (30) calendar days after receipt of an undisputed, properly submitted progress estimate from the Contractor. If the DISTRICT fails to pay an undisputed progress estimate within the allotted thirty (30) calendar days, the DISTRICT shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (s) of Section 685.010 of the Code of Civil Procedures. Five percent (5%) of amount of each estimate shall be retained by the DISTRICT until final completion and acceptance of all Work under Contract.
8. When, in the judgment of the DISTRICT, the work is not proceeding in accordance with the provisions of the Contract, or when in its judgment the total amount of the work done since the last estimate amounts to less than $1,000, no pay estimate will be prepared and no progress payment will be made.
9. No progress estimate or payment shall be considered to be an approval or acceptance of any work, materials, or equipment. Estimated amounts and values of work done and materials and equipment furnished will be conformed with actual amounts and values as they become available in subsequent progress estimates, progress payments and the final estimate and payment. All estimates and payments will be subject to correction in subsequent progress estimates and payments and the final estimate and payment.
10. The DISTRICT requires that any payments due to Subcontractors for a portion of the Work satisfactory completed shall be made by Contractor to Subcontractors within thirty (30) calendar days of DISTRICT's payment to Contractor. Failure to make such payments in a timely fashion may result in the DISTRICT issuing future progress payments by joint check to the Contractor and Subcontractors.
11. It is mutually agreed between the parties to the Contract that no payments made under the Contract, including progress payments and the final payment, shall be evidence of the performance of the Contract, either wholly or in part, and no payment shall be construed to be an acceptance of any defective or incomplete work or improper materials.
12. Liens and Stop Notices

The Contractor agrees to keep the Work, the site of the Work and all monies held by the DISTRICT free and clear of all liens and stop notices related to labor and materials furnished in connection with the Work, if permitted by law. Furthermore, the Contractor waives any right it may have to file any type of lien or stop notice in connection with the Work. Notwithstanding anything to the contrary contained in the Contract documents, if any such lien or stop notice is filed or there is evidence to believe that lien or stop notice may be filed at any time during the progress of the Work or within the duration of this Contract, the DISTRICT may refuse to make any payment otherwise due the Contractor or may withhold any payment due the Contractor a sum sufficient in the opinion of the DISTRICT to pay all obligations and expenses necessary to satisfy such lien or stop notice. The DISTRICT may withhold such payment unless or until the Contractor, within ten (10) calendar days after demand therefor by the DISTRICT, shall furnish satisfactory evidence that the indebtedness and any lien or stop notice in respect thereof has been satisfied, discharged and released of record, or that the Contractor has legally caused such lien or stop notice to be released of record pending the resolution of any dispute between the Contractor and any person or persons filing such lien or stop notice. If the Contractor shall fail to furnish such satisfactory evidence within ten days of the demand therefor, the DISTRICT may discharge such indebtedness and deduct the amount thereof, together with any and all losses, costs, damages and attorney's fees suffered or incurred by the DISTRICT from any sum payable to the Contractor under the Contract documents, including but not limited to final payment and retained percentage. This Section shall be specifically included in all Subcontracts and purchase orders entered into by the Contractor.

1. Final Acceptance and Date of Completion

Whenever the Contractor shall deem all Work under this Contract to have been completed in accordance therewith, it shall so notify the DISTRICT in writing, and the DISTRICT shall promptly ascertain whether the Work has been satisfactorily completed and, if not, shall advise the Contractor in detail and in writing of any additional work required. When all the provisions of the Contract have been fully complied with to the satisfaction of the DISTRICT, he shall proceed with all reasonable diligence to determine accurately the total value of all Work performed by the Contractor at the prices set forth in the Contract or fixed by Change Orders, and the total value of all extra work, all in accordance with the Contract. The DISTRICT will then certify to said final estimate and to the completion of the Work, and will file copies thereof with the DISTRICT and the Contractor. The date of completion shall be the date upon which the DISTRICT makes its formal written acceptance of the Work.

