

Job Order Contract General Conditions

Table of Contents

Article

Definitions, Bid and Scope

1. Definitions
2. Contract and Performance Period
3. Contract Scope
4. Indefinite Quantity Contract
5. Compliance with Applicable Law
6. Equals

Contractor Requirements

7. Post Award Conference
8. General Requirements
9. Work Requirements
10. Interpretation of Plans and Specifications
11. Ordering Procedures
12. Construction Procedures
13. Measurements to Be Verified
14. Caution to Contractors
15. Scheduling Work
16. Computer Requirements

Contract Documents

17. Specifications
18. Contract Documents and Order of Precedence
19. Standard Specifications
20. Record Drawings (As-Built Records); Reference Materials

Schedule and Changes

21. Work Schedule
22. County's Right to Delay Commencement of the Work

Inspections/Permits, Tests, Quality, Warranties

- 23. Observation and Inspections
- 24. Permits and Licenses
- 25. Tests

Substantial Completion, Occupancy by County

- 26. Substantial Completion
- 27. Occupancy by the County

Employment Requirements

- 28. Labor Laws
- 29. Worker/Worker Certification
- 30. Hours of Work
- 31. Saturday, Sunday, Holiday and Overtime Work
- 32. Prevailing Wage Scale
- 33. Employment of Indentured Apprentices
- 34. San Bernardino County Security Policy
- 35. Submission Equal Employment Opportunity Documents
- 36. Federal Equal Opportunity Employment Requirements
- 37. Failure to comply with Affirmative Action
- 38. Contract Work Hours and Safety Standards Act
- 39. EECBG Funds And CDH Funds

Contractor Responsibilities, Restrictions

- 40. Payroll Records
- 41. Quality of Work and Material
- 42. Responsibility of Contractor and its Representatives
- 43. Repairing Damaged Work
- 44. List of Subcontractor and Subletting Work
- 45. Advertising
- 46. Coordination with Others and Other Contracts
- 47. Contractor's Equipment
- 48. Contractor Personnel
- 49. Key Personnel
- 50. Audits and Records

51. Warranty and Corrections to Work
52. Failure to Complete Work on Time- Liquidated Damages
53. Disruption of County Scheduled Activities
54. Trucking
55. Toilet Facilities
56. Elevators
57. Utilities
58. Regulations
59. Contractor Liable and Responsible to County
60. Environmental Protection
61. Protection of Work and Property
62. Project Site Storage
63. Site Protection
64. Noise Control/Abatement
65. Safety and Health
66. Compliance with Clean Air Act, Clean Water Act, and California State Water Resources Control Board
67. Trenching and Excavation
68. Energy Conservation
69. Salvage and Salvage Disposal
70. Site Preparation and Cleanup
71. Access to Buildings
72. County-Furnished Equipment/Materials
73. Shop Drawings and Submittals

Insurance and Bonds

74. Indemnification and Insurance Requirements
75. Bonds

Legal and Other

76. Authority of the Department And Division
77. Laws, Codes and Regulations to be Observed
78. Discrepancies, Interpretations and Omissions
79. Assignment
80. Patents and Royalties
81. Suspension of Work

- 82. Termination
- 83. Notice of Suspension or Termination
- 84. Disentanglement
- 85. Mediation and Arbitration of Claims
- 86. Acceptance Of Final Payment As Release
- 87. Forum Selection
- 88. Waiver
- 89. Entire Agreements
- 90. Request For Payment
- 91. Payments to Contractor
- 92. Payments to Subcontractor
- 93. County Furnished Software
- 94. Termination for Improper Consideration
- 95. Release of Information
- 96. County's Quality Assurance Plan
- 97. Federal Earned Income Credit
- 98. Security Services at Court Facilities
- 99. Conflict of Interest
- 100. Employment Eligibility Verification
- 101. Former County Employees
- 102. Representation of the County
- 103. Public Records Act
- 104. Environmentally Preferable Purchasing Policy
- 105. Change of Address
- 106. General Provisions
- 107. List Of Attachments

General Conditions

1. DEFINITIONS

- A. Acceptance: shall mean written acceptance of the Work by the County.
- B. Adjustment Factor: is the Contractor's competitively bid price adjustment to the Unit Prices as published in the Construction Task Catalog®. All Adjustment Factors are expressed as an increase or decrease from the published prices.
- C. Architect/Engineer of Record: as used herein shall mean the individual/firm designated by the County for the preparation of plans and specifications for a specific Job Order.
- D. Director: as used herein refers to the Director of the Project and Facilities Management Department.
- E. Award Criteria Figure: The amount determined in the Award Criteria Figure Calculation section (Award Formula) of the Bid Form, which is used for the purposes of determining the lowest bid.
- F. Board of Supervisors: as stated herein shall mean the Board of Supervisors, San Bernardino County.
- G. Completion (final completion): as used herein means that an individual Job Order issued under the contract is fully executed and completed in accordance with the Detailed Scope of Work, plans and specifications.
- H. Construction Task Catalog®: for this contract, is a comprehensive listing of specific repair or remodeling construction related tasks together with a specific unit of measurement and a Unit Price, also referred to as the "CTC".
- I. Contract Documents: consist of the contract; the legal advertisements covering the opening of bids; the performance, payment and security (bid) bonds; the Instructions to Bidders; General Conditions; Construction Task Catalog®; Technical Specifications; bid proposal; Certificates of Insurance; and the Addenda, all incorporated in the contract before its execution. Job Order Proposal documentation include shop drawings, sketches, Price Proposals, lists of Subcontractor, schedules, etc; as prepared for individual Job Orders, as well as the Job Order itself, shall also become part of the Contract Documents after its execution.
- J. Contractor: as used herein refers to the licensed person, firm, or corporation authorized to do business in the State of California with whom a contract has been made directly or through accredited representatives that have entered into a contract with the County for the performance of the Work described by these Contract Documents.

- K. County: as used herein shall mean the San Bernardino County.
- L. Day: as used herein, shall mean a calendar day, unless specifically stated otherwise. If a stated deadline should fall on a non-working day, the due date shall be the following business day.
- M. Department: as used herein, refers to the Project and Facilities Management Department of the San Bernardino County.
- N. Detailed Scope of Work: shall be determined by individual Job Orders issued hereunder. The Detailed Scope of Work is the complete description of services to be provided by the Contractor under an individual Job Order. The Detailed Scope of Work will include documentation for a given project. Documentation may include a narrative description of the work.

A Descriptive general scope of work is issued by the County along with the invitation to the Joint Scope Meeting. A Detailed Scope of Work is generated by the Contractor following the Joint Scope Meeting, and is approved by the County. The final Detailed Scope of Work is signed by the Contractor and the County.

- O. Director: as used herein, refers to the Director of the Project and Facilities Management Department, or his/her authorized representative.
- P. Division: as used herein, refers to the Project Management Division of the Project and Facilities Management Department of the San Bernardino County. The Division is represented by the Director or Chief Project Manager.
- Q. Emergency: as used in this contract shall mean such situations as shall require immediate action preventing Contractor from contacting the County prior to execution.
- R. Final Acceptance: shall mean written acceptance of the Work by the County as evidence by the Director's signature, or his designee, on the recommendation for Acceptance or on a Notice of Completion.
- S. Inspector: as used herein shall mean any representative of the County authorized to perform inspections for various aspects of the Work.
- T. Job Order: as used herein refers to the obligation document written by the County, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price under a Job Order Contract. Each individual project to be accomplished under this contract will be through the issuance of a Job Order. A Job Order consists of plans, shop drawings, permits, specifications and the Detailed Scope of Work required to complete the work. The County will be responsible for the development of the Job Order as well as the observation and Acceptance of the Work contained within the Job Order. The County will review the Contractor's Job Order Proposal and if acceptable, shall sign the Job Order

and issue a Notice To Proceed for the Work described therein. Each Job Order will include a Detailed Scope of Work, a firm fixed Job Order Price Proposal from the Contractor, a time duration for the completion of the Work and any special conditions that might apply to that specific Job Order. There is no minimum or maximum value associated with an individual Job Order. A project may consist of one or more Job Orders.

- U. Job Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
- V. Job Order Contract (JOC): is a competitively bid, indefinite quantity contract for accomplishing an ongoing series of individual repair and remodeling and related services. Work is accomplished through the issuance of individual Job Orders against the contract. The bid documents include a Construction Task Catalog® containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction. Each Job Order issued will be a firm fixed priced order for accomplishing a specific task or project.
- W. Job Order Price: The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.
- X. Job Order Price Proposal: A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- Y. Job Order Proposal: as used herein is the Contractor's offer to do work. It refers to the Job Order Proposal documents prepared by the Contractor quoting a firm fixed price to achieve a specific Detailed Scope of Work as requested by the County. The Job Order Proposal will also contain approved shop drawings, permits and submittals as necessary, a detailed Job Order Price Proposal comprised of appropriate line items and quantities from the Construction Task Catalog®, supporting documentation for any Non Pre-Priced Tasks, a construction schedule, a list of Subcontractors, and other documentation as may be required by the County prior to the issuance of a Job Order.
- Z. Joint Scope Meeting: A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- AA. Maximum Contract Value: The maximum value of Job Orders that the Contractor may receive under this Contract.
- BB. Minimum Contract Value: The minimum value of Job Orders that the Contractor has the opportunity to perform under this Contract.
- CC. Non-Compliance Notice: as used herein shall refer to a written notice issued to the Contractor that identifies installations, and/or substitutions that do not comply with codes or Contract Documents and for which payment cannot be made.

- DD. Non Pre-Priced Tasks: as used herein shall refer to those units of work that are not included in the Construction Task Catalog® but within the general scope and intent of this contract and may be negotiated into this contract as needs arise. Such work requirements shall be incorporated into and made a part of this contract for the Job Order to which they pertain, and may be incorporated into the Construction Task Catalog®, if determined appropriate by the County, at the base price determined in this unit price contract. Non Pre-Priced work requirements shall be separately identified and submitted in the Job Order Proposal.
- EE. Normal Working Hours: shall mean standard shifts during the period of 7:00 a.m. to 5:00 p.m. Monday through Friday, except for County observed holidays. All other times are Other Than Normal Working Hours.
- FF. Notice of Completion: County shall record a Notice of Completion for each Project.
- GG. Notice to Proceed: is the written document issued by the County, authorizing the Contractor to commence work on an individual Job Order.
- HH. Other Contractors: as used herein shall mean any person, firm or corporation with whom a contract has been made by the County for the performance of any work which is not a portion of Work covered under this contract.
- II. Other than Normal Working Hours: Includes the hours of 5:01 p.m. to 6:59 a.m. Monday through Friday and all day Saturday, Sunday, and County Holidays.
- JJ. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
- KK. Project: The Project is the total construction improvements of which the Work, a series of individual Job Orders or an individual Job Order performed under the Contract Documents may be the whole or a part and which may include construction by the County or by Other Contractors.
- LL. Punch List: is a compilation of items which have not been completed in accordance with an individual Job Order and which will not interfere with the use of the premises as intended by the County.
- MM. Request for Proposal (RFP): refers to an official request made by the County for the Contractor to provide a Job Order Proposal for an identified project.
- NN. Subcontractor: as used herein shall be defined as a licensed person, firm, or corporation, and all of its lower tier Subcontractors, authorized to do business in the State of California, other than a material supplier/vendor laborer, who/which enters into a contract with a Contractor for the performance of any part of such Contractor's contract

- OO. Substantial Completion: shall mean that work on an individual Job Order is completed in accordance with the Detailed Scope of Work, plans and specifications, as modified by any Supplemental Job Order agreed by the parties, so that the remaining work is such minor alterations and patching as the final inspection shall disclose. All warranties and guarantees for completed work shall commence at Substantial Completion of the project. The date of Substantial Completion will be established by the County.
- PP. Superintendent: as used herein refers to the executive representative of the Contractor who is present on the Work site at all times during the progress, authorized to receive and fulfill instructions from and communicate with the County, and capable of overseeing and executing the Work efficiently. The Superintendent shall be a direct employee of the prime Contractor. The Superintendent shall not actually perform the physical tasks involved unless otherwise waived in writing by the County.
- QQ. Supplemental Job Order: A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
- RR. Surety: as used herein shall mean the firm, corporation, or individual which is bound by the performance, payment and security (bid guaranty) bond with and for the Contractor, and which engages to be responsible for the Contractor's acceptable performance, payment and guaranty of the work and for payments of all debts pertaining thereto.
- SS. Technical Specifications: The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- TT. Unit Price: as used herein refers to the price published in the Construction Task Catalog[®] for a specific construction or construction related task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. The Unit Prices are fixed for the duration of the contract. Each Unit Price is comprised of the labor, equipment, tax, insurance bonds, and materials costs to accomplish that specific task.
- UU. Work: includes all labor, materials, equipment, transportation, and services necessary to produce the repair or remodeling tasks as required by the Detailed Scope of Work for an individual Job Order.

2. CONTRACT AND PERFORMANCE PERIOD

- A. There is no Minimum Contract Value ordered under this contract. The Maximum Contract Value is stated in the Instructions to Bidders. The Maximum Contract Value may be increased to the maximum value allowed by law by agreement of both the County and the Contractor.

- B. This is a contract for repair, remodel or other repetitive work specified in individual Job Orders, effective for a period of 12 months from the start date of the contract approved by the Board of Supervisors. Job Orders issued prior to, but not completed, by the expiration of the contract period will be completed with

all provisions of this contract still in force.

- C. Performance time for each Job Order issued under this contract will be determined in accordance with the General Conditions. This performance time will be determined and agreed upon for each individual Job Order.
- D. The County, without invalidating the Job Order, may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Job Order. Supplemental Job Orders to an original Job Order issued prior to but not completed by the expiration of the contract period, will be completed with all the provisions of this contract still in force.
- E. Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract, by Change Order.

3. CONTRACT SCOPE

- A. The contract scope shall be determined by the individual Job Orders issued hereunder. Upon receipt of a Job Order, the contractor agrees to provide all management, work, material, supplies, parts (to include system components), transportation, plant supervision, labor and equipment, except when specified as County furnished, needed to repair or remodel at designed County locations. The Contractor agrees to provide quality assurance as specified in strict accordance with all terms, conditions, special contract requirements, specifications, attachments, and exhibits contained in this contract, Job orders under this contract, or incorporated by reference. The Contractor agrees to also be responsible for site safety as well as site preparation and cleanup.
- B. The Contractor's Work and responsibility shall include all programming, administration, and management necessary to provide repair, remodel, and related services as ordered. The Work shall be conducted by the Contractor in strict accordance with the contract and all applicable laws, regulations, codes, or directives; including all Federal, State, and Local laws, regulations, codes and directives. The Contractor agrees to insure that all Work provided meets, or exceeds critical reliability rate or tolerances specified or included in applicable referenced documents.

Contractor agrees to perform such work as quality control, financial control, and maintain accurate and complete records, files, library of documents to include Federal State, and Local regulations codes, laws, listed herein, and manufacturer's instructions and recommendations which are necessary and related to the Work to be performed.

Contractor agrees to provide related services such as preparing and submitting required reports, maintaining record drawings current from activities under this contract, performing administrative work, and submitting necessary information as specified. The Contractor agrees to provide; materials lists to include trade names,

brand names, model number, and ratings for all materials necessary for a complete job.

- C. All Work will be ordered and funded when needed in accordance with the ordering clause and procedures contained in the Article 11 (Ordering Procedures).
- D. The Contractor may be required to complete Work in any location within San Bernardino County.
- E. The Contractor will be required prepare Job Order Proposals, perform Work onsite, and close-out many projects concurrently.
- F. The following documents and standards shall be used in the execution of Work under the contract and are considered to be part of this contract;
 - 1. Construction Task Catalog® (CTC)
 - 2. Technical Specification, in PDF format.

The intent of these specifications is to furnish concise industry and commercial standards for repair or remodeling of County facilities. If, however, there is a conflict between Federal, State, and Local codes and the Technical Specifications; Federal, State and Local codes shall be the governing document.

If there is a conflict between the section number contained in the CTC and the section number contained in the Technical Specifications, the description of the section shall control.

4. INDEFINITE QUANTITY CONTRACT

- A. This is an indefinite-quantity contract for the supplies or services specified and effective for the period stated in the contract.
- B. Work or performance shall be made only as authorized by Job Orders issued in the accordance with the ordering procedures clause. The Contractor agrees to furnish to the County when and if ordered, the supplies or services specified in the contract up to and including the quantity designated in the Job Orders issued to the Maximum Contract Value designated in the contract.

5. COMPLIANCE WITH APPLICABLE LAW

This Contractor agrees to comply with all applicable Federal, State and Local laws, rules regulations, ordinances and directives, and all provisions required thereby to be included in this contract are hereby incorporated herein by reference.

6. EQUALS

When any material, product, thing or service is specified or indicated in the Contract Documents, or individual Job Order under the contract, by brand, trade, patent or proprietary name and/or by the name of the manufacturer, the item so specified or indicated shall be deemed to be followed by the words "Or Equal." This is unless specifically directed by a County Project Manager that an exact brand, model is to be utilized for a specific Job Order, which direction shall be stated in the Job Order.

7. POST AWARD CONFERENCE

Before the issuance of the first Job Order under the contract, a conference will be conducted by the County to acquaint the Contractor with County policies and procedures that are to be observed during the prosecution of the Work and to develop mutual understanding relative to the administration of the contract.

8. GENERAL REQUIREMENTS

The County controls all work performed upon its real property.

- A. Management: The Contractor agrees to provide all appropriate personnel required to perform the Work and meet all contract requirements.
- B. Safety: The Contractor agrees to conduct regular safety meetings with its Subcontractor(s), and both the Contractor and Subcontractor(s) agree to familiarize themselves with all provisions of Article 65, "Safety and Health".
- C. Indefinite Work: The County will issue to the Contractor requests for Job Order Proposals for the firm-fixed-prices for Work requirements within the scope of the contract. The Contractor agrees to prepare all Job Order Proposals in accordance with Article 11, "Ordering Procedures."
- D. Site Visits: The Contractor agrees to visit all proposed work sites prior to the development of the Detailed Scope of Work. All site visits must be coordinate through the County.
- E. Scope of Work Requirements: The Contractor agrees to provide all documentation required to fully establish the Detailed Scope of Work, including but not limited to, shop drawings, sketches and/or specifications related to the proposed project. This documentation will be provided for the purpose of defining the Detailed Scope of Work, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues.

The Contractor agrees to prepare all documents, shop drawings, and "as-built" drawings to meet all the requirements of Local, State and Federal regulations, codes, and directives. The County agrees to also provide as necessary the permits, forms, studies, and other documentation required by codes and agencies.

- F. Non Pre-Priced Task Requirements: In addition to the work unit requirement in the Construction Task Catalog® (CTC) and Technical Specifications, the County may require Non Pre-Price Tasks. Such Non Pre-Priced Tasks shall be incorporated into the Job Order in accordance with these Contract Documents.
- G. Contractor Inspections: The Contractor agrees to inspect all repairs and refurbishments to ensure that all Work is accomplished as specified under this contract. The Contractor agrees to prepare and maintain inspection files that reflect past and current inspection dates, results of all inspections made, corrections required, and corrections made.
- H. Compliance with all Applicable Laws and Regulations: The Contractor agrees to, as part of its factor, prepare and review as necessary the documentation noted in Item 9E above, to ensure its compliance with all applicable laws and regulations.
- I. Performance Evaluation Meetings: The Contractor agrees to meet with the County as requested, and in any event, not less than once a month, during contract performance. Mutual effort will be made to resolve any problems identified.
- J. Documentation and Information: The Contractor agrees to, when required by the Division, produce for inspection at the Contractor's office, any and all documentation or information concerning the Contractor's financial status, including without limitation, books, accounts, records, financial statements, vouchers, and canceled checks. The Contractor further agrees to permit the Division to copy any such documentation or information.
- K. Compliance with Contract Documents: Failure to comply with all requirements in the Contract Documents may result in disqualification under future Requests for Proposals for the San Bernardino County Job Order Contract Program or award of a future San Bernardino County Job Order Contract.