1. Final Payment

Within ten (10) calendar days after the date of completion, the DISTRICT will file in the Office of the County Recorder, a Notice of Completion of the Work herein agreed to be done by the Contractor. On the expiration of thirty-five (35) calendar days after the recordation of such Notice of Completion the difference between said final estimate and all payments theretofore made to the Contractor shall be due and payable to the Contractor, subject to any requirements concerning the furnishings of a maintenance bond, and excepting only such sum or sums as may be withheld or deducted in accordance with the provisions of this Contract. All prior certifications upon which partial payments may have been made, being merely estimates, shall be subject to correction in the final certificate.

1. Final Release

Final payment to the Contractor in accordance with the final estimate is contingent upon the Contractor furnishing the DISTRICT with a signed written release of all claims against the DISTRICT arising by virtue of the Contract. Disputed Contract claims in stated amounts may be specifically excluded by the Contractor from the operation of the release. The release shall be in substantially the following form:WAIVER AND RELEASE UPON FINAL PAYMENT

The undersigned has been paid in full by the DISTRICT for all labor, services, equipment and material furnished to the DISTRICT on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Improvements located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, California, and does hereby waive and release the DISTRICT, its officers, agents, and employees, from all claims and liability to the Contractor arising out of, or in any way connected with, the Contract, except for the disputed contract claims specified below:

Notice of Disputed Claim

Amount of Claim

$

Dated:

(Name of Contractor)

By:

(Title)

Any payment, however, final or otherwise shall not release the Contractor or its sureties from obligations under the Contract Documents or Performance and Payment Bonds.

1. Right to Withhold Payments
2. In addition to all other rights and remedies of the DISTRICT hereunder and by virtue of the law, the DISTRICT may withhold or nullify the whole or any part of any partial or final payment to such extent as may reasonably be necessary to protect the DISTRICT from loss on account of:
3. Defective work not remedied, irrespective of when any such work be found to be defective;
4. Claims or liens filed or reasonable evidence indicating probable filing of claims or liens including, but not limited to claims under Sections 1775, 1776, or 1777.7 of the Labor Code;
5. Failure of the Contractor to make payments properly for labor, materials, equipment, or other facilities, or to Subcontractors and/or suppliers;
6. A reasonable doubt that the Work can be completed for the balance then unearned;
7. A reasonable doubt that the Contractor will complete the Work within the agreed time limits;
8. Costs to the DISTRICT resulting from failure of the Contractor to complete the Work within the proper time; or
9. Damage to Work or property.
10. Damage to another Contractor.
11. Performance of Work in violation of the Terms of the Contract Documents.
12. Where work on unit items is substantially complete, but lacks cleanup and/or other corrections ordered by the DISTRICT, amounts shall be deducted from the unit prices in partial payment estimates to amply cover such cleanup and correction.
13. Failure to file required Equal Opportunity and Affirmative Action forms.
14. Whenever the DISTRICT shall, in accordance herewith, withhold any monies otherwise due the Contractor, written notice of the amount withheld and the reasons therefore will be given the Contractor. After the Contractor has corrected the enumerated deficiencies, the DISTRICT will promptly pay to the Contractor the amount so withheld. When monies are withheld to protect the DISTRICT against claims or liens of mechanics, material men, Subcontractors, etc., the DISTRICT may at its discretion permit the Contractor to deliver a surety bond in terms and amount satisfactory to the DISTRICT, indemnifying the DISTRICT against any loss or expense, and upon acceptance thereof by the DISTRICT, the DISTRICT shall release to the Contractor monies so withheld.
15. Waiver of Interest

The DISTRICT shall have no obligation to pay and the Contractor hereby waives the right to recover interest with regard to monies which the DISTRICT is required to withhold by reason of judgment, order, statute or judicial process.

1. Satisfaction of Claims and Liens

Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the DISTRICT, a complete release of all liens and claims arising out of this Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as it has knowledge or information the releases and receipts include all the labor and material for which a lien or claim could be filed; but the Contractor may, if any Subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the DISTRICT, to indemnify the DISTRICT against any lien or claim. If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the DISTRICT all monies that the latter may be compelled to pay in discharging such a lien, or claim, including all costs and reasonable attorney's fees.