9. WORK REQUIREMENTS

The Contractor agrees to:

- A. Quality Control Plan:
 - 1. The Contractor agrees to submit a written Quality Control Plan (QCP) which shall include the name of its employee responsible for ensuring quality. The Contractor agrees to notify the County, in writing, of any proposed change to the plan during the course of the contract. No change shall be implemented prior to review and Acceptance by the County. Once the County has accepted the Contractor's Quality Control Plan, it shall become part of this contract. Deviation from the Quality Control Plan without the express written approval of the County may place the Contractor in default of the contract.

2. The Contractor agrees to deliver two copies of its Quality Control Plan to the County no later than ten (10) Days from the date of contract award, and agrees to issue and deliver two copies whenever changes take place.
 3. The Contractor agrees to apply the approved Quality Control Plan, and agrees to ensure that all Work and requirements of the contract are met as specified.
 4. The Contractor agrees to maintain quality control over supplies, manufacturers, products, services, site conditions, and workmanship, to produce Work of specified quality. In addition, the Contractor agrees to comply with industry standards except where Contract Documents specify more restrictive tolerances, more rigid standards, or more precise workmanship. The Contractor agrees to participate in County inspections and verification as required, and perform and validate corrective actions in a timely manner.
- B. Standards: The Contractor agrees to meet the standards set forth by the Technical Specifications and all other applicable regulations, codes, directives, equipment specifications, and manufacturer's instructions and recommendations inclusive of equipment or vehicles, supplies, parts, or materials utilized to provide the required Work. In case of uncertainty of detail or procedure, the Contractor should request additional instruction from the County.
- C. Material Acquisition: The Contractor agrees to determine all materials required for each Job Order from shop drawings and sketches, specifications, Detailed Scope of Work, instructions, and any other available resources. The Contractor agrees to acquire all necessary materials and use them to produce the desired finished products.
- D. Material Storage: All materials stored at work sites shall be stored in a manner that precludes any safety or health risk to the public. Hazardous materials or waste as defined by Federal Standard 313D shall be handled in accordance with Environmental Protection Agency Federal Regulations, State Department of Health, and Department of Transportation and South Coast Air Quality Management District (AQMD) procedures.
- E. Electrical Equipment: All Contractor equipment utilizing County electrical sources must meet UL standards and be compatible with existing circuits. The Contractor agrees to prevent operation, or attempted operation, of equipment that requires electrical power exceeding the capacity of existing circuits.
- F. Recoverable Resources: Recovery items to which the County does not claim valuable interest, such as metal scrap, scrap lumber, crating materials, empty barrels, boxes, textiles and bags, waste paper, cartons, and similar materials that retain useful, recycling, salvage, or saleable value, shall become the property of the Contractor.

- G. Work in Progress: The Contractor agrees to consult with the County to resolve all scope problems, disseminate project information and maintain close coordination on all matters relating to Work in progress.
- H. Laboratory and Field Tests: The Contractor agrees to perform all laboratory and field tests, as directed by the County, to demonstrate compliance with Work specifications.
- I. Walk-Through Inspections: The Contractor agrees to perform preliminary walk-through inspections with the County and Inspectors to identify Punch List items and discrepancies prior to final inspection.
- J. Contractor Selection: The County may award an individual Job Order to any selected Contractor. Selection of the Contractor and award of the Job Order will be in compliance with established County procedures and based on one or more of the following criteria:
 - 1. Rotational selection among all Contractors, unless otherwise determined by the County.
 - 2. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
 - 3. Balancing of work load (Job Order dollar volume and construction backlog) among Contractors.
 - 4. Management of Job Order dollar volume within bonding limitations of the Contractor.
 - 5. Price, as it relates to the County's independent cost estimate.
 - 6. Contractor's responsiveness to the County on Job Orders.
 - 7. Other appropriate criteria as deemed in the best interest of the County.

10. INTERPRETATIONS OF PLANS AND SPECIFICATIONS

- A. Every part of the Work, as shown on the drawings and described in the specifications which are provided by the County for a specific Job Order, must be complete and finished. No deviations are to be made from the drawings or specifications without previously obtaining written authorization from the Director or Chief Project Manager.
- B. In general, the drawings will show dimensions, positions, and kind of construction; and the specifications will define materials, quantities, and methods. Any Work called for on the drawings and not mentioned in the specifications, or vice versa,

shall be performed as though fully set forth in both. Work not particularly detailed, marked or specified, shall be the same as similar

parts that are detailed, marked or specified.

- C. The drawings shall be accurately followed as to scale, except where figures are given for dimensions which shall in all cases be taken in preference to scale measurements. Large-scale details take precedence over small drawings in all cases, full-scale drawings having preference.
- D. Should an error be found in the specifications or drawings, or in the work done by others affecting this Work, the Contractor shall notify the County at once, and the County will issue instructions as to procedure. If the Contractor proceeds with the Work so affected without such instructions, he will make good any resulting damage or defects. This includes typographical errors in the specifications and notational errors on the drawings where doubtful of interpretation.
- E. Where on any drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply also to all other like portions of the Work. Where ornament or other detail is indicated on starting only, such detail shall be continued throughout the course of parts in which it occurs and shall also apply to all other similar parts in the Work unless otherwise indicated.

11. ORDERING PROCEDURES

A. Joint Scope Meeting and Job Development:

The County will issue, for each individual project, a Descriptive General Scope of Work and Joint Scope invitation requesting the Contractor's Superintendent and project manager and/or the County's end user representative, to meet at the project site. The County, Contractor and other necessary parties will visit the proposed work site and participate in a Joint Scope Meeting, which will include discussion and establishment of the following:

1. General Scope of Work
2. Definition and refinement of requirements
3. Existing site conditions
4. Methods and alternatives for accomplishing work including value engineering
5. Requirements for plans, sketches, shop drawings(s), submittals, etc.
6. Tentative construction duration work schedule

7. Preliminary quantity assumptions / estimates
8. Staging areas, site access and protocol for admission
9. Special conditions regarding unique facility operations
10. Safety requirements
11. Hazardous Materials or site conditions
12. Hours of operation
13. Liquidated damages
14. Date on which the Job Order proposal is due
15. Other requirements

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of work; means of access to the premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators; means of communications; and the location of partitions, eating spaces, and restrooms for the Contractor, for individual Job Orders. The Contractor agrees to be responsible for taking these factors into account when developing its Job Order Proposal.

The Detailed Scope of Work will be completed by the Contractor and submitted to the County for approval, prior to issuance of a Request for Proposal. This Detailed Scope of Work must be submitted within Five (5) working days or a mutually agreed upon time at the Joint Scope Meeting. If consultant services are required to clarify project requirements, they will be completed and submitted with the Detailed Scope of Work for County approval before a Request for Proposal will be issued.

Unless waived in writing, the Contractor agrees to provide all documentation required to fully establish the Detailed Scope of Work including, but not limited to, shop drawings, sketches and/or specifications that comply with the contract specifications and relate to the proposed project. This documentation will be provided for the purpose of defining scope, obtaining permits, and assisting the County in determining the best possible solution for repair and refurbishment issues. If the County requests a change in the proposed Detailed Scope of Work, the Contractor agrees to submit a revised Detailed Scope of Work reflecting all requested changes within two (2) working days. Failure to comply with these requirements may result in disqualification under future Requests for Proposals for the San Bernardino County Job Order Contract Program or award of a future San Bernardino County Job Order Contract.

B. Request for Proposal:

Upon completion of the joint scoping process, the County will prepare a draft descriptive scope of work referencing any sketches, drawings, photographs and specifications required to document accurately the work to be accomplished. The Contractor shall review the descriptive scope of work and request any required changes or modifications. Once the project development stage and Joint Scope Meeting have produced a County approved Detailed Scope of Work, the County will issue a Request for Proposal (RFP) to the Contractor. The RFP will include the Detailed Scope of Work approved by the County and other pertinent information with regards to scheduling, submittals, shop drawings and sketch requirements. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular project. The Contractor agrees to prepare and submit a Job Order Proposal of Work in accordance with Section C below.

C. Job Order Proposal development:

The Contractor Job Order Proposal agrees to be comprised of the following elements:

1. Detailed Price Proposal Pre-Priced

work requirements

A Pre-priced Task is a task described in, and for which a Unit Price is set forth in, The Construction Task Catalog®. Pre-Priced work requirements will identify the type and number of work tasks required from the CTC. The price per unit set forth in the CTC shall serve as the base price for the purpose of the operation of this article. The Contractor's Job Order Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work tasks proposed are reasonable for the Detailed Scope of Work. Documentation to be submitted with the Job Order Proposal shall include, but not be limited to, Job Order Price Proposal, shop drawings, calculations, catalog cuts, and specifications, list of anticipated Subcontractors and Suppliers, construction schedule and any other requested documents.

The total extended price for Pre-Priced work requirements will be determined by multiplying the price per unit by the quantity required. The price offered in the Job Order Proposal will be determined by multiplying the total extended price by the appropriate Adjustment Factor. (Unit Price x quantity x Adjustment Factor.)

The Job Order Price shall be the value of the approved Job Order Price Proposal.

Non Pre-Priced Task requirements

Units of work not included in the CTC, but within the general scope and intent of this contract, may be negotiated into this contract as needs arise. Such work requirements shall be incorporated into and made a part of this contract for the Job Order to which they pertain, and may be incorporated into the CTC if determined appropriate by the County at the negotiated price. Non Pre-Priced Tasks shall be separately identified and submitted in the Job Order Proposal. Whether a work requirement is PrePriced or Non Pre-Priced is a final determination by the County, binding and conclusive on the Contractor.

Information submitted in support of Non Pre-Priced Tasks agree to include, but not be limited to, the following: complete specifications and technical data, including work unit content, work unit costs data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks include a cost or price analysis report, establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three bids. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable. The Contractor agrees to provide an installed Unit Price (or demolition price if appropriate), which shall include all costs required to accomplish the Non Pre-Priced Task.

In addition to items which are not included in the Construction Task Catalog®, a Non Pre-Priced line item maybe utilized, if the County clearly specifies the make or manufacture of the material that is to be utilized. The only item that will be accepted as Non Pre-Priced will be the direct material cost. If there is an associated line item listed in the Construction Task Catalog® for that type of material, then the labor and equipment costs must be utilized at the specific Adjustment Factor. In addition, to the Non Pre-Priced back up, a comparison to the material cost listed in the Construction Task Catalog® must be included with the Job Order Proposal Package for review and approval.

The final price submitted for Non Pre-Priced (NPP) Tasks shall be calculated according to the following formula:

Contractor performed duties

A = direct labor costs and fringe benefits per prevailing wage rates

B = direct material costs (supported by quotes)

C = direct equipment costs (supported by equipment amortization data)

D = allowable overhead costs = A x 55% (i.e., workers compensation insurance)

E = allowable profit = (A+B+C) x 10%

Subcontractor performed duties

F = cost of Subcontractor(s) to Contractor (supported by quotes)

G = Contractor's allowance for Subcontractors cost = F x 5%

H = Contractor's overhead for Subcontractor(s) costs in accordance with the following schedule:

F x 0% for NPP tasks < 10% of total Job Order value

F x 7% for NPP tasks 10-20% of total Job Order value

F x 10% for NPP tasks > 20% of total Job Order value

Total cost of Non-Pre-Priced Task

A+B+C+D+E+F+G+H After being used on three separate Job Orders, the unit price for the Non Pre-Priced Task may become fixed as a permanent Pre-Priced item, which will no longer require price justification.

The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the County may permit the Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.

Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all shop drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to

pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The cost of expediting services or equipment use fees are not reimbursable.

The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents. Failure to comply with these requirements may result in disqualification under future Requests for Proposals for the San Bernardino County Job Order Contract Program or award of a future San Bernardino County Job Order Contract.

In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.

If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted within five (5) calendar days so that the submittal of the Job Order Proposal is not delayed.

2. Total Fixed Cost of the Job Order Proposal

The total fixed cost of the Job Order Proposal shall be determined by adding the total Job Order Proposal price offered for Pre-Priced and Non Pre-Priced work units.

3. Credits: Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.

4. Submittals

All shop drawings, and "As-Built" drawings shall be prepared such that the drawings meet all the requirements of Local, State, and Federal regulations, codes and directives. The Contractor agrees to also provide

as necessary, the forms, studies, and other documentation required by applicable codes and agencies.

The Contractor agrees to ensure that all engineering solutions conform strictly to the guides and criteria outlined in contract specifications. In case of uncertainty of detail or procedure, the Contractor agrees to request additional instruction from the County. The Contractor is responsible for producing complete, competent, properly coordinated, and thoroughly checked documents.

At the Contractor's expense, as part of their Adjustment Factors, the documentation noted above, shall be prepared and reviewed as necessary to ensure its compliance with all applicable laws and regulations.

5. Work duration schedule

The Contractor agrees to furnish a schedule in accordance with Article 21, "Work Schedule" with each Job Order Proposal submitted.

6. Subcontractor's list

The Job Order Proposal represents the Contractor's offer to do Work, and as such, in accordance with sections 4100 to 4113, inclusive, of the Public Contract Code of the State of California, the Contractor agrees to list, on the Subcontractor listing report, the name and business location of each Subcontractor that will perform work, labor or render service on the Work in excess of one-half of one percent (1/2%) of the total Job Order Proposal amount. Contractors and Subcontractor which have been debarred from public works projects by the Labor Commissioner may not perform work under this contract. The Contractor agrees to list percentage of the project to be performed by proposed Subcontractor(s) and percentage of the project to be self-performed.

Contractor agrees to advise the County of any Subcontractor substitution(s) prior to commencement of Subcontractor work and to only substitute Subcontractor as authorized under Public Contract Code sections 4100 et seq. Contractor may be subject to penalties in accordance to the above referenced sections for illegal Subcontractor substitution.

Where a hearing is required for a decision on the substitution of subcontractors, pursuant to the provisions of Chapter 4, Part 1, Division 2, of the Public Contract Code, (commencing with Section 4100) by the awarding authority, or a duly appointed hearing officer, the Clerk of the Board of Supervisors shall prepare and certify a statement of costs incurred by the County for investigation, and to conduct the hearing, including the costs of any hearing officer and shorthand reporter appointed. For the purposes of a hearing for the substitution of subcontractors (pursuant to the

Public Contract Code commencing with Section 4100) the awarding authority shall be the Director, or his/her designee.

The statement of costs shall be sent to the undersigned, who shall reimburse the County for all costs. If not paid separately, such reimbursement shall be deducted from monies due and owing to the undersigned prior to acceptance of the project.

7. Electronic Job Order Proposal

The Contractor agrees to transmit an electronic copy of the Job Order Proposal, using the County furnished software, to the County.

8. Complete Job Order Proposal

By submitting a signed Job Order Proposal, the Contractor is agreeing to accomplish the Work outlined in the RFP and the Detailed Scope of Work for that particular Job Order. It is the Contractor's responsibility to include the necessary line items in the Job Order Proposal and apply the appropriate Adjustment Factor(s) prior to submitting it to the County. Errors and omissions in the Job Order Proposal shall be the responsibility of the Contractor. All costs associated with preparing Job Order Proposals shall be the responsibility of the Contractor. The County makes no commitment as to the award of individual Job Orders.

D. Job Order Proposal Review: Each Job Order Proposal received from the Contractor will be reviewed in detail for appropriateness of quantities, proper Adjustment Factor and tasks selected. Submittals will be reviewed, as well as the work duration schedule and list of Subcontractor(s). The County will evaluate the entire Job Order Price Proposal and compare them with the independent County estimate of the same tasks to determine the reasonableness of approach, including the nature and number of work units proposed and the County's estimate of the Detailed Scope of Work. The County will determine whether the Contractor's Job Order Proposal is acceptable.

The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:

1. Will constitute or create a hazard to the work, or to persons or property;
2. Will not produce finished Work in accordance with the terms of the Contract;
or
3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.

The County reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a Job Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including third party services), subcontractor costs, and the costs to review the Job Order Proposal with the County.

By submitting a Job Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the County.

Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's Job Order Proposal. A signed copy of the Job Order will be provided to the Contractor.

In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the County. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures.

E. Approval: Upon approval of the Detailed Scope of Work and the Contractor's Job Order Proposal, the County will issue a Job Order Authorization to the Contractor. The Job Order Authorization will include the firm fixed price of the Job Order and the project duration. Once the Job Order Authorization has been issued the Contractor agrees to:

1. Identify the Superintendent and Site Health and Safety Officer (SHSO);
2. Initiate submission of required shop drawings and submittals to the County for review and approval;
3. Prepare a detailed Work Schedule in accordance with Article 21.

The Contractor agrees to not begin construction prior to the construction start date identified in the Notice to Proceed (NTP).

The County reserves the right to reject a Contractor's Job Order Proposal based on unjustifiable quantities and/or methods, performance periods, inadequate

documentation, or other inconsistencies or deficiencies on the Contractor's part in the sole opinion of the County.

The County reserves the right to issue a unilateral Job Order Authorization for the Work if a Job Order Proposal price cannot be mutually agreed upon. This is based upon unjustifiable quantities and incorrect line items in the sole opinion of the County.

The County also reserves the right to not issue a Job Order if the County's requirement is no longer valid or the project is not funded. In these instances, the Contractor has no right of claim to recover Job Order Proposal expenses.

The County may pursue continuing valid requirements by other means where agreement was not reached with the Contractor.

F. Job Order Proposal time requirements

1. Job Order Proposal submittal

The Contractor agrees to respond to a Request for Proposal within Five (5) working days, or a mutually agreed upon time. Contractor's response shall confirm receipt of the Request for Proposal, and a mutually agreed upon date for submittal of Contractor's detailed Job Order Price Proposal.

The Contractor agrees to make a thorough analysis of each Request for Proposal and submit all Requests for Information (RFI's) to the County. The RFI shall not extend the Job Order Proposal due date unless mutually agreed to by the County. All RFI's and responses will be included in the Detailed Scope of Work, for proper documentation.

2. Job Order Proposal review

The Contractor's project manager or agent agrees to be available for Job Order Proposal review meetings within two (2) Days of being notified by the County (via fax, e-mail, telephone, etc.). After review of the Job Order Proposal, the Contractor agrees to remove all inapplicable line items and adjust quantities as directed by the County.

3. Job Order Proposal modification

The Contractor will be granted only one opportunity to add new, valid line items that may have been omitted from its first Job Order Proposal by submitting a second, revised Job Order Proposal. The Contractor agrees to submit the revised Job Order Proposal within (2) two Days of the initial Job Order Proposal review meeting, unless otherwise specified in writing. Upon review of the revised Job Order Proposal, the Contractor agrees to remove all line items or adjust quantities deemed inappropriate by the County, and re-submit its Job Order Proposal within one (1) Day. No new

line items may be added to the revised Job Order Proposal, nor may quantities be increased, nor modifiers added unless specifically agreed to in writing by the County's subsequent Job Order Proposal review.

4. Enforcement of time requirements

The Job Order Proposal time requirements contained herein will be strictly enforced. Failure to comply may result in the Contractor being deemed non-responsive to the Request for Proposal. The County may cancel the Request for Proposal from the Contractor and solicit another Contractor. The County may also deem the Contractor ineligible for any future JOC contracts.

12. CONSTRUCTION PROCEDURES

A. Pre-Construction Meeting

Within no more than seven (7) Days from the issuance of the Job Order Authorization, unless the County grants additional time, the County will conduct a pre-construction meeting with the Contractor's project manager, Subcontractors, and the end-user to determine the actual project schedule, project access requirements and to address and resolve any customer concerns.

At the pre-construction meeting the Contractor agrees to:

1. Prepare a detailed work duration schedule and submit it to the County for approval prior to the issuance of the Notice To Proceed;
2. Designate in writing, the name of one or more persons who agrees to act as a Site Health and Safety Official (SHSO) who agrees to be at the job site at all times during which work of any kind is being performed, and who agrees to be thoroughly familiar with the Contractor's Injury and Illness Prevention Program (IIPP) and Code of Safe Practices (CSP);
3. Sign and submit to the County a Job Site Safety Affidavit specifying CAL/OSHA safety regulations with which the Contractor is required to comply. It is the responsibility of the Contractor to develop and submit the Job Site Safety Affidavit. The format of the Affidavit is to be determined by the Contractor. The Contractor is responsible to comply with all Safety regulations, which are pertinent to Completion of the Detailed Scope of Work.
4. Ensure all background checks are completed for all Contractor and Subcontractor personnel prior to the commencement of work at the job site. Provide a listing of all personnel working on the site.

5. Submit all Material Safety Data Sheets, required for materials to be utilized during the course of the job, as part of the Job Order Proposal. These are subject for review and approval by the County.

B. Notice to Proceed

Following the pre-construction meeting, the County will issue a Notice to Proceed (NTP) which will provide the construction start date, the work duration period, and the Substantial Completion date. The Contractor agrees to begin and complete construction within the dates specified on the NTP. The County must approve all extensions of time in writing.

C. Project Construction

The Contractor agrees to provide continuous on-site supervision on each Job

Order, using the Contractor's Superintendent while progress on the project is being accomplished. The Contractor's Superintendent agrees to be able to receive and comprehend instructions in English and agrees to be responsible for:

1. Coordination and providing supervision to all Subcontractor and workers;
2. Posting of the prevailing wage scale;
3. Maintaining a copy of the Contractors safety program manual made available to all construction personnel;
4. Conducting weekly on-site safety meetings;
5. Completing the daily labor and construction progress log on a daily basis and submit copies to the County on a daily basis. Copies of the previous day's reports must be submitted by 9:00AM of the following Day.
 - a. Daily labor log is to include a listing of Subcontractor(s) and a count of workers by trade providing services for the Day.
 - b. Construction progress log is to include a narrative of the work provided by trade(s). Narrative to include the various areas of the jobsite where Work was performed and any problems or conditions that were encountered.
 - c. In the event the Contractor fails to provide a daily log and/or construction progress log, the County may impose damages against the Contractor in the amount of fifty dollars (\$50.00) for each log and deduct from the Contractor's payment request, for each Day the Contractor does not provide the documentation.

County may suspend Contractor operations if no Contractor Superintendent is observed. All delays caused by the suspension will be the responsibility of the Contractor. No time extension or claims for cost(s) associated with the suspension will be granted by the County. Failure to comply with these requirements may result in disqualification under future Requests for Proposals for the San Bernardino County Job Order Contract Program or award of a future San Bernardino County Job Order Contract.

D. Project Completion

The Contractor agrees to schedule a final job walk with the County. If required, the County will prepare a list of incomplete items, the "Punch List". The Contractor agrees to complete the "Punch List" corrections and schedule a final project completion job walk. The County will sign the "Punch List" as completed when determined, the project is finished. The Contractor agrees to submit the following along with its final payment request:

1. "Punch List" signed by the County;
2. Completed building inspection card;
3. All required warranties and maintenance requirements;
4. All record drawings or as-built drawings,
5. All required operation and maintenance manuals;
6. All keys and security entry cards;
7. Any other closeout items.

13. MEASUREMENTS TO BE VERIFIED

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

14. CAUTION TO CONTRACTORS

The Contractor is cautioned in regard to Job Order Proposals to be issued hereunder that when the word approximate is used in conjunction with measurements, quantities, dimensions, etc., it is the Contractors' responsibility to verify any and all such items prior to submission of the Job Order Proposal. Contractors are also cautioned that any Job Order awarded is for all services or Work, as necessary, to repair and remodel the facilities

covered by the contract in accordance with all contract terms and conditions. It shall also be the duty and responsibility of the Contractor to manage and conduct the required Work in the most effective and efficient manner possible and meet or exceed minimum critical rates or standards. In addition the Contractor is cautioned that no claims for additional moneys will be entertained when such claim is based upon a contention the contract fails to mention a specific item or component of facility covered by contract and the Work is required in the normal course of operations. For example, surfaced area repair statements may not mention culverts. However, culverts are a normal component of roads, streets, or erosion controls and are shown on plots or maps provided. As culverts are a normal component of the system, the Contractor agrees to be responsible for providing all necessary repair or replacement work or service.

15. SCHEDULING WORK

As part of the required Joint Scope Meeting, the Contractor and the County will agree on a sequence of work; means of access to premises and building; space for storage of materials and equipment; Work and materials and use of approaches; use of corridors, stairways, elevators; means of communications; and the location of partitions, eating spaces, and restrooms for the Contractor, for individual Job Orders. The Contractor will be responsible for taking these factors into consideration when developing Contractor's Job Order Proposal and schedule.

16. COMPUTER REQUIREMENTS

The Contractor will be required to supply one (1) computer system capable of operating the County furnished JOC software, and individual email accounts for each of its project managers. The minimum system as described below is capable of operating the software. The system will be for the use of the Contractor and agrees to be owned, operated and located at the Contractor's discretion. The Contractor must have personnel trained in basic computer operations and must have high speed internet access. See section 93 for Gordian Cloud® software requirements.

The Job Order Contracting (JOC) System License and Fee Agreement is incorporated herein by reference. Any Contractor awarded a Job Order Contract shall be required to execute this Agreement with The Gordian Group.

The computer system will consist of these minimum specifications:

- A. Computer - Dell corp. Optiplex gx270, pentium 4, 3.2ghz (800 mhz bus), 1gbmb ram, 80gb hd (ata/100 7200rpm), 64mb video (geforce 4), 48x cd-rom, 2 usb 2.0), 10/100/10000 ethernet.
- B. Monitor
- C. Keyboard D. Mouse
- E. Software - Windows 2000 pro.

The Contractor will be responsible for providing maintenance for all the above equipment for the duration of the contract.

17. SPECIFICATIONS

The Specifications are intended to establish the standards for quality, performance and technical requirements for all labor, workmanship, material, methods and equipment necessary to complete the Work.

When detailed specifications and drawings are provided by the County, for a specific Job Order these are to be considered part of the Detailed Scope of Work and take precedence.

18. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

- A. In the event that any provision(s) in any component part of the Contract Documents conflicts with any provision(s) of any other component part, the following order of precedence among the Contract Documents component parts

shall govern:

1. Any and all requirements in the Contract Documents pertaining to the American Rescue Plan Act (ARPA) Coronavirus Local Fiscal Recovery Fund (CLFRF) Federal Guidelines and Use Requirements.
2. Contractor Agreement - County
3. Written amendments and modifications to the contract
4. Addenda and notices to bidders
5. Job Orders (including Detailed Scopes Of Work and Requests for Proposals)
6. Construction Task Catalog®
7. Technical Specifications
8. Performance bond
9. Labor and material payment bond

- B. In the event there is a conflict between or among any provisions within one of the component parts of the Contract Documents, the higher standard or the more stringent requirement shall govern.

19. STANDARD SPECIFICATIONS

- A. Where the specifications or the building code stipulate that a material shall conform to the American Society for Testing Materials (A.S.T.M.) specifications or other recognized standards, the Contractor agrees to, when so required, deliver to the County an affidavit or certificate in triplicate, signed by the manufacturer or supplier that the material furnished conforms to specifications or standards mentioned. When tests are required, the results of such tests shall be delivered to the County.
- B. References to the "building code" are to the edition of the applicable building code listed in the specifications, including any amendments thereto.

20. RECORD DRAWINGS (AS-BUILT RECORDS); REFERENCE MATERIAL

- A. The Contractor agrees to maintain a set of Contract Documents, when applicable, on the project site for record documents. The Contractor agrees to promptly advise the County of any observations during contract performance of deficiencies in record drawings. In the event subsurface utility lines are located in other than locations indicated in record drawings, County will be promptly advised of the observation. For subsurface utility lines placed or moved by the Contractor, actual locations shall be included in a revised record drawing, and

the revised drawing will include, by offset dimensions to two permanently fixed surface features, the end of each run, including each change in direction. Valve, splice boxes, and similar appurtenances shall be located by dimensioning along the utility run from a reference point. The average depth below the surface of each run shall also be recorded. For structures or facilities affected by Work under this contract, the Contractor, at the time of Substantial Completion, shall submit to the County "as-built prints" showing the aforementioned data. For structures or facilities which the County may take temporary possession or use of prior to Substantial Completion of the Work, the County may request and the Contractor shall furnish the "as-built prints" at the time of such temporary possession or use. In the event the Contractor fails to maintain the record drawings as required herein, the County will consider that satisfactory progress has not been achieved under the Job Order.

- B. Contractor payments are contingent upon the record drawings being maintained in a current status, in as much as the County will not approve full payment unless record drawings are current.
- C. As a condition precedent to the certifying of the final payment under the contract, the Contractor shall submit complete record documents to the County.

21. WORK SCHEDULE

- A. All time limits stated in the Contract Documents are of essence to the contract. The Contractor shall prosecute the Work at such time and in such manner that Completion of the Work agrees to occur in accordance with the County approved

work duration schedule, including authorized adjustments thereto. Failure to complete the Work on a timely basis will subject the Contractor to liquidated damages as outlined below.

- B. With each Job Order Proposal, the Contractor agrees to furnish a Gantt chart work duration schedule showing the order in which the Contractor proposes to perform the Work, the durations in which the Contractor is to perform the Work, and the relative dates on which the Contractor contemplates starting and completing project tasks, including the acquisition of materials, fabrication, and equipment. The County may determine the level of detail and number of tasks required to be included on the schedule. Unless otherwise specified, the schedule shall be in the form of a Gantt chart work duration schedule of suitable scale to indicate appropriately the percentage of Work scheduled for Completion. At the discretion of the County, the Contractor may be required to furnish a Critical Path Method (CPM) schedule.
- C. Contractor's detail work duration schedule: the purpose of this requirement is to ensure adequate planning, coordination and execution of the Work, and to evaluate the progress of the Work. The schedule indicates the dates for starting and completing various aspects of the Work including, but not limited to, on-site construction activities as well as the submittal, approval, procurement, fabrication, and delivery of major items, materials and equipment. The schedule indicates phasing of Work activities as required. The schedule provides the Contractor's initial plan for the Work based on its understanding of the Detailed

Scope of Work, with the critical path highlighted.

- D. Schedule approval: all project schedules will be subject to the County's review and approval. The use of any particular scheduling system shall be subject to the approval of the County.
- E. Schedule updates: the Contractor agrees to maintain the work duration schedule updates on an ongoing basis and, when the County requests it, include the updates in its payment request. The Contractor may be required to submit a narrative report with each monthly update which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to do so may be considered a material breach of the contract. Any additional or unanticipated costs or expense required to maintain the schedules shall be solely the Contractor's obligation and Contractor agrees not to charge the County.
- F. Adjustment of the work duration schedule: the Contractor agrees that whenever it becomes apparent to the County, from the current monthly status review meeting or the schedule, that phasing or Job Order milestone dates will not be met, it will take some or all of the following actions at no additional cost to the County.
 - 1. Increase construction manpower in such quantities and crafts as will eliminate the backlog of Work.

2. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the backlog of Work.
 3. Reschedule the Work under this Job Order in conformance with all other specification requirements. The Contractor agrees to be liable for any additional cost incurred by the County for the adjustment of project schedules.
 4. Prior to proceeding with any of the above actions, the Contractor agrees to notify and obtain approval from the County for the proposed schedule changes. If such actions are approved, the Contractor agrees to incorporate the revisions into the schedule.
- G. Failure of the Contractor to comply with the work requirement under this article shall be grounds for a determination that the Contractor is not prosecuting the Work with sufficient diligence to ensure Completion within the time specified in the Job Order. Upon making this determination, the County may terminate the Contractor's right to proceed with the Work, or any separate part of it, in accordance with the default terms of this contract.

22. COUNTY'S RIGHT TO DELAY COMMENCEMENT OF THE WORK

The County agrees to have the right to direct the Contractor to withhold actual commencement of the Work in part or in whole, and the Contractor agrees to comply with such instructions. The Contractor agrees to be granted an extension of the Completion time of the Job Order equal to the number of working days delay caused to County pursuant to Contractor's compliance with such instructions. The Contractor will not be entitled to any additional compensation due to the subject extension of the Job Order Completion Time.

23. OBSERVATION AND INSPECTIONS

- A. All Work shall meet with the approval of the County and shall be completed in conformity with the Contract Documents.
- B. The County or its representative agrees to have access to the Work at all times. The Contractor agrees to furnish all facilities for inspection at the site, and at shops or yards, and agrees to not cover up any Work requiring inspection until the same has been approved by the County. If Work should be covered up before being inspected, the Contractor agrees to be required to remove such portions of the Work as may be necessary to disclose the part in question.
- C. The County shall be given access to the Work at all times. Such access shall not be subject to restrictions which are not directly related to the provision and maintenance of health and safety.

- D. An inspection notice may be issued if the contract Work has not been executed in full-compliance with the Job Order and specifications. The Contractor is responsible for bringing all Work subject to an inspection notice into full compliance with the Job Order and specifications at no additional cost to the County. No Work will be paid for by the County until such Work is brought into full compliance with the Job Order and specifications.
- E. Technical reports may be generated for the purpose of evaluating the quality, correctness, functionality, etc. of the Contractor's Work or performance under this contract in accordance with the requirements of the Job Order and specifications.
- F. In order to allow for inspection by the County and other agencies, or any inspection required elsewhere in these specifications, the Contractor shall notify the Division a sufficient length of time in advance of the permanent concealment of any materials or Work.
- G. If otherwise not specified in the Detailed Scope of Work for the Job Order, whenever the Contractor desires to carry on the Work of this Contract at night or on a Saturday, Sunday, or holiday, he shall request authorization in writing from the Division for such Work at least twenty-four (24) hours in advance so that inspection may be provided, if authorization is granted, and the Contractor agrees to pay overtime reimbursement of costs for this service, unless otherwise specified.
- H. If any Work is concealed or performed without the prior notice specified above, then the Work shall be subject to such tests or exposure as may be necessary to prove to the County that the materials used and the Work done are in conformity with the plans and specifications. All labor and equipment necessary for exposing and testing shall be furnished by the Contractor at his expense. The Contractor shall replace, at his own expense, any materials or work damaged by exposure and any faulty materials or workmanship evidenced by such exposure or testing.
- I. When, in order to comply with the intent of the specifications, and when not otherwise specified, inspection must be made at the plant or mill of the manufacturer or fabricator of material, the Contractor shall notify the County a sufficient length of time in advance to allow for arrangements to be made for such inspection.
- J. Any inspection or approval by any representative or agent of the County will not relieve the Contractor of the responsibility of incorporating in the Work only those materials which conform to the specifications, and any nonconforming materials shall be removed from the site whenever identified.
- K. The Contractor shall promptly remove from the premises all materials determined by the County to be nonconforming whether incorporated into the Work or not. Whenever Work has been determined to be nonconforming by the County, the Contractor shall promptly re-perform the Work in accordance with the Contract and without expense to the County; and shall bear the expense of making good all work

of other contractors destroyed or damaged by such removal or replacement. No Work which is defective in construction or deficient in any of the requirements of the specifications shall be considered as accepted. The Contractor shall correct any imperfect work before the final inspection, or, at the option of the County, within the applicable guarantee period.

- L. Upon completion of the Work, the Contractor shall notify the County when he desires a final inspection of the Work. The County will make such inspection as soon thereafter as possible. If the Work is found to be in compliance with plans and specifications, the Division will recommend Acceptance of the Work and/or file the Notice of Completion with the County Recorder.

24. PERMITS AND LICENSES

- A. Except as provided in D & E below, the Contractor agrees to obtain and pay for all permits required for the Work. Further, the Contractor agrees to obtain and pay for all permits incidental to the Work or made necessary by Contractor's operation. The Contractor agrees to obtain all building permits. The Contractor will be reimbursed for all direct costs of permits without mark-up. The Contractor must submit the direct cost of all permits and inspection in the Job Order Proposal. Any permit and/or inspection fees not included in the Job Order Proposal will not be reimbursed by the County. The County is not responsible for any re-inspection(s) required due to the Contractor's failure to pass initial inspection(s).
- B. The Contractor will be required to obtain a city business license to perform the work in the appropriate city, as specific in the Job Order.
- C. To comply with section 3800 of the Labor Code of the State of California, the Contractor and all Subcontractors requiring a permit (building, plumbing, grading, and electrical, etc.) agree to file a workers' compensation certificate with the County.
- D. Exclusive of off-site inspection specified to be the County's responsibility, the Contractor agrees to arrange and pay for all off-site inspection of the Work including certification thereof required by the specifications, drawings, or by governing authorities.
- E. The County will provide on-site inspection of the Work and will arrange for off-site inspection when specified in the specifications. All other required inspections will be the responsibility of the Contractor.
- F. The County will not pay any costs for licenses required in the performance of the Work. The Contractor agrees to assume this responsibility in total.
- G. The County will inspect the Work for code compliance as part of permits pulled. The County will provide this inspection at no additional cost for the first inspection and for re-inspection. If the Contractor is unable to correct defective work after one re-inspection, the County may charge the Contractor for additional reinspections.

25. TESTS

- A. Arrangements for testing of materials, as required, shall be authorized and performed under the direction of the County's Building Construction Inspector.
- B. All material testing which conforms to or meets specified standards in the following categories shall be paid for by the County. Material tests in the following categories which fail to meet specified standards shall be paid for by the Contractor:
 - 1. Soil density tests
 - 2. Concrete compression tests
 - 3. Grout compression tests 4. Mortar compression tests
 - 5. Testing of masonry units
 - 6. Testing of reinforcing steel
- C. Any other required or specified tests shall be paid by the Contractor and shall be performed by a qualified testing laboratory approved by the County.
- D. The Contractor shall pay for all additional and related costs, including professional services and special testing necessary to correct defects or damage
to the project due to faulty materials or construction procedures.

26. SUBSTANTIAL COMPLETION

- A. The date of Substantial Completion of the Work, or designated portion thereof as set forth in the Detailed Scope of Work for a specific Job Order, is the date certified by the County when the Work is sufficiently complete and the County may occupy or use the Work, or designated portion thereof, for the use for which it is intended.
- B. When the Contractor considers that the Work, or designated portion thereof as set forth in the Detailed Scope of Work, is substantially complete as defined above, the Contractor agrees to prepare for submission to the County a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the County determines that the Work or designated portion thereof is substantially complete, it will issue a certificate of Substantial Completion which agrees to establish the date of Substantial Completion. The certificate agrees to state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and agrees to list remaining items to be corrected or completed. The Work not fully completed or corrected shall be completed to the satisfaction of the County within thirty (30) calendar Days after Substantial Completion, or within a period of time

mutually agreed upon between the Contractor and the County. In the event the Contractor fails to complete or correct the remaining items within the allotted time, the County may complete or correct the items and deduct the cost thereof from the contract amount.

- C. Warranties required by the Contract Documents, as discussed in these General Conditions, shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the certificate of Substantial Completion.
- D. In accordance with the General Conditions, the County reserves the right to occupy substantially completed portions of the Work and any such portion agrees to be subject to the above provisions for Substantial Completion.

27. OCCUPANCY BY THE COUNTY

- A. The Contractor, Contractor's employees and representatives will be admitted by the County to the premises for the purpose of executing the Work to be performed under this contract, but they agree to have no tenancy.
- B. It is further understood that the County agrees to have the right to take temporary possession of, or use any portion of, any substantially completed or partially completed part of the Work as the County may deem necessary for its operations upon notice to the Contractor. Before taking possession of any Work, the County may furnish the Contractor a list of items of outstanding or deficient Work remaining to be performed or corrected on those portions of the Work that the County intends to take possession of or use. However, a failure of the County to

list any item of Work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The County's possession or use shall not be deemed an Acceptance of any Work so occupied or used until Final Acceptance under the terms of this contract, and thereafter pursuant to the warranty provisions of this contract; provided that the Contractor will not be responsible for any damages or loss to the Work in place caused by the County's possession or use.

- C. If prior possession or use by the County delays the progress of the Work or causes additional expense to the Contractor, an adjustment may be made in the contract amount or the contract time, under the applicable scheduling and cost provisions of this contract.

28. LABOR LAWS

- A. The Contractor, his agents and employees shall be bound by and comply with all applicable provisions of the Labor Code and such federal, state and local laws which affect the conduct of the work including, without limit, payment of applicable prevailing wages.

- B. The Contractor shall strictly adhere to the provisions of the Labor Code regarding the employment of apprentices; minimum wages; payment of wages; alien labor, the eight-hour day; overtime, Saturday, Sunday and holiday work; and nondiscrimination because of race, color, national origin, physical handicap, sex or religion. The Contractor shall forfeit to the County the penalties prescribed in the Labor Code for violations.
- C. In accordance with the Labor Code, prevailing wage rate determinations are included elsewhere in these specifications for the work to be done on this project. Updated wage rates will be made available to the Contractor, who shall pay not less than these rates.
- D. Certified payroll records can be requested by County at any time and shall be delivered by Contractor within ten (10) days. In all events, certified payroll records shall be made available as required by law.
- E. When the State Labor Code minimum wage and the Federal Wage Determinations (Davis-Bacon Act) are applicable due to federal funding involvement, the higher of the two wage rates per each work classification will prevail.
- F. Contractors are prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the awarding body. The contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.
- G. The Contractor shall inform himself as to Sections 1735, 1771, 1773, 1774, 1775, 1776, 1777, 1777.5, 1777.6, 1810, 1812, 1813, 1814, 1815, 1816, and 1850 of the Labor Code of the State of California, and shall comply with these and with all other applicable laws. In accordance with Section 1770 of the Labor Code, the Owner has ascertained the prevailing wages applicable to the work to be done as set forth in the Bid Documents.
- H. The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed by the Contractor or by any Subcontractor in connection with the Work. Pursuant to California Labor Code Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

- I. The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Work by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.
- J. Contractor shall comply with Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017). The requirements include, but are not limited to, the following:
 1. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
 2. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
 3. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
 4. As required by the Department of Industrial Relations, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the Department of Industrial Relations.
 5. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
 - (1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
 - (2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner
 - (3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
 6. Registration with the Department of Industrial Relations and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for

construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

7. Labor Code section 1725.5 states the following:

“A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided

that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.”

8. Labor Code section 1771.1 states the following:

“(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public

Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liability for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon

determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at the address on file with either of the following:

(i) The Contractors' State License Board.

(ii) The Secretary of State.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.”

9. Labor Code section 1771.4 states the following:

“a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.”

K. As required by Labor Code section 1775(b)(1) the following Labor Code sections are included in the General Conditions, and any revisions to the Labor Code sections hereinafter made are also incorporated:

Labor Code section 1771 - Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

Labor Code section 1775 - (a)(1) The contractor and any subcontractor under the contract shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2)(A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B)(i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in [subdivision \(c\) of Section 1777.1](#).

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with [Section 1720](#)) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and [Sections 1771](#), [1776](#), [1777.5](#), [1813](#), and [1815](#).

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to [Section 1813](#).

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

Labor Code section 1776 - (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of [Sections 1771, 1811, and 1815](#) for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the

Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund ([29 U.S.C. Sec. 186\(c\)\(5\)](#)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f)(1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to [Section 329 of the Unemployment Insurance Code](#) and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (commencing with [Section 7920.000](#)) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with [Section 1798](#)) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

Labor Code section 1777.5 - (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in [Section 3077](#), who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with [Section 3070](#)) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract,

the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the

approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.
- (2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.
- (3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.
- (4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m)(1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all money in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

Labor Code Section 1813 - The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

Labor Code Section 1815 - Notwithstanding the provisions of [Sections 1810 to 1814](#), inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

29. WORKER/WORKER CERTIFICATION

Only workers skilled in the various trades required under this contract agree to be employed upon the Work. Any mechanic or laborer employed upon the Work, who in the opinion of the County, is non-cooperative or who shall prove careless or incompetent, agrees to be immediately removed from the Work by the Contractor, when notified to do so, and shall not be re-employed upon the Work.

30. HOURS OF WORK

Work in excess of eight hours per day will be permitted by employees of this Contractor, under this contract, only if section 1815 of the Labor Code of California is complied with by this Contractor.

31. SATURDAY, SUNDAY, HOLIDAY AND OVERTIME WORK

- A. No work shall be done on Saturdays, Sundays or holidays recognized by the County government and no work shall be performed outside of Normal Working Hours without the consent of the County, unless required under the Job Order. In any event, all Work shall be subject to approval of the County. Prior to the start of such Work, the Contractor agrees to arrange with the County for the continuous or periodical inspection of the Work and tests of materials, when necessary. If requests are made by Contractors for permission to work overtime, nights, Saturdays, Sundays or holidays, and such requests are granted, the Contractor agrees to bear all extra expense to the County for inspection and other incidental expenses caused by such overtime work. If Contractor is requested, in the interest of the County, to work overtime by the County; or if overtime work is specifically required by the Job Order, all extra expense of inspection will be paid by the County. Should the Contractor find it necessary in order to complete the Work according to schedule to perform certain of Contractor's operations on Saturdays, Sundays, holidays or overtime, these operations agree to be performed as part of the Work included in the contract price and shall not constitute a basis for additional payments. Refer to above paragraph for the obligations for the Contractor to assume the cost of inspections.
- B. The County reserves the right to order in writing Work outside of Normal Working Hours to avoid inconvenience of occupants of existing facilities or to perform special operations that in the judgment of the County best serve the intent of the Contract Documents and the orderly prosecution of the Work. If the County elects to order Work outside of Normal Working Hours, the Contractor agrees to make all arrangements to supply an adequate work force for the task to be accomplished and will be compensated by utilizing the other than normal factor, where applicable.

32. PREVAILING WAGE SCALE

- A. The Contractor agrees to comply with all provisions of the Labor Code of the

State of California. However, if any Job Order will be paid for using Federal funds (Federally Assisted), then Federal labor standards, including the Davis-Bacon requirements, will be enforced, in addition to the State Labor code requirements.

- B. Under the provisions of said Labor Code, the California Department of Industrial Relations will ascertain the prevailing hourly rate in dollars and details pertinent thereto for each craft, classification or type of workers or mechanic needed to execute any contract which may be awarded by the awarding entity. If Federally Assisted then the U. S. Department of Labor will ascertain the prevailing hourly rate. When the State Labor Code prevailing wage and the Federal Wage Determinations (Davis-Bacon Act) are applicable due to federal funding involvement, the higher of the two wage rates per each work classification will prevail.
- C. Particulars of the current prevailing wage scale, which are applicable to the Work contemplated under these specifications, are filed with the County and the Department and must be posted at the project site by the Contractor.

33. EMPLOYMENT OF INDENTURED APPRENTICES

- A. Contractor agrees to comply with sections 1777.1, 1777.5 and 1777.7 of the Labor Code, State of California.
- B. All Contractors agree to employ registered apprentices at a ratio in accordance with section 1777.5. Contractor agrees to be responsible for the compliance of all Subcontractors.
- C. Contractor and Subcontractors agree to keep an accurate record showing the name of the craft and wage rate of each apprentice and journeyman employed by each entity. Subcontractor agrees to provide, weekly, such records to the Contractor. Records shall be made available to the division of apprenticeship standards and the County, for the purpose of determining compliance. Failure to comply may result in withholding payments and other penalties as provided in Labor Code.

34. SAN BERNARDINO COUNTY SECURITY POLICY

Contractor is advised that failure to fully comply with the security requirements of the contract shall result in the termination of the contract for default. The determination if the Contractor will be required to implement the following security procedures will be determined by County for each specific Job Order and will be directed by the County. This requirement will be defined as part of the Detailed Scope of Work.

A. SECURITY

- 1. All persons performing duties under the Contract shall be acceptable to the County. This shall include all employees of Contractor, all Subcontractors of Contractor, and all others who might have access to County facilities

without the supervision of a County employee. This includes all Contractor employees, Subcontractor employees, and may include suppliers and vendors or anyone else Contract retains to perform Work. All costs are the responsibility of the Contractor. All time required to comply shall be reflected on the schedule for each individual project.

2. Acceptability shall be determined by:
 - a. Background investigation.
 - b. The County's previous experience with the individual (if applicable).
3. Only those individuals, who have been determined acceptable by the County, have received their County issued Identification (ID) cards and who have been designated on the Contract as the individuals who shall be providing service to the facility shall be allowed to work in County facilities. Individuals no longer working for Contractor shall return ID Cards to the County upon separation.
4. Those individuals who fail a background investigation shall not be allowed to work in any County facility.
5. The misuse of any County issued ID cards, access control cards, keys, or alarm codes by Contractor or any of the employees of Contractor shall be considered as failure to fully comply with the security requirements of this contract and shall be considered grounds for termination of the contract.

B. BACKGROUND INVESTIGATION

1. All individuals required by County to undergo a County conducted background investigation shall not be authorized access to any County facility prior to the individual passing the background investigation.
2. Contractor shall submit a complete background investigation package for each employee, including Subcontractors, who will require access to County facilities. They shall provide the following for each person requiring a background investigation:
 - a. A completed Authority to Release Personal Information form or other forms as required by the County.
 - b. A check in the amount of \$58.00 payable to the San Bernardino County. The cost of the background investigation is currently \$58.00, and is required by the Department of Justice. Submit the completed package to the Division or as otherwise directed by the Division.

C. INCOMPLETE PACKAGES WILL NOT BE ACCEPTED.

1. Fees are determined by the County and the State of California and are subject to change at any time. Contractor will be responsible for any increase in fees.
2. Disqualifying information includes, but is not limited to the following:
 - Character / Moral Turpitude Violations
 - Theft / Related Offenses
 - Affiliation with Criminal Elements
 - Felony Convictions
 - Current (Pending) Criminal Cases
 - Active Arrest Warrants
 - CORI = Criminal Offender Record Information
 - CLETS = California Law Enforcement Telecommunication Systems
 - Any information that would prohibit a Contractor employee access to CLETS and/or CORI as outlined by the California Department of Justice. The County shall be notified if there is any criminal activity during employment. Any disqualifying activity by an employee or Subcontractor of Contractor shall deem that individual unacceptable and removed from employment. If the disqualifying activity is by Contractor, the contract will be terminated.

35. SUBMISSION EQUAL EMPLOYMENT OPPORTUNITY DOCUMENTS

Contractor agrees to fully comply with the laws and programs (including regulations issued pursuant thereto) which are listed following this paragraph. Such compliance is required to the extent such laws, programs and their regulations are, by their own terms, applicable to this Contract. Contractor warrants that he will make himself thoroughly familiar with the applicable provisions of said laws, programs and regulations prior to commencing performance of the Contract. Copies of said laws, programs and regulations are available upon request from the San Bernardino County Human Resources Department at 157 West Fifth Street, First Floor, San Bernardino, California 92415. To the extent applicable, the provisions of said laws, programs and regulations are deemed to be a part of this Contract as if fully set forth herein.

- A. Vietnam Era Veterans' Readjustment Assistance Acts of 1972 and 1974, as amended. Pub. L.92-540, Title V, Sec. 503(a), Pub. L.93-508, Title IV, Sec. 402. (38 USCA 2011-2013).

- B. Rehabilitation Act of 1973, as amended (Handicapped) Pub. L.93-112, as amended (29 USCA 701-794).
- C. California Fair Employment Practice Act. Labor Code Secs. 1410 et seq.
- D. Civil Rights Act of 1964, as amended (42 USCA 2000a to 2000H-6) and Executive Order No. 11246, September 24, 1965, as amended.
- E. Equal Opportunity Clause

In addition, during the performance of this Contract, the Contractor agrees to comply with Executive Order 11246 of September 24, 1965, as amended, and Title VII of the Civil Rights Act of 1964, and is applicable pursuant to 41 CFR Section 60-1.4, as quoted in the "Construction Contract Labor Compliance Provisions (Attachment D)" and "Labor Compliance Contract Addendum" Compliance Guidelines For Construction Contractors", (elsewhere in these specifications).

- F. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era

This clause is inserted pursuant to Executive Order 11701 of January 24, 1973, and the Vietnam Era Veterans Readjustment Assistance Acts of 1972 and 1974 (P.L. 92-540, 93-508), and is applicable pursuant to 41 CFR Sec. 60-250. (Wording appears in the "Contract Compliance Guidelines For Construction Contractor", elsewhere in these specifications.)

- G. Affirmative Action for Handicapped Workers

This clause is inserted pursuant to the Rehabilitation Act of 1973 (P.L. 93-112) and 41CFR Sec. 60-741.4.

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Manager, provided by or through the Contracting Officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
 5. The Contractors will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
 6. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vender. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
- H. Executive Order 11588 - The Contractor shall comply with the provisions of Executive Order 11588 issued March 29, 1971, and any other executive order, statute or regulation regarding the stabilization of wages and prices in the construction industry.
- I. Executive Order 11246 - The Contractor certifies that he will fully comply with Executive Order 11246, as amended by Executive Order 11375, and the rules and regulations issued thereunder, which are hereby incorporated by reference as appropriate. The Contractor commits himself to such compliance by submitting a properly signed bid or offer or by signing or otherwise accepting a contract or subcontract.
- J. The Contractor agrees to secure from each listed Subcontractor and file, with the County, each of the following supplied certificates, forms and reports according to the instructions furnished for each and at the time shown below for each:
1. Upon notification to proceed for an individual Job Order:
 - a. Certificate of non-segregated facilities (subcontracts under \$10,000 excluded).
 - b. Certificate with regard to the performance of previous contracts or subcontracts subject to the equal opportunity clause and the filing

of required reports (contracts/subcontracts under \$10,000 excluded).

- c. Statement of workforce needs.
 - d. Notice of equal employment opportunity.
2. Within ten (10) Days of award of any subcontracts over \$10,000:
- a. Contractor's notification of subcontracts awarded.
3. Prior to commencement of construction:
- a. Notice of equal employment opportunity (subcontracts under \$10,000 excepted).
 - b. Certification for applicable fringe benefits payments.
 - c. Federal lobbying certification (subcontracts under \$10,000 excepted).
 - d. Contractor's notice of Section 3 commitment as stated in 24 CFR 135.1 et seq. (contracts under \$100,000 excepted).
4. During the construction period:
- a. Contractor's list of Federal and non-Federal work in bid condition area (San Bernardino County). (Subcontracts under \$10,000 excepted.)
 - b. Certificate of understanding and authorization (required when Statement of compliance is signed by a designated person).
5. Upon hiring or contracting with a Section 3 resident or business firm (contracts under \$100,000 excepted):
- a. Section 3 resident certification
 - b. Section 3 business certification
6. Upon Completion of construction (contracts under \$100,000 excepted):
- a. Section 3 compliance report

K. The Contractor agrees to have posted at the construction site prior to and during construction the following:

1. Equal employment opportunity poster
2. Labor poster
3. Department of Labor wage decision

36. FEDERAL EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

Contractor agrees to comply with the provisions of Executive Orders, 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act, and other applicable Federal, State, and County laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

All Contractors and Subcontractors whose contracts are in excess of \$10,000 must comply with Executive Order 1246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor Regulations (41 CFR part 60).

A. Equal opportunity clause. During the performance of this contract, the Contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or

workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a mean of enforcing such provisions, including sanction for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- B. Notice of requirement for affirmative action to ensure equal employment opportunity (Executive Order 11246).
1. The offeror's or bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for, the Contractor's aggregate work force in each trade on all work in the covered area, are as follows:

<u>Timetables</u>	<u>Goals for minority participation in each trade</u>	<u>Goals for female participation in each trade</u>
May 2009	19.0 %	6.9%

These goals are applicable to all the Contractor's work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the Work is actually performed. With regard to this second area, the Contract also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulation in 41 CFR part 60 - 4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60 - 4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor agrees to make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60 - 4. Compliance with the goal will be measured against the total work hours performed.

3. The Contractor agrees to provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any subcontract in excess of \$10,000 at any tier for work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract and the geographical area in which the contract is to be performed.
4. As used in this notice, and in the contract resulting from this solicitation, the "Covered Area" is the geographical area which comprises San Bernardino County, State of California.

C. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

1. As used in these specifications:

- a. "Covered Area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal social security number used on the employer's quarterly Federal tax return, U.S. Treasury Department form 941.
 - d. "Minority" includes:
 - i. Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central of South American or other Spanish culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitation from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60 -4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, it's affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the plan. Contractor must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees the overall good faith performance by Other Contractors or Subcontractor toward a goal in an approved Plan does not

excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor agrees to implement the specific affirmative action standards provided in paragraphs 7 (a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women agrees to excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made commitment to employ the apprentices and trainee at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor agrees to take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor agrees to document these efforts fully, and agrees to implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a

working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect

to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this agrees to be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs, apprenticeship and trainee programs relevant to the Contractors employment needs especially those programs funded or approved by the Department of Labor. The Contractor agrees to provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on a bulletin board; accessible to all employees at each location where work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligation under these specifications with all employees

having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor agrees to send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60 -3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar groups of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation agrees to not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor agrees to not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including

suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director agrees to proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is

being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of change in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided agrees to be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
16. The Director, from time to time, agrees to issue goals and timetables for minority and female utilization which agree to be based on appropriate work force, demographic or other relevant data and which agrees to cover construction projects or construction contracts performed in specific geographic areas. The goals, which shall be applicable to each construction trade, shall be published as notices in the Federal register, and shall be inserted by the contracting officers and applicants, as applicable in the notice required by 41 CFR 60-4.2. Covered construction Contractors performing construction work in geographical areas where they do not have Federal or Federally Assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed.

17. Specific EEO requirements. For a Federally Assisted construction contract in excess of \$10,000 the Contractor/Subcontractor agrees to:
 - a. Forward the following EEO certification forms to the contract awarding authority prior to contract award: certification of nonsegregated facilities and certification with regard to the performance of previous contracts or subcontracts subject to the equal opportunity clause and the filing of required reports.
 - b. Submit a notification of subcontracts awarded to the Director, Office of Federal Contract Compliance Programs, United States Department of Labor - ESA, 200 Constitution Avenue, NW, Room c3325, Washington, excess of \$10,000, listing the name, address, and telephone number of the Subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
 - c. Send a notice of the Contractor's commitment to Equal Employment Opportunity to labor unions, or representatives of workers prior to commencement of construction work.
 - d. Display an Equal Employment Opportunity poster in a conspicuous place available to employees and applicants for employment.
 - e. For contracts in excess of \$10,000, bind Subcontractor to the Federal Equal Employment Opportunity requirements by including the provisions of paragraphs a through c, above, in the subcontract.
18. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
19. Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
20. Affirmative action compliance requirements:

The following forms and reports are required to be completed by the Contractor and/or Subcontractor according to the instructions furnished for each and at the time shown below for each:

- a. Within ten working days of subcontract award:

- Contractor's notification of subcontracts awarded
- b. Prior to commencement of Work:
 - Notice of EEO commitment
- c. During the construction period:
 - Monthly employment utilization report (form cc257)

37. FAILURE TO COMPLY WITH AFFIRMATIVE ACTION

In the event the Contractor fails to provide any of the documents required by Articles 35 and 36 of these General Conditions, the County may take any of the following actions:

- A. Impose damages against the Contractor in the amount of two hundred dollars (\$200) for each violation found and determined if the Contractor does not provide the proper documentation within fourteen (14) calendar Days of notification.
- B. Withhold the release of five percent (5%) retention as indicated in the payments article of these General Conditions.
- C. Provide the Contractor with a failing grade on its contract term, which will be maintained by the County.
- D. Notify the Contractor that its JOC contract has been cancelled, terminated, or suspended because it has failed to comply with affirmative action reporting requirements.
- E. Notify the Contractor that it intends to commence debarment proceedings because the Contractor has failed to comply with affirmative action reporting requirements.

38. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Contractor and all Subcontractors of any tier agree to comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR part 5) which is incorporated by reference in this contract.

39. EECBG FUNDS AND CDH FUNDS

- A. Energy Efficiency and Conservation Block Grant (EECBG)

If the individual Job Order is funded with Energy Efficiency and Conservation Block Grant fund, the following requirements will be in effect.

The determination if the individual Job Order is EECBG funded will be identified in the Detailed Scope of Work for the specific Job Order.

Record Keeping – Contractors must maintain payrolls and basic records and submit certified weekly payrolls. Although use of [Form WH-347](#) is optional, the form will satisfy the requirements of Regulations, Parts 3 and 5 (29 CFR, Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis Bacon and related Acts. Records to be maintained include:

1. Name, address, and social security number of each employee;
2. Each employee's work classification(s);
3. Hourly rate(s) of pay (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof);
4. Daily and weekly numbers of hours worked;
5. Deductions made; and actual wages paid.

Contractor shall submit weekly a copy of the payrolls to the County.

1. The prime contractor is responsible for the submission of the copies of payrolls of all subcontractors.
2. Each payroll shall be submitted with a "Statement of Compliance."
 - a. Payroll contains the required information.
 - b. Each labor and mechanic has been paid the full weekly wages.
 - c. Each labor and mechanic has been paid not less than the applicable wage rates and fringe benefits.
3. The Contractor and Sub-contractors shall make the payroll records available for inspection, copying, or transcription by authorized representatives of the Department of Energy.
 - a. The recipient or sub-recipient shall insert in the contract any or all clauses related to the Davis Bacon and its related acts
4. The contractor shall post in a prominent and accessible place at the project site wage determination (including additional classification and wage rates) and the Davis Bacon poster (WH-1321)

B. Community Development Block Grant Funds (CDH)

If the individual Job Order is funded with Community Development Block Grant Funds, then all requirements in the San Bernardino County Community Development and Housing Construction Contract Labor Compliance Provisions (Attachment D) and Labor Compliance Contract Addendum, including but not limited to Federal Labor Standard Provisions (HUD 4010 form), apply and are attached. The determination if the individual Job Order is funded by a Community Development Block Grant will be identified in the Detailed Scope of Work for the specific Job Order.

40. PAYROLL RECORDS

The Contractor agrees to comply with the requirements of section 1776 of the Labor Code, State of California, including maintaining payroll records as enumerated in subdivision (a). Contractor and Contractor's Subcontractor of any tier agree to submit to the County a copy of all certified payrolls, indicating that the wage rates are not less than those determined by the California Department of Industrial Relations or Federal prevailing wage rates if applicable, and that the classifications set forth for each laborer or mechanic conform with the work he/she performed. The Contractor agrees to be responsible for the submission of copies of payrolls for all Subcontractor with the submission of payment request.

Certified payroll shall be submitted with each payment request and shall include:

- A. Original document
- B. Company name & address
- C. Account number/project number
- D. Project name & address
- E. Period of time in which work is being performed
- F. Employee name, address and social security number
- G. Work classification, including sub-classification
- H. Hours paid
- I. Rate of pay
- J. Deductions
- K. Payroll check number

- L. Benefits
- M. Signature of employee authorized to certify payroll

41. QUALITY OF WORK AND MATERIAL

- A. All materials, parts and equipment furnished by the Contractor agree to be new, first quality and free from defects and imperfections. Workmanship shall be in accordance with the best standard practices.
- B. Any item or work installed by the Contractor but not in conformance with the drawings and specifications shall be removed and reinstalled by and at the Contractor's expense upon written request from the County.
- C. If such items or work are not removed or satisfaction obtained by the County within 30 calendar Days of such request, then the County may have such items or work removed and work completed to conform to drawings and specifications at the Contractor's expense.

42. RESPONSIBILITY OF CONTRACTOR AND ITS REPRESENTATIVES

- A. The Contractor will designate a County approved individual to serve as the primary point of contact for the contract. Contractor shall notify County when the primary contact will be unavailable/out of the office for one (1) or more workdays. The Contractor shall not change the primary contact without written acknowledgement to the County. Contractor or designee must respond to the

County inquiries within two (2) County business days.
- B. The Contractor agrees to give personal attention and supervision to the Work until same is entirely completed. The Contractor must have a senior manager in charge, who is competent to manage and administer the contract, and oversee the progress of the Work. The name of this representative shall be sent by letter to the Division immediately after the awarding of the contract.
- C. The Contractor must have a competent, full-time, on-site Superintendent in charge of overseeing the progress of Work performed on each Job Order under this contract, and who is authorized to receive instructions and to act for the Contractor on all matters related to the Work. This person shall be acceptable to the County and shall have a cell phone at which he or she can be reached at all times. The Contractor agrees to submit the name of its Superintendent in the Proposal for each Job Order. County may suspend the Contractor's work at the jobsite if Contractor's Superintendent is not present during the prosecution of the Work. The Contractor shall also have at all times an Office Manager assigned to this Contract. Additional staff will be provided depending on the volume of work. For each Job Order issued, the Contractor shall identify the Superintendent responsible for that Job Order. The Superintendent shall be reachable 24 hours a

day, seven days a week. At all times, the Contractor shall provide one Superintendent for every Job Order.

1. The Contractor shall reimburse the County \$400 per calendar day that a Superintendent is not on site at all times Work is being performed.

43. REPAIRING DAMAGED WORK

- A. Contractor agrees that all portions of the Work that may be damaged by accident or in the course of or on account of building operations, or by reason of any other cause whatsoever during the progress of the Work, shall be carefully and neatly repaired and turned over to the County ready for use.
- B. Should any part of the Work of this contract be cut into or damaged by Other Contractors, the Contractor and party causing such damage agrees to make adjustments between themselves relative to repairs and payment for same.

44. LIST OF SUBCONTRACTOR AND SUBLETTING WORK

- A. No part of the Work shall be done as piece work, nor shall it be left to a Subcontractor after the execution of the Notice To Proceed except as provided by law. In case part of the Work should be sublet, these General Conditions shall govern each trade insofar as they may apply to the Work of that trade.
- B. Where more than one Contractor or where Subcontractor are engaged upon the Work, they shall coordinate their efforts (in accordance with these General Conditions regarding Other Contractors, or under the control and guidance of the general Contractor), and agree to be responsible, one to the other, for any damage or injury to the Work.
- C. Contractor agrees to be governed by the provisions of sections 4100 to 4113, inclusive, of the Public Contract Code of the State of California. Contractor agrees to set forth in their Job Order Proposals, on forms provided for same, the name and location of the mill, shop or office of each Subcontractor who agrees to perform the work or labor or render service to the Contractor in or about the Work, and the portion of the Work which agree to be done by each Subcontractor.
- D. No subcontract shall be assigned or transferred except as provided in the above sections of the Public Contract Code of the State of California.
- E. In case any Work is left to a Subcontractor, the Contractor agrees to be at all times responsible for the Work so done to same extent as if the Contractor were doing or had done the Work.
- F. In accordance with Public Contract Code sections 4100 et seq., the Contractor must list all Subcontractors who agree to perform in excess of 1/2 of one percent (1/2%) of the Work on each Job Order Proposal.

- G. The Labor Commissioner may debar from bidding on, or receiving a public works contract, any Contractor or Subcontractor found to have violated public works laws with intent to defraud. No debarred Contractor or Subcontractor may perform work pursuant to this contract. A list of debarred Contractors and Subcontractor is published by the Labor Commissioner. The Contractor is liable for payment of wages due to any employees of debarred Contractor that was permitted to work under this contract.
- H. Without the prior written consent of the County, the contract is not assignable by the Contractor either in whole or in part.

45. ADVERTISING

No advertising matter shall be attached or painted on surfaces of buildings, fences or canopies, except that names of Contractors and Subcontractor, with their addresses and the designation of their particular branch may be shown on signs of a removable type. Size and location of such signs shall be subject to approval of the County. The Contractor agrees to provide a project identification signboard as specified.

46. COORDINATION WITH OTHERS AND OTHER CONTRACTS

- A. The County reserves the right to award other contracts for any work on any portion of the project not included in this contract.
- B. Where coordination with Other Contractors is required, the Contractor agrees to make the appropriate provisions in Contractor's CPM schedule for the access to the site by those Contractors, the schedules of work developed by them, and any coordination required between any of those Contractors and between any of them and this Contractor.
- C. The Contractor agrees to perform the Work of the contract so that it will properly coordinate and fit the work performed by Other Contractors. The Contractor agrees to give the Other Contractors every reasonable opportunity to perform their work, store materials and place equipment thereof, and fit Contractor's Work to the work of Other Contractors. The Contractor agrees to furnish to the Other Contractors all information necessary in order that they may properly connect and fit their work to Contractor's in ample time, so that they may have reasonable opportunity to prepare their work therefore. The Contractor agrees to make the Work of this contract ready to receive the work of the Other Contractors at the time fixed thereof, and agrees to fit this Work to that of the Other Contractors at the time fixed therefore.
- D. The Contractor agrees to cooperate with others in the prosecution of all Work and agrees to not interfere with material, equipment or workers of the County or Other Contractors engaged by the County at the site of the Work.
- E. All Contractors engaged in Work at the site, agree to have, insofar as practical, equal use of the premises and facilities. In case of disagreement regarding such

use, the matter shall be referred to the County, whose decision relative to said use shall govern.

- F. If any part of the Contractor's Work depends for proper execution or results upon the Work of any Other Contractor, the Contractor agrees to inspect and promptly report to the Director any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to inspect and report shall constitute an acceptance of the Other Contractor's work as fit and proper to receive the Contractor's Work, except as to defects which may develop in the Other Contractor's work after the execution of the Contractor's Work.
- G. Should the Contractor cause damage to the Work or property of any Other Contractor on the project, the Contractor agrees to, upon due notice, settle with such Other Contractor by agreement or arbitration if it will so settle. If such Other Contractor sues the County or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the County agrees to notify the Contractor who agrees to defend such proceedings at the Contractor's expense, and if any judgment or award against the County arises there from, the Contractor agrees to pay or satisfy it and agrees to reimburse the County for all attorney's fees and court or arbitration costs which the County has incurred.

47. CONTRACTOR'S EQUIPMENT

The Contractor agrees to furnish and maintain all equipment such as stairs, ramps, runways, scaffolds, hoists, etc., required for the proper execution of the Work. All such equipment and Work shall meet all requirements of all ordinances and laws applicable thereto.

48. CONTRACTOR PERSONNEL

- A. The Contractor agrees to employ only orderly and competent workers, skillful in the performance of the type of work required under this contract, to do the Work and agrees that whenever the County informs the Contractor in writing that any workers on the site are incompetent or disorderly such worker shall be discharged from the Work and shall not again be employed on the Work without the County's written consent.
- B. The Contractor agrees to give adequate attention to the faithful prosecution and completion of this contract and agrees to keep on the site at all times during project's progress, competent personnel, Superintendent and any necessary assistants to supervise and direct the Work. Grounds for removal of Contractor personnel specifically include (but is not limited to) the failure or refusal of such personnel to adhere to the Contractor's planned work schedule as approved with the Job Order Proposal.
- C. The Contractor's project manager agrees to supervise and direct the Work in accordance with the contract requirements. The Contractor agrees to be

responsible for implementation of all construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work.

- D. Before starting the Work, the Contractor agrees to designate and submit for County's approval, in writing, the names of the project manager and the Superintendent who will be assigned to the Work, along with their qualifications and experience. A facsimile of the project manager's signature shall be submitted to the County.
- E. The Contractor agrees to notify the County and obtain written approval for any change or reassignment of key personnel.

49. KEY PERSONNEL

- A. The Contractor agrees to submit the pre-award survey within 24 hours of notification of apparent low bid, which shall contain a project staff organizational chart including the names and resumes of employees in key positions who will work on this contract. All employees in key positions must be approved by the County.
- B. If any key personnel furnished by the Contractor for the project in accordance with the key personnel provisions of this section should be unable to continue in the performance of assigned duties for reasons due to death, disability or termination, the Contractor agrees to promptly notify the County explaining the circumstances. Changes in assignment of key personnel due to commitments not related to this contract are prohibited without County approval. Whenever, in the sole discretion of the County, the Contractor is not providing a sufficient level of supervision and project management, the County will direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific

quality control program, all at no cost to the County. In the event the County's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the County \$175 per hour for such effort.

- C. On request by the County, the Contractor agrees to furnish to the County within seven (7) Days the name of the person substituting for the individual unable to continue, together with any information the County may require to judge the experience and competence of the substitute person. Upon approval by the County, such substitute person shall be assigned to this contract and if the County rejects the substitute, the Contractor agrees to submit a second substitute person seven (7) Days thereafter. Such process shall be repeated for a reasonable period until the County approves the proposed replacement. After which a reasonable transition time of seven (7) days shall occur.

- D. In the event that, in the opinion of the County, the performance of personnel of the Contractor assigned to this contract is at an unacceptable level, such personnel shall cease to be assigned to this contract and shall return to the Contractor, and the Contractor agrees to furnish to the County, the name of a substitute person or persons in accordance with the previous paragraph. Absence of acceptable key personnel for the Work shall constitute an event of default.

50. AUDITS AND RECORDS

- A. County shall have the absolute right to monitor the performance of Contractor in the delivery of services provided under this contract.
- B. County, State of California, or Federal Government, or any subdivision or appointee for these entities, shall have the absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this contract. Full cooperation shall be given by Contractor in any auditing or monitoring conducted.
- C. Contractor shall cooperate with County in the implementation, monitoring and evaluation of this contract and comply with any and all reporting requirements established by this contract.
- D. All records pertaining to service delivery and all fiscal, statistical and management books and records shall be available for examination and audit by County, Federal and State Representatives for a period of four years after final payment under the contract or until all pending County, State and Federal audits are completed, whichever is later. Records of the Contractor which do not pertain to the services under this contract may be subject to review or audit unless provided in this or another contract. Technical program data shall be retained locally and made available upon the County's reasonable advance written notice or turned over to County. If said records are not made available at the scheduled monitoring visit, Contractor may, at County's option, be required to reimburse County for expenses incurred due to required rescheduling of monitoring visit(s).
- E. Contractor shall provide all reasonable facilities and assistance for the safety and convenience of County's representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of the Contractor.
- F. Upon County request, contractor shall hire a licensed certified public accountant, approved by the County, who shall prepare and file with County, within 60 days after the termination of the contract, a certified fiscal audit of related expenditures during the term of the contract and a program compliance audit.

- G. All documents, data, products, graphics, computer programs, and reports prepared by the contractor pursuant to this contract shall be considered property of the County upon payment for services.

51. WARRANTY AND CORRECTIONS TO WORK

- A. In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (J) of this article, that Work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.
- B. Corrections to Work may be required during the Work or the warranty period. The County is expressly authorized at County's option to apply any sums withheld from progress payments toward the cost of such corrections.
- C. This warranty shall continue for a period of one year from the date of Substantial Completion of the Work. If the County takes occupancy of any part of the Work before Final Acceptance, a warranty covering that specific portion of the Work shall begin for a period of one year from the date the County takes Substantial Completion. The County will notify the Contractor in writing of the scope of any partial occupancy and the specific items under warranty.
- D. The Contractor agrees to remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor agrees to remedy at the Contractor's expense any damage to County owned or controlled real or personal property, when that damage is the result of:
 - 1. The Contractor's failure to conform to or comply with contract requirements; or
 - 2. Any defect of equipment, material, workmanship, or design furnished.
- E. The Contractor agrees to restore any Work damaged in fulfilling the terms and conditions of this article. The Contractor's warranty with respect to Work repaired or replaced shall run for 1 year from the date of repair or replacement.
- F. The Director agrees to notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- G. If the Contractor fails to remedy any failure, defect, or damage within 10 working days (or immediately in the case of an emergency where delay would cause serious risk of loss or damage) after receipt of notice, the County agrees to have the right to remove, replace, repair, or otherwise remedy the failure, defect, or damage, and all direct and indirect costs of such removal, replacement, repair and correction, including compensation for additional professional services shall be paid by the Contractor.

- H. With respect to all warranties, express or implied, from Subcontractor, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor agrees to:
1. Obtain all warranties that would be given in normal commercial practice;
 2. Require all warranties to be executed, in writing, for the benefit of the County, if directed by the County; and
 3. Enforce all warranties for the benefit of the County, if directed by the County.
- I. In the event the Contractor's warranty under paragraph (C) of this Article has expired, the County may bring suit at County's expense to enforce a Subcontractor's, manufacturer's, or supplier's warranty.
- J. The Contractor agrees to not be liable for the repair of any defects of material or design that is furnished by the County nor for the repair of any damage that results from any defect in County furnished material or design.
- K. This warranty shall not limit the County's rights under other articles of this contract with respect to latent defects, gross mistakes, or fraud.
- L. The terms of this condition do not relieve the Contractor of any legal liability for defects discovered after one year from the date of occupancy. The obligation imposed by this condition shall survive termination of the contract.

52. FAILURE TO COMPLETE WORK ON TIME – LIQUIDATED DAMAGES

- A. Timely Completion of Job Orders issued under this contract is of the essence. Should the Contractor fail to substantially complete the Work specified in the Job Order in accordance with the approved construction schedule, and provided the Contractor has not previously obtained a written extension of Job Order Completion Time from the County according to the General Conditions, at the sole discretion of the County a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each Job Order if applicable.

Schedule for Liquidated Damages

<u>Job Order Price</u>	<u>Liquidated damages per Day</u>
Up to \$100,000	\$750
\$100,001 to \$500,000	\$1,000
Over \$500,000	\$1,500

- B. The applicability of liquidated damages shall be clearly noted on the Request for Proposal for each Job Order. No liquidated damages shall apply if not noted on the Request for Proposal.
- C. If the Contractor fails to complete any part of the Work in accordance with the work duration schedule, the County agrees to have the right to complete that part of the Work it deems necessary in order to maintain the work duration schedule. All direct and indirect costs of such Work shall be paid by the Contractor.
- D. Liquidated damages are in addition to the \$400 per calendar day that Contractor shall reimburse the County if a Superintendent is not on site at all times Work is being performed.

53. DISRUPTION OF COUNTY SCHEDULED ACTIVITIES

The Contractor agrees to not cause any disruption to a County scheduled activity. The Work shall be coordinated with the County and shall be accomplished in accordance with the schedule set forth in Job Orders issued hereunder. Schedule revisions shall be made known to the County on a timely basis, and all extensions of time must be in writing and approved by the County.

54. TRUCKING

The Contractor agrees to require that all trucks entering or leaving the project sites with loose materials be loaded and covered in a manner that will prevent dropping of materials on streets while in transit. Suitable tarpaulins shall be placed over the loads for materials subject to blowing.

55. TOILET FACILITIES

Contractor's personnel will normally be permitted to use toilet facilities on premises subject to regulation and control of the County. In the event Work is in a remote area or that toilet facilities are not available, adequate and suitable temporary facilities shall be provided by the Contractor.

56. ELEVATORS

- A. Any temporary use of existing elevators shall be by arrangement with the County. Such use will be of an intermittent nature. The Contractor agrees to provide and maintain suitable and adequate protection covering for the elevator machinery, the hatchway entrance, and the interior of elevator during the periods of temporary use. Elevators shall not be loaded in excess of the rated capacity of the elevator.
- B. The County will bear the cost of electrical current for such temporary existing elevator usage. On Completion of the Work, the Contractor agrees to remove the protective coverings together with any resultant dirt and debris.

57. UTILITIES

The County will provide access to utilities, such as electrical, water, sewage, etc., however, the Contractor may be required to pay for these services at current rates. The County will identify service tie-in points but connections to these tie-in points shall be the responsibility of the Contractor. The County will not be liable for any claims for costs associated with temporary outages or unavailability of these utilities.

58. REGULATIONS

The site of the contract Work is on County property, or County leased property, or property where the County has authority to perform the Work, and all rules and regulations issued covering fire, safety, sanitation, severe weather conditions, admission to buildings, conduct of operations, etc., shall be observed by the Contractor, Contractor's employees, and Subcontractors. The regulations include:

- A. Fire prevention: Contractor's and Subcontractor's employees shall be cognizant of, and agree to comply with, all requirements for handling and storing combustible supplies and materials, daily disposal of combustible waste, trash, etc., in accordance with Federal, State and Local requirements, codes and regulations. The Contractor will require employees to become familiar with methods of activating building fire alarms.
- B. Safety: all rules of safety which are or may be imposed upon the Contractor by Federal, State, or Local code or regulation shall be effectively carried out in the performance of the Work set forth herein. Contractor agrees to take proper safety and health precautions to protect the Work, the Contractor's employees, the public and the property of others.
- C. Sanitation: the Contractor is responsible for and agrees to maintain all areas used by the Contractor in performance of the contract in a clean, neat, orderly, sanitary, and safe condition. The premises shall be kept free from accumulation of waste material and rubbish resulting from Work at all times. Combustible materials shall be removed daily.
- D. Conduct: The County reserves the right to refuse access to any Contractor's employee if the County determines it to be in the best interest of the County.

59. CONTRACTOR LIABLE AND RESPONSIBLE TO COUNTY

- A. The Contractor agrees to be held liable by the County for the performance of all the Work provided for under this contract. These specifications make no attempt to fix the Detailed Scope(s) of Work of the Subcontractor or the responsibility of any such Subcontractor, it being understood that the Contractor agrees to fix the detailed scope of all work and responsibilities of the Subcontractor.
- B. Any disputes which may arise in this connection between the Contractor and any

Subcontractor must be settled between the parties concerned. The County will not undertake or be in any way responsible for the settlement of such disputes.

60. ENVIRONMENTAL PROTECTION

- A. The Contractor agrees to be responsible to protect the environment of work areas as affected by this contract. Contractor agrees to be responsible for the proper disposal of all solid, liquid, and gaseous contaminants and refuse in accordance with all Federal, State, Local requirements, codes and regulations.
- B. All chutes for refuse, and the like shall be covered or of such a design to fully confine the material to prevent the dissemination of dust.

61. PROTECTION OF WORK AND PROPERTY

- A. The Contractor agrees to continuously maintain adequate protection of all of the Contractor's Work from damage, and agrees to protect the County's property from injury or loss arising in connection with this contract. The Contractor agrees to make good any such damage, injury or loss, except as may be directly due to or caused by agents or employees of the County.
- B. The Contractor agrees to adequately protect adjacent property as provided by law and the Contract Documents.
- C. The Contractor agrees to provide and maintain all passageways, guard fences, lights and other facilities for protection and security required by public authorities or local conditions.
- D. In an emergency affecting the safety of life, of the Work, or of adjoining property of County, the Contractor, without special instructions or authorization from the County, is hereby permitted to act at the Contractor's discretion to prevent such threatened loss or injury.
- E. Any compensation claimed by the Contractor on account of emergency work as set forth in D above shall be determined by agreement of the County and the Contractor.
- F. The Contractor agrees to carefully protect all trees, shrubs, and hedges, not specified as being removed, from injury during Work and pay for damages to same resulting from insufficient or improper protection.
- G. The Contractor agrees to send proper notice, make all necessary arrangements and perform all other services required for the care, protection and maintenance of all public utilities, including mail boxes, fire plugs, power and telephone poles and wires, and all other items of this character on or around the building site.

- H. Building materials, Contractor's equipment, and other supplies necessary to the Work may be stored on the premises with approval of the County. This shall in no manner relieve the Contractor from full responsibility for such materials.
- I. Where materials are not sold or furnished in packages or containers, the Contractor, when requested by the County, agrees to obtain invoices from the manufacturer or its agents covering such materials showing the name and brand of the materials furnished, which invoices must be furnished to the County.
- J. In the event of accidental damage to or disruption of any of the County's equipment, utilities, or facilities by the Contractor or any of the Subcontractors, or when life or property are endangered, the Contractor agrees to immediately take all necessary steps to replace/repair all pieces/parts of any damaged equipment/materials, make all necessary repairs and restore all services to normal. Further, the Contractor agrees to engage any and all required additional Subcontractors, labor, individuals or other outside services, deemed necessary by the County, to operate on a continuous, "around-the-clock" basis until all restoration is complete. Also, the Contractor agrees to provide and install all required materials and equipment.
- K. All costs involved in making repairs and restoring disrupted services to normal agrees to be borne by the Contractor.

62. PROJECT SITE STORAGE

The Contractor agrees to store all supplies and equipment on Job Order project site(s) so as to preclude mechanical and climatic damage and maintain project sites in a neat and orderly manner at all times.

63. SITE PROTECTION

- A. The Contractor agrees to provide adequate climatic protection for the exposed part of buildings wherever Work under this contract is performed.
- B. The Contractor agrees to cover equipment that is to remain in place within the area of contract operations and protect it against damage or loss. This includes equipment that is removed in the performance of Job Orders where directed for reuse in Work as required by drawings and specifications. Equipment temporarily removed that is in good operating condition at the time of removal shall be protected, cleaned and replaced equal to or better than its condition prior to its removal. Security for equipment or material that is to be reused and is removed for temporary storage at the work site shall be the sole responsibility of the Contractor. If the Contractor considers the equipment to be at risk after removal, arrangements should be made with the County for County storage while removed. Transportation to and from the County storage site shall be provided for and at the Contractor's risk. The Contractor shall remain responsible for continued suitability for reuse of any equipment so stored by the County.

64. NOISE CONTROL/ABATEMENT

- A. The Contractor agrees to comply with all applicable Federal, State and Local laws, ordinances, and regulations relative to noise control.
- B. Contractor agrees to comply with all Federal, State, and Local laws, regulations, and standards regarding environmental pollution. All environmental protection matter shall be coordinated through the County.

65. SAFETY AND HEALTH

This article is applicable to all Work covered by this contract.

A. General:

- 1. The Contractor agrees to submit a copy of its Injury and Illness Prevention Program (IIPP) and Code of Safe Practices (CSP) documents to the County not later than ten (10) Days from the date of contract execution.
- 2. Applicable publications: the publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only:
 - a. Code of Federal Regulations (CFR);
 - b. OSHA General Industry Safety and Health Standards (29 CFR 1910), Publication v2206; OSHA Construction Industry Standards (29 CFR 1926). One source of these regulations is OSHA Publication 2207, which includes a combination of both parts 1910 and 1926 as they relate to construction safety and health. It is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402;
 - c. National emission standards for hazardous air pollutants (40 CFR, Part 61);
 - d. Federal Standard (Fed. Std.); and
 - e. 313 D Material Safety Data Sheets, preparation and the submission thereof.
- 3. In the event of accident(s) of any kind, the Contractor agrees to furnish the County with copies of all accidents reports within 10 Days of the occurrence to the County. Reports shall be sent without delay and at the same time that they are forwarded to any other parties and jurisdictional agencies.

- B. Definition of hazardous materials: refer to hazardous and toxic materials/substances included in subparts H and Z of 29 CFR 1910; and to

others as additionally defined in Fed. Std. 313. Those most commonly encountered include asbestos, polychlorinated biphenyls (PCBs), explosives, lead, radon and radioactive material, but may include others. The most likely products to contain asbestos are spray-on fireproofing, insulation, boiler lagging, and pipe covering.

- C. The County reserves the right to halt Work on any project where hazardous materials are suspected to be present. This stoppage will allow for proper testing and the development of a corrective action plan.

- D. All persons working with hazardous materials shall be certified for the hazards with which they are working, including the Contractor's Superintendent.

- E. Asbestos

1. The Contractor is warned that exposure to airborne asbestos has been associated with four diseases: lung cancer, certain gastrointestinal cancers, pleural or peritoneal mesothelioma and asbestosis. Studies indicate there are significantly increased health dangers to persons exposed to asbestos who smoke, and further, to family members and other persons who become indirectly exposed as a result of the exposed worker bringing asbestos-laden work clothing home to be laundered.

2. The Contractor is advised that friable and/or non-friable asbestoscontaining material may be encountered in areas where contract Work is to be performed.

The Contractor must bid for asbestos abatement or take proper precautions for no exposure to asbestos. Proof of asbestos abatement and documentation of asbestos training must be provided to the County. Friable asbestos-containing material means any material that contains more than one percent asbestos by weight that hand pressure can crumble, pulverize or reduce to powder when dry. Non-friable asbestoscontaining materials are materials in which asbestos fibers are bound by a matrix material, saturant, impregnant or coating. Non- friable asbestos-containing materials do not normally release airborne asbestos fiber during routine handling and end-use. However, excessive fiber concentrations may be produced during uncontrolled abrading, sanding, drilling, cutting, machining, removal, demolition or other similar activities.

3. Care must be taken to avoid releasing or causing to be released, asbestos fibers into the atmosphere where they may be inhaled or ingested. The Occupational Safety and Health Administration (OSHA) has set standards at 29 CFR 1910.1001 for exposure to airborne concentrations of asbestos, fibers, methods of compliance, medical surveillance, housekeeping procedures, and other measures that must be taken when working with or

around asbestos- containing materials. The Environmental Protection Agency (EPA) has established standards at 40 CFR 61.140-156 for the control of asbestos emissions to the environment and the handling and disposal of asbestos wastes.

4. Friable asbestos containing materials are not permitted by current criteria and shall not be used in repair, remodeling or modification projects. Documents for all repair or remodeling projects will be reviewed to ensure that the use of friable asbestos-containing materials is not called for.
5. Maintenance, modification, or demolition activities where exposure to asbestos dust may occur from previously installed friable or non-friable asbestos- containing material will be identified. All precautions, to include proper work practices, medical surveillance, respiratory protection, industrial hygiene, and environmental protection requirements of OSHA (29 CFR 1910.1001), and EPA (40 CFR 61.140-156) as applicable, shall be strictly adhered to.
6. Contractor(s) staff working in designated County facilities known to contain asbestos must complete asbestos awareness training in accordance with CCR Title 8, Section 5208 and 1529. Training shall be consistent with EPA training requirements for local education agency maintenance staff as set forth in Code 40 of Federal Regulations (40 C.F.R. sec. 763.92(a)(1).). Documentation that Contractor(s) employees working under this contract have received such training must be submitted within 30 Days of the contract start date.

F. Petroleum Based Paints, Solvents, and Cleaners

1. The use of sealers, cleaners, paints, etc. containing petroleum distillates is discouraged and/or lead based products is discouraged and are approved only for use in County facilities when no other suitable alternative is available. If approved, workers must be trained on precautionary measures while working with petroleum distillates and/or lead based products.
2. The County will review with the Contractor's representative, a complete list of all sealers, cleaners, paints, etc., that are to be used during the contract.
3. The Contractor will submit a written request for all petroleum based products to be used. The request will indicate the amount to be used, labels of the products to be used, time of day/week when the products will be applied, and how the area will be ventilated.
4. The County must approve all requests and reserves the right to reject any requests to use petroleum based products. If questions exist on the safe use and application of the substance as outlined by the Contractor, an engineering testing lab under contract with the County will be consulted.

5. The County will assess whether or not concurrent air sampling by an engineering testing lab is justified.
6. All County employees on or adjacent to worksite must be aware of the effects of the products the Contractor intends to use, or approved to use. Contractor and County agree to coordinate with building manager/client department manager prior to starting work activity. G. Contractor responsibility for jobsite safety:

The Contractor agrees to be solely responsible for ensuring that all Work performed under the contract is performed in strict compliance with all applicable Federal, State and Local occupational safety laws and regulations. The Contractor agrees to provide at its expense all safeguards, safety devices and protective equipment, and shall take any and all appropriate action to provide a safe jobsite.

H. Jobsite safety affidavit:

The Contractor is to complete and present, at the pre-construction meeting, a jobsite safety affidavit. In the jobsite safety affidavit the Contractor certifies that it is in compliance with CAL/OSHA regulations. The format of the affidavit is to be developed by the Contractor, and it is to include a description of all potential hazards and the safety mechanisms to be put in place, for the Detailed Scope of Work for each individual Job Order. I. Project Health and Safety Official:

The Contractor must submit a copy of its Injury and Illness Prevention Program (IIPP) and Code of Safe Practices (CSP) documents not later than ten (10) Days from date of contract execution. For each Job Order, the Contractor shall designate in writing to the County one or more persons who shall act as a Site Health and Safety Official (SHSO) who agrees to be at the job site at all times during which work of any kind is being performed, and who agrees to be thoroughly familiar with the Contractor's Injury and Illness Prevention Program (IIPP) and Code of Safe Practices (CSP). The SHSO shall be available at all times to abate any potential safety hazards, and shall have the authority and responsibility to shut down an operation, if necessary. The SHSO agrees to be identified prior to the start of construction. Failure by the Contractor to provide the required SHSO agrees to be grounds for the County to direct the cessation of all work activities and operations, at no cost to the County, until such time as the Contractor is in compliance.

The SHSO agrees to monitor the Work area environment, perform tests as necessary, provide direction as to the level of protection and corresponding personal protective equipment required, and enforce compliance with the IIPP and CSP.

All costs for furnishing a SHSO, providing or having available trained employees and personal protective equipment, performing monitoring and testing, establishing

and following safety procedures and measures, furnishing any required apparatus, and all other costs related to implementing the IIPP and CSP shall be considered as included in the Contractor's Adjustment Factor(s).

66. COMPLIANCE WITH CLEAN AIR ACT, CLEAN WATER ACT, AND CALIFORNIA STATE WATER RESOURCES CONTROL BOARD.

- A. Contractor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act of 1970 (including section 306), including all amendments, and all regulations implementing the Clean Air Act.
- B. Contractor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Water Act of 1972 (including section 508), including all amendments, and all regulations implementing the Clean Water Act.
- C. Contractor agrees to comply with all applicable standards, orders, or requirements issued under Environmental Protection Agency regulations.
- D. Contractor agrees to comply with all requirements of the California State Water Resources Control Board, including the statewide General Permit for Discharges of Storm Waters Associated with Construction Sites (See Order No. 2009-0009- DWQ). This includes, but is not limited to, paying all appropriate fees, filing all required documentation, and complying with all the regulations of the State Water Resources Control Board.

67. TRENCHING AND EXCAVATING

Any public works contract of a local public entity which involves digging trenches or other excavations that extend deeper than four feet below the surface shall contain a clause which provides the following:

- A. That the Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:
 - 1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - 2. Subsurface or latent physical conditions at the site differing from those indicated.
 - 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

- B. That the public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the times required for, performance of any part of the work shall issue a Supplemental Job Order under the procedures described in the contract.
- C. That, in the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

68. ENERGY CONSERVATION

Contractor and Subcontractors of all tiers agree to comply with all mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (pub. L. 94-163). In addition, the Contractor agrees to;

- A. Use lights only in areas where work is actually being performed.

- B. Turn off faucets, valves, and equipment after required usage has been accomplished.
- C. Not use County telephones for personal reasons nor make any toll or longdistance calls.

69. SALVAGE AND SALVAGE DISPOSAL

- A. The material and equipment which are removed or disconnected and, which the County desires to retain but which are not specified for immediate reuse, shall remain the property of the County. The County representative shall be informed of the presence of the property and disposition instructions shall be requested.
- B. Debris, rubbish, hazardous waste, and non-usable material resulting from the Work under this contract to which the County does not claim a further interest as a result of the preceding paragraph, shall be disposed of by and at the expense of the Contractor at a location off County property. Hazardous wastes must be disposed of in accordance with the Resource Conservation and Recovery Act and State and Local regulations. The contract Adjustment Factor includes the cost of all clean-up, including final cleanup on each individual Job Order.

70. SITE PREPARATION AND CLEANUP

The Contractor agrees to:

- A. Coordinate with the County on a sequence of procedures for gaining access to the premises, space for storage of materials and equipment, work and materials, use of approaches, corridors stairways, and similar features of a structure. This coordination is required prior to commencement of Work at a time directed by the County.
- B. Move the furniture and portable office equipment in the immediate work area to a designated location prior to start of Work, and replace these items to their original location upon Completion of the Work. The Contractor will be liable for damages incurred while moving furniture and equipment, and be responsible for contacting appropriate agencies for movement of vending machines. If the Work required by the Job Order will not allow furniture and portable office equipment to be replaced to its original positions, the County will be notified and new locations will be designated by the County for replacement of the furniture and equipment by the Contractor.
- C. Work of Contractor personnel, materials and equipment, and accomplishment of Work agrees to be made with a minimum of interference to operations and personnel.
- D. The Work shall, so far as practicable, be done in definite sections or divisions and confined to limited areas. Work shall be completed in the section before Work in other sections or divisions begin.
- E. Perform clean up and site restoration prior to final walk-through inspection. All projects shall be delivered in a clean, orderly and usable condition.

71. ACCESS TO BUILDINGS

- A. It shall be the Contractor's responsibility, through the County and appropriate building superintendent, to obtain access to buildings and facilities and arrange for the buildings to be opened and closed. It shall be the Contractor's responsibility to arrange for adequate security of the building(s) at the end of each work day and on weekends.
- B. It is the responsibility of the Contractor to prohibit the opening of locked areas by the Contractor's employees to permit the entrance of persons other than the Contractor's employees engaged in the performance of assigned work in those areas.

72. COUNTY-FURNISHED EQUIPMENT/MATERIALS

- A. From time to time the County may elect to supply its own materials and/or equipment for a specific project. In those cases the Contractor shall provide

transportation of any County furnished equipment/materials included on the Job Order. The equipment/materials will be transported from the County storage area to the work site indicated on the Job Order. The Contractor assumes the risk and responsibility for the loss or damage to County-furnished property. The Contractor agrees to follow the instructions of the County's representative regarding the disposition of all County- furnished property not consumed in performance of a Job Order.

- B. The Construction Task Catalog® included in this contract was developed on the basis that the Contractor would furnish all equipment and materials to accomplish the requirements of the contract. It may be advantageous for the County to furnish equipment and/or materials for an individual job order. In such event, the line item will only include the labor and equipment portion, not the material. The line item will be at the appropriate Adjustment Factor.

73. SHOP DRAWINGS AND SUBMITTALS

- A. Shop drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.
- B. Samples are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.
- C. The Contractor agrees to review, stamp with his approval, and submit, with reasonable promptness, and in orderly sequence so as to cause no delay in the Work or in the work of any other Contractor, all shop drawings and samples required by the Contract Documents. Shop drawings and samples shall be properly identified as specified, or as the County may require. At the time of submission, the Contractor agrees to inform the County in writing of any deviation in the shop drawings or samples from the requirements of the Job Order.
- D. By approving and submitting shop drawings and samples, the Contractor thereby represents that the Contractor has determined and verified all field measurements, field criteria, materials, catalog numbers and similar data, or will do so, and that the Contractor has checked and coordinated each shop drawing and sample with the requirements of the Work and of the Contract Documents.
- E. The Contractor agrees to cross out any items on sheets, which constitute information not pertaining to the equipment specified, and clearly mark all components which are provided as "optional" by the manufacturer and required hereinafter. Failure to comply with the above will result in disapproval of shop drawings.

- F. The County will review and approve shop drawings and samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the Job Order and with the information given in the Contract Documents. The County's approval of a separate item shall not indicate approval of the entire assembly in which the item functions.
- G. The Contractor agrees to make any corrections required by the County and agrees to resubmit the required number of corrected copies of shop drawings or new samples until approved. The Contractor agrees to direct attention, in writing or on resubmitted shop drawings, to (1) corrections requested by the

County on previous submission, and (2) to additional revisions made, other than those specifically requested by the County on previous submission.
- H. The County's approval of shop drawings or samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents, unless the Contractor has informed the County in writing of such deviation at the time of submission and the County has given written approval to the specific deviation. Additionally, the County's approval shall not relieve the Contractor from responsibility for errors or omissions in the shop drawings or samples.
- I. No portion of the Work requiring a shop drawing or sample submission shall be commenced until the County has approved the submission. All such portions of the Work shall be in accordance with approved shop drawings and samples.

74. INDEMNIFICATION AND INSURANCE REQUIREMENTS

Contractor agrees to and shall comply with the following indemnification and insurance requirements:

A. BASIC REQUIREMENTS:

Indemnification – To the fullest extent possible permitted by law, Contractor assumes liability for and agrees, at the Contractor's sole cost and expense, to promptly and fully indemnify, defend (with counsel reasonably approved by County) (even if the allegations are false, fraudulent, or groundless), and hold harmless the County and its authorized officers, employees, agents and volunteers (Indemnitees) from and against any and all claims (including claims against the County seeking compensation for labor performed or materials used or furnished to be used in the work or alleged to have been furnished on the project, including all incidental or consequential damages resulting to the County from such claims), allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, demands, losses, costs, damages, judgments, liens, stop notices, penalties, anticipated losses of revenue and/or liability, and expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses) arising out of, resulting from, or in any way (either directly or indirectly) related to the contract, the

work, the project or any breach of the Contract by Contractor (or any of its officers, agents, employees, subcontractors, or any person performing any of the work, or from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the Indemnitee's "passive" negligence but does not apply to the Indemnitee's "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code section 2782 provided such "active" negligence or "willful misconduct" is determined by agreement of the parties or by findings of a court. In instances where an Indemnitee's "active" negligence accounts for only a percentage of the liability for the claim involved, the obligation of the Contractor will be for that entire percentage of liability for the claim not attributable to the "active" negligence or "willful misconduct" of the Indemnitees. The County shall be consulted with regard to any proposed settlement.

The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by Contractor of the tender of any claim from the County. The Contractor's obligation to defend the County shall be at Contractor's sole expense, and not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. The duty to defend shall apply whether or not a claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively, or concurrently negligent, or which otherwise asserts that the Indemnitees are responsible, in whole or in part, for any claim. The Contractor shall respond within thirty (30) calendar days to the tender of any claim for defense and/or indemnity by the County, unless the County agrees in writing to an extension of this time. The defense provided to the Indemnitees by Contractor shall be by well qualified, adequately insured, and experienced legal counsel acceptable to the County Counsel.

It is the intent of the parties to the Contract that the Contractor and its subcontractors of all tiers shall provide the Indemnitees with the broadest defense and indemnity permitted by law. In the event that any of the defense, indemnity, or hold harmless provisions are found to be ambiguous, or in conflict with one another, it is the parties' intent that the broadest and most expansive interpretation in favor of providing defense and/or indemnity to the Indemnitees be given effect.

Contractor shall ensure, by written subcontract agreement, that each of Contractor's subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to all claims arising out, in connection with, or in any way related to each such subcontractor's work in the same manner in which Contractor is required to protect, defend, indemnify, and hold the Indemnitees harmless. In the event Contractor fails to obtain such defense and indemnity obligations from its subcontractors as required herein, Contractor agrees to be fully responsible to the Indemnitees according to the terms of this Section.

Contractor's indemnification and defense obligations set for in this Section are separate and independent from the insurance requirements and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance requirements. The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations.

Contractor's obligations under this Section are binding on Contractor's and its subcontractors' successors, heirs and assigns and shall survive the completion of the work or termination of the Contractor's performance of the work.

Additional Insured – All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights – The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

Severability of Interests – The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

Proof of Coverage – The Contractor shall furnish Certificates of Insurance to the County Department administering the contract evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days

of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A-VII”.

Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

Failure to Procure Coverage – In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

Insurance Review – Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County’s risk.

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

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

B. INSURANCE SPECIFICATIONS:

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

Workers' Compensation/Employers Liability – A program of Workers'

Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

1. Premises operations and mobile equipment.
2. Products and completed operations.
3. Broad form property damage (including completed operations).
4. Explosion, collapse and underground hazards.
5. Personal injury
6. Contractual liability.
7. \$2,000,000 general aggregate limit.

Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

Increased Insurance Limits Required -

Contracts over one million (\$1,000,000) and less than three million (\$3,000,000) require limits of not less than three million (\$3,000,000) in General Liability and Auto Liability coverage.

Contracts over three million (\$3,000,000) and less than five million (\$5,000,000) require limits of not less than five million (\$5,000,000) in General Liability and Auto Liability coverage.

Contracts over five million (\$5,000,000) require limits of not less than ten million (\$10,000,000) in General Liability and Auto Liability.

For Contracts over one million (\$1,000,000) the Contractor must have Continuing Products/Completed Operations Liability Insurance with a limit of not less than five million (\$5,000,000) for each occurrence for at least three years following substantial completion of the work on projects over one million (\$1,000,000).

Any contract that involves the use, handling, transportation, storage, abatement, containment or testing of any substance that is potentially toxic or hazardous to the environment, including but not limited to, those listed as hazardous by the United States Department of Transportation or the CAL OSHA "Director's list of Hazardous Substances" or listed as radioactive by the Nuclear Regulatory Commission, shall have the following additional requirements:

Environmental Liability Insurance with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the County without any restrictions.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

Subcontractor Insurance Requirements - The Contractor agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this contract to provide insurance covering the contracted operations with the basic requirements for all contracts in Article 74, Section A, and the insurance specifications for all contracts in Article 74,

Section B, (including waiver of subrogation rights) and naming the County as an additional insured. The Contractor agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

Course of Construction/Installation (Builder's Risk) - Property insurance providing all risk, including theft coverage for all property and material to be used on the project. The insurance policy shall not have any coinsurance penalty.

Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

75. BONDS

- A. Prior to the execution of the contract, the Contractor agrees to file with the County surety bonds in the amounts and for the purposes noted below, duly executed by a corporate Surety licensed to transact business in the State of California and satisfactory to the County. The Contractor agrees to pay all premiums and costs thereof and incidental thereto.
- B. Each bond shall be signed by both the Contractor and the Surety.
- C. The JOC Contractor agrees to give two (2) surety bonds with good and sufficient sureties; the first in the sum of not less than the Maximum Contract Value to insure the claims of material men supplying materials to the Contractor, Subcontractor and mechanics and laborers employed by the Contractor on the Work; the second in the sum of not less than the Maximum Contract Value to ensure the faithful performance of the contract. Both bonds shall be on forms provided by the County or forms acceptable to the County.
- D. The "Materials and Labor Bond" (or "payment bond") shall be so conditioned as to insure to the benefit of persons furnishing materials for or performing labor upon the Work. The Contractor agrees to maintain the materials and labor bond in full force and effect until the Work is completed and accepted by the County, and until all claims for materials, labor and subcontracts are paid.
- E. The "Bond for Faithful Performance" shall be so conditioned as to ensure the faithful performance by the Contractor of all Work under said contract, within the time limits prescribed, including any refurbishment provisions, in a manner that is satisfactory and acceptable to the County; that all materials and workmanship supplied by the Contractor agrees to be free from original or developed defects; and that should original or developed defects or failures appear within a period of one year from the date of Substantial Completion, the Contractor agrees to, at the Contractor's expense, make good such defects and failures and make all

replacements and adjustments required, within a reasonable time after being notified by the County to do so, and to the approval of the County. The Contractor agrees to maintain the bond in full force and effect during the performance of the Work of the Contractor and for a period of one year after the date of Substantial Completion. Also see Article 80 entitled "Patents and Royalties" of these General Conditions.

- F. Should any Surety or sureties upon said bonds or any of them become insufficient, said Contractor agrees to renew said bond or bonds with good and sufficient sureties within ten (10) Days after receiving notice from the County that the Surety or sureties are insufficient.
- G. Should any Surety or sureties be deemed unsatisfactory at any time by the County, notice will be given the Contractor to that effect, and he agrees to forthwith substitute a new Surety or sureties satisfactory to the County. No further payment shall be deemed due or will be made under this contract until the new sureties shall qualify and be accepted by the County.
- H. Should the County increase the Maximum Contract Value, the contractor shall submit additional bonds as necessary to cover the additional value of the contract.

76. AUTHORITY OF THE DEPARTMENT AND DIVISION

- A. The Division shall represent the County and shall decide, within the provisions of the specifications and drawings, all questions which may arise concerning the quality or acceptability of materials furnished and work performed.
- B. All questions concerning substitutions, selections, materials, colors and textures shall be submitted to the Division for approval.
- C. In all cases requiring interpretation of the drawings and/or specifications, the decision of the Division shall be final.
- D. Final determination of the acceptable fulfillment of the Contract on the part of the Contractor shall be made by the Department.

77. LAWS, CODES AND REGULATIONS TO BE OBSERVED

- A. The Contractor agrees to become familiar and comply with all Federal, State, County and City laws, ordinances or regulations controlling the action or operation of those engaged in the Work, or affecting materials used, and operate in accordance therewith.
- B. In accordance with this requirement, it has not been considered necessary to enumerate all wiring, plumbing and other requirements covered by the codes. The Contractor, in making a bid, agrees that the requirements of such ordinances will be as carefully adhered to as if they were specifically set forth in the specifications.

- C. The Contractor agrees to hold harmless the County and all of its officers, agents and servants against any claims or liability arising from, or based upon the violation of such laws, by-laws, ordinances, regulations, orders or decrees, whether by the Contractor or the Contractor's employees, except where the instance of violation is done in accordance with the specifications.
- D. Work performed on County owned property, irrespective of political subdivision location, shall be governed by the County building laws; and Work performed outside the property lines of County owned property shall be governed by the local laws of the County, City, or other municipal government having jurisdiction.

78. DISCREPANCIES, INTERPRETATIONS AND OMISSIONS

Should the Contractor find any discrepancy, omission, violation of applicable codes, or be in doubt as to the meaning of the Contract Documents, the Contractor agrees to stop Work in progress, if that Work is affected by the particular discrepancy, omission or interpretation needed, and obtain direction from the County. The Contractor agrees to be held responsible for any loss or damage where there is a doubt as to what is required when proceeding with the Work without consulting the County.

79. ASSIGNMENT

The Contractor agrees to not assign this contract without the consent of the County.

80. PATENTS AND ROYALTIES

In the event that any patented article, material or process is to be installed or used in the performance of the Work, the Contractor agrees to pay the royalty chargeable and agrees to defend all suits and claims against the County, and agrees to hold it free and harmless, and herein agrees to indemnify the County from all liability, damages, costs, and royalties, including without limitation, reasonable attorney fees, from: (a) any infringement or alleged infringement of any patent, or for the misuse of any patented article, by Contractor and its Subcontractor in the performance of the Work, or (b) the infringement or alleged infringement of any patent, by the County's use or operation of the Work following the completion thereof by the contractor, or (c) the use or misuse by the Contractor and/or its Subcontractor during the performance of the Work, of any confidential information or secret processes, or (d) any use or misuse of confidential information or secret processes by the County in the use or operation of the Work following Acceptance, or (e) any loss to the County in the event that the County is enjoined from using such patented article or material and the incidental damage caused by the loss of use and damage to County property in removing same, and cost of replacing the article or material, the use of which is enjoined. Provided further the bond for faithful performance shall be deemed to expressly apply to this provision of the specifications.

81. SUSPENSION OF WORK

- A. The County may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work for such period of time as he/she may determine to be appropriate for the convenience of the County.
- B. Upon receipt of the order, the Contractor agrees to immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the Work covered by the order during the period of work stoppage.
- C. Once work has commenced, if the performance of all or any part of an individual Job Order is, suspended, delayed, or interrupted for a period longer than sixty (60) Days by (a) an act of the County in the administration of this contract, or (b) by the County's failure to act within the time specified in this contract (or, if no time is specified, within a reasonable time), an adjustment may be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by suspension, delay, or interruption for a period longer than sixty (60) Days. This will be accomplished by issuing a new Job Order. However, no adjustment shall be made under this article for any suspension, delay, or interruption to the extent (a) that performance would have been suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or (b) for which an adjustment is provided for or excluded under any other provision of this contract.
- D. No claim under this section shall be allowed (a) unless the Contractor notifies the County within fourteen (14) Days of incurring the costs (but this requirement shall not apply as to a claim resulting from a direction to suspend work), and (b) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this article.
- E. The County will not be liable for any damages, anticipated profits, or costs incurred with respect to suspended work during any period of suspension, except for costs that (a) are incurred for the purpose of safeguarding the work materials, and equipment in transit or at the site, (b) are incurred for such personnel, Subcontractor, or rented equipment that are maintained at the site; or (c) are other reasonable and unavoidable costs of shutting down the Work or reassembling personnel and equipment.

82. TERMINATION

- A. Termination for Convenience:

The County may, whenever the interests of the County so require, terminate this contract, in whole or in part, including any Job Order or any portion of a Job Order, for the convenience of the County with ten (10) days notice to

Contractor. The County will give written notice of the termination to the Contractor specifying the part of the contract terminated and the date termination becomes effective.

1. The Contractor agrees to incur no further obligations in connection with the terminated Work, and, on the date set in the notice of termination, the Contractor agrees to stop work to the extent specified. The Contractor agrees to also terminate outstanding orders and subcontracts as they relate to the terminated Work. The Contractor agrees to settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated Work. The County may direct the Contractor to assign the Contractor's right, title, and interest under the terminated orders or subcontracts to the County. The Contractor must still complete the Work not terminated by the notice of termination and may incur obligations as are necessary to do so.
2. The County may require the Contractor to transfer title and deliver to the County in the manner and to the extent directed by the County: (a) the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and (b) the completed or partially completed shop drawings and sketches, information, and other property that, if the contract had been completed, would be required to be furnished to the County. The Contractor agrees to, upon direction of the County, protect and preserve property in the possession of the Contractor in which the County has an interest. If the County does not exercise this right, the Contractor agrees to use its best efforts to sell such supplies and manufacturing materials for the benefit of the County.
3. If the parties are unable to agree on the amount of a termination settlement, the County will pay the Contractor the following amounts:
 - a. For contract Work performed before the effective date of termination, the total, without duplication of any items, of:
 - i. The percentage of the contract price which equals the percentage (%) of Work completed in accordance with the schedule of values, if applicable, less prior progress payment(s), any applicable liquidated damages, charge backs, and fines for violation of EEOC requirements. 125% of the amount of outstanding stop notices shall be withheld until the stop notices are resolved as provided by law.
 - ii. The cost of settling and paying terminated subcontracts which are properly chargeable to the terminated portion of the Work.

- b. The reasonable cost of settlement of the Work terminated, including:
 - i. Accounting, clerical, and other expenses reasonably necessary for the preparation of termination settlement bids and supporting data;
 - ii. The termination and settlement of subcontracts, excluding the amounts of such settlements; and.
 - iii. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

B. Termination for Default

- 1. If the Contractor refuses or fails (a) to develop Job Order Proposals properly and diligently in substantial accord and compliance with the Request for Proposal issued by the County; (b) to reach agreement with the County on the means, methods, and quantities to accomplish a specific Detailed Scope of Work; (c) to commence the Work within the

time specified in the work duration schedule; (d) to prosecute the Work or any separable part with the diligence that will ensure Completion in accordance with the work duration schedule, including any extensions/adjustments made thereto; (e) to provide sufficient and properly skilled workmen or proper materials or equipment to complete the Work in an acceptable manner and without delay; (e) to promptly pay its Subcontractor, laborers, and material-men; (f) to perform any of the Contractor's other obligations under this contract; or (g) to complete the Work within the time specified in this contract ("events of default"), the County may, by written notice to the Contractor, terminate the right to proceed with the Work (or the separable part of the Work). In this event, the County may take over the Work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the site necessary for completing the Work. The Contractor and Contractor's sureties agrees to be liable for any damage to the County resulting from events of the default, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by the County in completing the Work.
- 2. The Contractor's right to proceed shall not be terminated because of delays, nor will the Contractor be charged with damages under this article, if:
 - a. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor (examples of such causes include: (i) acts of god, (ii) acts of the public enemy, (iii) acts of the County in either its public

or contractual capacity, (iv) acts of another Contractor in the performance of a contract with the County, (v) fires, (vi) floods, (vii) epidemics, (viii) quarantine restrictions, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of Subcontractor or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractor or suppliers; and,

- b. The Contractor, within fourteen (14) calendar Days from the beginning of any delay, unless extended by the County, notifies the County in writing of the causes of the delay. The County will ascertain the facts and the extent of the delay. If, in the judgment of the County, the findings warrant such action, the time for completing the Work will be extended by written approval of the County. The findings of the County will be final and conclusive on the parties.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the County.
4. The rights and remedies of the County in this article are in addition to any other rights and remedies provided by law or under this contract. Time is of the essence for all delivery, performance, submittal, and Completion dates in this contract.

83. NOTICE OF SUSPENSION OR TERMINATION

The notice of suspension or termination for any reason shall be given in writing and shall be complete one Day after deposit in the United States mail in a sealed envelope with postage prepaid and directed to the Contractor at the Contractor's address as filed with the County, or upon personal delivery to any person whose actual knowledge of such suspension or termination would be sufficient notice to the Contractor. Actual knowledge of such suspension or termination by an individual Contractor or by a co- partner, if the Contractor is a Partnership, or by the President, Vice President, Secretary or General Manager, if the Contractor is a corporation, or by the managing agent regularly in charge of the work on behalf of said Contractor, shall in any case be sufficient notice.

84. DISENTANGLEMENT

A. General Obligations

The Contractor shall accomplish a complete transition of the services being terminated from the Contractor and the Subcontractor to the County, or to any replacement provider designated by the County, without any interruption of or adverse impact on the services or any other services provided by third parties (the "disentanglement"). The Contractor shall fully cooperate with the County and any new service provider and otherwise promptly take all steps, including, but not

limited to providing all requested information, required to assist the County in effecting a complete disentanglement. The Contractor shall provide all information regarding the services or as otherwise needed for disentanglement, including data conversion, files, interface specifications, training staff assuming responsibility, and related professional services. The Contractor shall provide for the prompt and orderly conclusion of all Work, as the County may direct, including Completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to the County or the County's designee. All services related to disentanglement shall be performed by the Contractor at no additional cost to the County beyond what the County would pay for the services absent the performance of the disentanglement services. The Contractor's obligation to provide the services shall not cease until the disentanglement is satisfactory to the County, including the performance by the Contractor of all asset-transfers and other obligations of the Contractor provided in this paragraph, has been completed.

B. Disentanglement Process

The disentanglement process shall begin on any of the following dates: (i) the date the County notifies the Contractor that no funds or insufficient funds have been appropriated so that the term shall be terminated pursuant to the contract; (ii) the date designated by the County not earlier than sixty (60) Days prior to the end of any initial or extended term that the County has not elected to extend pursuant to the contract; or (iii) the date any termination notice is delivered, if the County elects to terminate any or all of the services pursuant to the contract. Contractor's obligation to perform services, and County's obligation to pay for services, shall expire: (a) when funds appropriated for payment under this contract are exhausted; (b) at the end of the initial or extended term set forth in this contract; or (c) on the termination date, pursuant to this contract (with the applicable date on which Contractor's obligation to perform the services expires being referred to herein as the "expiration date"); provided, however, that the Contractor shall remain obligated to provide disentanglement services for up to twelve (12) months after any such expiration date for the applicable services. The Contractor and County shall discuss in good faith a plan for determining the nature and extent of the Contractor's disentanglement obligations and for the transfer of services in process provided, however, that the Contractor's obligation under this contract to provide all services necessary for disentanglement shall not be lessened in any respect. The Contractor shall be required to perform its disentanglement obligations on an expedited basis, as determined by the County, if the County terminates the term pursuant to the agreement.

C. Specific Obligations

The disentanglement shall include the performance of the following specific obligations:

1. No Interruption or Adverse Impact

The Contractor shall cooperate with the County and all of the County's other service providers to ensure a smooth transition at the time of disentanglement, with no interruption of services, no adverse impact on the provision of services or County's activities, no interruption of any services provided by third parties, and no adverse impact on the provision of services provided by third parties.

2. Third-Party Authorizations

Without limiting the obligations of the Contractor pursuant to any other clause in herein, the Contractor shall, subject to the terms of any thirdparty contracts, procure at no charge to the County any third-party authorizations necessary to grant the County the use and benefit of any third-party contracts between the Contractor and third-party Contractors used to provide the services, pending their assignment to the County.

3. Return, Transfer and Removal of Assets

a. The Contractor shall return to the County all County assets in Contractor's possession.

b. The County shall be entitled to purchase at net book value

those Contractor assets used for the provision of services to the County, other than those assets expressly identified by the parties from time to time as shared resources, such Contractor assets as the County may select. Contractor shall promptly remove from the County's premises, or the site of the work being performed by the Contractor for the County, any Contractor assets that the County, or its designee, chooses not to purchase under this provision.

4. Transfer of Leases, Licenses, and Contracts

The Contractor, at its expense, shall convey or assign to the County or its designee, such leases, licenses, and other contracts used by the Contractor, County, or any other person in connection with the services, as the County may select, when such leases, licenses, and other contracts have no other use by the Contractor. The Contractor's obligation described herein shall include the Contractor's performance of all obligations under such leases, licenses, and other contracts to be performed by it with respect to periods prior to the date of conveyance or assignment and the Contractor shall reimburse the County for any losses resulting from any claim that the Contractor did not perform any such obligations.

5. Delivery of Documentation

The Contractor shall deliver to the County or its designee, at the County's request, all documentation and data related to the County, including the County data, held by the Contractor, and the Contractor shall destroy all copies thereof not turned over to the County, at no charge to the County. Notwithstanding the foregoing, Contractor may retain one (1) copy of the documentation and data, excluding County data, for archival purposes or warranty support.

85. MEDIATION AND ARBITRATION OF CLAIMS

A. Pursuant to Public Contract Code Section 20104(c), the current provisions of Article 1.5 of Chapter 1 of Part 3 of the Public Contract Code (commencing with Section 20104) dealing with the mediation and arbitration of public works claims are incorporated herein and a copy of these provisions are set forth below.

20104.

- (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
- (2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
- (b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.
- (2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) 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 (C) an amount the payment of which is disputed by the local agency.
- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
- (d) This article applies only to contract entered into on or after January 1, 1991.

20104.2 For any claim subject to this article, the following requirements apply:

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment.

Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

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

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

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

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

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

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

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

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of the Division 3.6 of Title 1 of the Government Code. For purposes of those

provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submit his or her written claim pursuant to subdivision (a) until the time the claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with [Section 910\) of Part 3 of Division 3.6 of Title 1 of the Government Code](#).

20104.4 The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of

the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

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

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

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

20104.6. (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

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

B. Pursuant to Assembly Bill 626 (2015-2016 Reg. Sess.) the text of Public Contract Code section 9204 is included as follows:

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency. (B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

- (iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.
 - (iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
 - (v) The Military Department as to any project under the jurisdiction of that department.
 - (vi) The Department of General Services as to all other projects. (vii) The High-Speed Rail Authority.
- (4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.
- (5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.
- (d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.
- (B) The claimant shall furnish reasonable documentation to support the claim.
- (C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.
- (D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.
- (2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall

be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section. (C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

- (3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.
- (4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
- (5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original

contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

- (e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.
- (f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.
- (g) This section applies to contracts entered into on or after January 1, 2017.
- (h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.
- (i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

86. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

The acceptance by the Contractor of final payment for a specific Job Order, shall be and shall operate as a release to the County of all claims and all liability to the Contractor for all things done or furnished in connection with this Work and for every act and neglect of the County, and others relating to or arising out of this Work. No payment, however, final or otherwise, shall operate to release the Contractor or Contractor's sureties from any obligation under this contract or the performance and payment bond.

87. FORUM SELECTION

This contract shall be governed by and constructed in all aspects in accordance with the laws of the State of California without regard to principles of conflicts of laws. The venue of any action or claim brought by any party to this contract shall be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this contract is brought by any third party and filed in another venue, the parties hereto agree to use their efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

88. WAIVER

The waiver by the County of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained.

89. ENTIRE AGREEMENTS

This contract, together with all documents, the General Condition, all individual Job Orders, specifications, and drawings incorporated herein by reference, constitutes the entire agreement between the County and the Contractor, and there are no terms, conditions, or provisions, either oral or written, between the parties other than those herein contained, and this contract supersedes any and all oral or written representations, inducements, or understandings of any kind or nature between the parties relating to the Work. No provision of this contract may be amended or added to except by written agreement signed by the parties hereto, or their respective successor- in-interest.

90. REQUEST FOR PAYMENTS

- A. The Contractor must submit a "payment request" form with supporting documentation to the County for approval. Payment request shall not be deemed properly completed unless certified payrolls and any other mandatory submittals have been properly completed and submitted for each week worked during the time period covered by said payment request. Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the County concerning the percentage complete of the Detailed Scope of Work and the dollar value for which the Application for Payment may be submitted. Once the County approves the payment request form, payment will be made to the Contractor within thirty (30) Days. Deductions will be made from any payment request for the appropriate retention amount and/or withholdings due to stop notices or other claims be Subcontractor, suppliers or other vendors.
- B. If the County requests it, the Contractor agrees to include an update to the work duration schedule together with the payment request form. If the requested update(s) is not provided with the payment request, the payment request form may be considered incomplete and not processed.
- C. The Contractor may be required to submit a narrative report with each update to the work duration schedule. The narrative report shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. Failure to provide the narrative report may be considered a material breach of contract.
- D. The Contractor agrees that its signature on the payment request form, as herein prescribed, constitutes a sworn Statement.
- E. The Contractor agrees that its signature on the payment request form requesting either partial or final payment certifies that:
 - 1. The specified percentage of Work has been completed and material supplied, and is directly proportional to the amount of the payment currently requested.

2. The amount requested is only for performance in accordance with the specifications, terms and conditions of the subject contract.
 3. Timely payments will be made to Subcontractor and suppliers from the proceeds of the payment covered by this certification, in accordance with these General Conditions, and subcontract agreements.
 4. This request for payment does not include any amounts which the prime Contractor intends to withhold or retain from a Subcontractor or supplier, except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.
 5. Not less than the prevailing rates of wages as ascertained by the County have been paid to laborers, workers and mechanics employed on the subject Work.
 6. There has been no unauthorized substitution of Subcontractor, nor have any unauthorized subcontracts been entered into.
 7. No subcontract was assigned or transferred or performed by anyone other than the original Subcontractor, except as provided in Sections 4100-4113, inclusive, of the Public Contract Code.
 8. If applicable, all required EEO/OAAC documentation has been submitted as required by these General Conditions.
 9. If requested, the Contractor has attached all work duration schedule updates.
 10. Where applicable, payments to Subcontractor and suppliers have been made from previous payments received under the contract.
 11. If it was requested, the Contractor has attached a schedule of values which reflects a detailed justification for the partial payment amount requested.
- F. In addition to paragraph D above, in the case of a request for final payment, the Contractor agrees that its signature on the payment request form certifies that all Punch List items have been signed off as completed by the County, and
- that all building inspection cards have been completed.
- G. The Contractor agrees that it is submitting a request for payment within one year of the Completion of the project for which it is billing. If the Contractor does not submit a request for payment within one year of the Completion of the project for which it is billing, it herein agrees to forfeit that payment.
- H. If the Contractor's payment request is not approved, the County will issue a

“Return of Payment Request for Correction” letter advising the Contractor of missing deliverables and/or information requiring correction. After making the appropriate corrections, the Contractor agrees to submit a second, or corrected, payment request form.

- I. If applicable, the Contractor’s payment request may also be rejected if the Contractor fails to submit to the Office of Affirmative Action compliance all required EEO/OAAC documentation as required by these General Conditions. If any EEO/OAAC documents are missing or incomplete, the County may issue to the Contractor a return of Contractor’s request for corrective action letter, along with a copy of the JOC contractor Equal Employment Opportunity Compliance memo completed by the Office of Affirmative Action Compliance. After complying with the outstanding EEO/OAAC requirements, the Contractor agrees to notify the County for further review of the payment request.
- J. If the Contractor fails to submit, within fourteen (14) Days of notification, the noted outstanding documents to the County will issue a “Notification of Assessed Damages” letter advising the Contractor that it has been assessed damages in the amount of \$200.00 for each violation. Once the Contractor has submitted a duly completed payment request form, the County will approve and will issue an authorization for payment.
- K. The Contractor agrees that the County’s approval of payment does not relieve the Contractor of its responsibility to comply with the terms of the final Detailed Scope of Work, and with the conditions of the Job Order and contract for completed and future Work.
- L. The Contractor agrees that even though the County has approved payment, the County retains the right to further inspect the Work and issue correction notices.
- M. Payment Request Form

The Contractor agrees to submit the original Payment Request Form with the supporting documentation for payment. The payment request shall include, but is not limited to, the following information and attachments:

- 1. Job Order number;
- 2. Encumbrance number;
- 3. Payment period;
- 4. Current authorized amount;
- 5. The daily labor and construction progress log;
- 6. Certified payroll documents including Statement of compliance;

7. A schedule of values if requested;
8. A narrative report if requested, and if applicable;
9. A Subcontractor's fringe benefits Statement.

All payment requests are to be mailed to the following address:

San Bernardino County
Project and Facilities Management Department
385 North Arrowhead Avenue, Third Floor San
Bernardino, CA 92415-0184

91. PAYMENTS TO CONTRACTOR

A. Payment Types

1. Lump sum payment – if an individual Job Order is scheduled for Completion within 45 Days or less, the County will make one payment, exclusive of retention. Contractor may request for one payment (excluding retention payment); however, payment will be made after Final Acceptance of the Job Order.
2. Partial payment – the County will consider a request for partial payments for Job Orders scheduled for a performance period of greater than 45 Days.
3. Monthly payment schedule – for projects with a monthly payment schedule, requests for payment must be submitted at least five (5) Days prior to the end of the month. Payments shall be made on inspected and approved Work only. Payment will be made on the valuation of work done as of the twenty-fifth day of each month.
 - a. After the first payment and before making any other payment to the Contractor, the County may require that the Contractor produce and deliver to the County satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding payment request have been fully paid for, and that as of the said date, no claims exist if that is the case. This partial release of claim must be executed with the same formality as this contract.
 - b. Upon receipt of a stop notice, the County shall withhold from the Contractor an amount of money sufficient to cover the potential cost of the stop notice and the reasonable cost of any associated litigation. Such amount shall be not less than 125% of the amount of any such stop notice claim. In order to satisfy the requirements of a stop notice, the County will refuse to release funds held in retention.

i. If a subcontractor or supplier files a stop notice, the Contractor shall furnish a bond satisfactory to the County to release the stop notice and indemnify the County against such stop notice. The stop notice release bond shall:

(1) Be issued by a surety acceptable to the County admitted to issue surety bonds by the California Department of Insurance;

(2) Be in a form and substance satisfactory to the County; and

(3) In an amount of not less than 125% of the amount of any stop notice claim.

c. In accordance with Public Contract Code Section 20104.50 the County will make partial payments within 30 Days after receipt of an undisputed and properly submitted payment request from a Contractor on a contract. If the payment request is determined not to be a proper payment request suitable for payment, it shall be returned to the Contractor as soon as practicable, but not later than seven Days after receipt, accompanied by a letter setting forth the reasons why the payment request is not proper.

B. Retention

When payments are made under this contract, five percent (5%) of each requested and approved payment will be retained. The retention will be released upon Final Acceptance of the Work, and the County's approval on the final payment request. A Notice of Completion must be filed for each Project exceeding \$45,000. Final payment is to be made 60 Days subsequent to the filing of the Notice of Completion and/or Final Acceptance of the Work.

C. Retention Release

The County's release of the retention does not relieve the Contractor of its responsibility to comply with both the proposed Detailed Scope of Work and the terms and conditions of the Job Order and contract for completed and warranty work.

The Contractor agrees that a condition precedent to the County's release of the five percent (5%) retention amount is in full compliance with this Article 91 herein.

The Contractor must submit a completed final payment request form to the County for approval. The Contractor agrees that the signature on the payment request form certifies that it has completed or submitted the following:

1. All required Affirmative Action Compliance documents; and

2. All warranties and maintenance requirements; and
3. All as-built prints and record drawings; and
4. All operation and maintenance manuals; and
5. All badges, keys and security entry cards; and
6. All other items as applicable.

Once the County approves the payment request form, an authorization for final payment will be issued.

Once the Contractor has submitted a duly completed Final Payment Release request form, the County will provide their approval, and the County will issue an authorization for payment.

The Contractor agrees that the County's approval of final payment does not relieve the Contractor of its responsibility to comply with the terms and conditions of the Job Order and contract for completed and future Work.

Contractor shall accept all payments from County via electronic funds transfer, directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with direction and accurately complete forms provided by County required to process EFT payments.

92. PAYMENTS TO SUBCONTRACTOR

The Contractor must pay all Subcontractor and suppliers within ten (10) calendar Days of Acceptance of that portion of the Work by the County.

93. COUNTY FURNISHED JOB ORDER CONTRACTING SOFTWARE

The Job Order Contracting System License Agreement is incorporated herein by reference. Any Contractor awarded a Job Order Contract shall be required to execute this Agreement with The Gordian Group.

A. Job Order Contracting Software

1. The County selected The Gordian Group, Inc., dba The Mellon Group's (Gordian) Job Order Contracting ("JOC") Solution (Gordian JOC Solution™) for their JOC program. The Gordian JOC Solution includes Gordian's proprietary Gordian Cloud® JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the Contractor to prepare and submit Job Order Price Proposals, subcontractor lists, and other requirements specified by the County. The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a JOC System License Fee to obtain access to Gordian's JOC Solution. The Contractor's use, in whole or in part,

of Gordian's JOC Applications, Construction Task Catalog® and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the County is strictly prohibited unless otherwise approved in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following Job Order Contracting System License.

B. Job Order Contracting System License

1. Gordian hereby grants to the Contractor, and the Contractor hereby accepts from Gordian for the term of this Contract or Gordian's Contract with the County, whichever is shorter, a nonexclusive right, privilege, and license to Gordian's proprietary JOC System and related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing Contractor's responsibilities to the County under this Contract. The Contractor hereby agrees that Proprietary Information shall include, but is not limited to, Gordian's JOC Applications and support documentation, Construction Task Catalog®, training materials and other Gordian provided proprietary materials. In the event this Contract expires or terminates as provided herein, or Gordian's Contract with the County expires or terminates, or the Contractor fails to pay the JOC System License Fee specified in this Contract, the JOC System License shall terminate and the Contractor shall return all Proprietary Information in its possession to Gordian.
2. In consideration for a non-exclusive, non-transferable, license to the Gordian JOC Solution, the Contractor shall pay Gordian a license fee ("Contractor License Fee") equal to one percent (1%) of the value of each Job Order, Purchase Order or other similar purchasing document ("Purchase Order") issued to the Contractor by the County. The Contractor License Fee shall be included in the Contractor's overhead costs, shall not be included as an additional line item cost in Job Order Price Proposals, and shall be payable to Gordian within ten (10) days of Contractor's receipt of each Purchase Order issued to the Contractor by the County. Gordian is hereby declared to be an intended thirdparty beneficiary of this Agreement. In the event any court action is brought to enforce payment of the Contractor License Fee by any party or third-party beneficiary of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and collection costs. The Contractor shall remit the Contractor License Fees as follows:

Payments Made Payable to: The Gordian Group, Inc.

Mail Checks to: P.O. Box 751959
Charlotte, NC 28275-1959

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

4. The Contractor acknowledges that disclosure of Proprietary Information will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of Gordian. The Contractor further acknowledges and agrees to respect the copyrights, registrations, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the Contractor.
5. In the event of a conflict in terms and conditions between the JOC System License and any other terms and conditions of the Contract with the County or any Job Order, Purchase Order or similar purchasing document issued to the Contractor by the County, the JOC System License shall take precedence.

94. TERMINATION FOR IMPROPER CONSIDERATION

- A. County may, by written notice to Contractor, immediately terminate the right of Contractor to proceed under this agreement if it is found that consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing the agreement or securing favorable treatment with respect to the award, amendment or extension of the agreement or the making of any determination with respect to the Contractor's performance pursuant to the agreement. In the event of such termination, County agrees to be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by the Contractor.
- B. Contractor agrees to immediately report any attempt by a County officer, employee or agent to solicit such improper consideration.
- C. Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, to tangible gifts.

95. RELEASE OF INFORMATION

No news releases, advertisements, public announcements or photographs arising out of this contract or Contractor's relationship with the County may be made or used without prior written approval of the County.

96. COUNTY'S QUALITY ASSURANCE PLAN

The County or its agent will evaluate the Contractor's performance under this contract. Such evaluation will include assessing the Contractor's compliance with all contract terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the contract in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures; the County may terminate this contract or impose other penalties as specified in this contract.

97. FEDERAL EARNED INCOME CREDIT

The Contractor agrees to notify its employees, and agrees to require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal Income Tax Laws. Such notice agrees to be provided in accordance with the requirements set forth in Internal Revenue Service Publication 596.

98. SECURITY SERVICES AT COURT FACILITIES

The Contractor acknowledges that when performing Work at any court facility during other than Normal Working Hours, security services will be required. In the event that the County is not the managing party for the court facility, the payment for the security services shall be negotiated with the courts. The Contractor acknowledges and agrees that it is critical to report to the site to perform Work as scheduled, and to complete all Work within the time specified.

Accordingly, the Contractor agrees that if it, or its Subcontractor, fails to report to the job site for work as scheduled, or if it, or its Subcontractor, fails to complete all work within the time specified due to the wrongful act or negligence of the Contractor or its Subcontractor, the cost for security services shall be charged to the Contractor, and/or shall be deducted from payments due the Contractor. The rights and remedies of the County in this article are in addition to any other rights and remedies provided by law or under this contract.

However, the Contractor agrees to incur no cost for security services for failure to report to a job site as long as it provides 48 hours advance notice to the County of its intention to not perform at the specified time.

99. CONFLICT OF INTEREST

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or Subcontractor and the County. Contractor shall make a reasonable effort to prevent employees, consultants, or members of government bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family, business, or other ties.

In the event that County determines that a conflict of interest situation exists, any increase in costs associated with the conflict of interest situation may be disallowed by County and such conflict may constitute grounds for termination of the contract.

This provision shall not be construed to prohibit employment of persons with whom Contractors' officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicants and such persons have successfully competed for employment with other applicants on a merit basis.

100. EMPLOYMENT ELIGIBILITY VERIFICATION

The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor agrees to obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99603), or as they currently exist and as they may be hereafter amended. The Contractor agrees to retain all such documentation for all covered employees for the period prescribed by law.

101. FORMER COUNTY OFFICIALS

Contractor agrees to provide or has already provided information on former San Bernardino County Administrative Officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County Administrative Officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County Administrative Official" is defined as a member of the Board of Supervisors or such officer's staff, Chief Executive Officer or member of such officer's staff, County Department or group head, assistant department or group head, or any employee in the exempt group, management unit or safety management unit.

102. REPRESENTATION OF THE COUNTY

In the performance of the contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County.

103. PUBLIC RECORDS ACT

Any documents submitted by Contractor; all information obtained in connection with the County's right to audit and inspect Contractor's documents, books, and accounting records record retention and inspection/audit settlement of this contract; as well as those documents which were required to be submitted in response to the Advertisement for Bids used in the solicitation process for this contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 7920.000 et seq. (Public Records Act) and which are marked "Trade Secret", "Confidential", or "Proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a Job Order Proposal marked "Trade Secret", "Confidential", or "Proprietary", the

Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

104. ENVIRONMENTALLY PREFERABLE PURCHASING POLICY

The Contractor agrees to comply with County Policy 11-08 – Environmentally Preferable Purchasing Policy.

105. CHANGE OF ADDRESS

Contractor shall notify the County, in writing, of any change in mailing address and/or physical location within ten (10) calendar Days of the change, and shall immediately notify County of changes in telephone or fax numbers.

106. TRAVEL MANAGEMENT POLICY

Contractor shall adhere to the County's Travel Management Policy (08-02 and 0802SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

107. GENERAL PROVISIONS

- A. When notices are required to be given pursuant to this contract, the notices shall be in writing and mailed to the following respective addresses listed below.

Contractor: As stated in Article IX of Contract

County: Interim Director Project and Facilities Management
Department
San Bernardino County
620 South E Street,
San Bernardino, CA 92415-0184

- B. Nothing contained in this contract shall be construed as creating a joint venture, partnership or employment arrangement between the parties hereto, nor shall either party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other party hereto.
- C. County shall have power of attorney to pay delinquent debts and unpaid wages for work provided under this contract from accounts payable to Contractor in the event debts and wages have not been paid on a current basis.

- D. No waiver of any of the provisions of the contract shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the parties. No course of dealing and no delay or failure of a party in exercising any right under the contract shall affect any other or future exercise of that right or any exercise of any other right. A party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
- E. Any alterations, variations, modifications, or waivers of provisions of the contract, unless specifically allowed in the contract, shall be valid only when they have been reduced to writing, duly signed and approved by the authorized representatives of both parties as an amendment to this contract. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
- F. If any provision of the contract is held by a court of competent jurisdiction to be unenforceable or contrary to law, it shall be modified where practicable to the extent necessary so as to be enforceable (giving effect to the intention of the parties) and the remaining provisions of the contract shall not be affected.

108. LIST OF ATTACHMENTS

The following are made a part of these General Conditions.

- **Non-Collusion Declaration – Principal Contractor**
- **Sample Contract**
- **Contractor’s Affidavit and Final Release**
- **Federal and State Wage Determination**
- **Community Development and Housing; Attachment D (including HUD 4010)**
- **Compliance with American Rescue Plan Act (ARPA) Exhibit**
- **Community Development and Housing Labor Compliance Contract Addendum**
- **Zone Map and Listing of Facilities in each Zone.**
- **Technical Specifications**
- **Construction Task Catalog®**

- **Job Order Contracting (JOC) System License and Fee Agreement**

- END OF GENERAL CONDITIONS -