

**COVER SHEET**  
**COUNTY OF SAN BENITO**  
**RESOURCE MANAGEMENT AGENCY**  
**PUBLIC WORKS DIVISION**

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**COUNTY PROJECT NO. PWB-1805**

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

**SPECIAL PROVISIONS**

**INVITATION FOR BIDS**

**NOTICE TO CONTRACTORS**

**INVITATION FOR BIDS**

**GENERAL PROVISIONS**

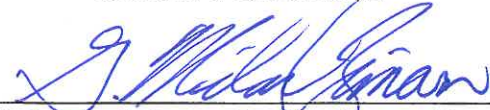
**SAN BENITO COUNTY PUBLIC WORKS & ROAD PROJECTS**

**SPECIAL PROVISIONS**

**CONTRACT**

APPROVED AS TO LEGAL FORM:

**BARBARA THOMPSON  
SAN BENITO  
COUNTY COUNSEL**

By:   
G. Michael Ziman, Deputy County Counsel  
Date: June 15, 2018

APPROVED FOR USE IN INVITATION TO BID:

**SAN BENITO COUNTY  
BOARD OF SUPERVISORS**

By: \_\_\_\_\_  
Anthony Botelho, CHAIR  
Date: \_\_\_\_\_

**TITLE SHEET**

**BOARD OF SUPERVISORS**

**COUNTY OF SAN BENITO**

Anthony Botelho, Chair

Robert Rivas

Jaime De La Cruz

Jerry Muenzer

Mark Medina

Ray Espinosa, County Administrative Officer

John Guertin, Resource Management Agency Director

**NOTICE TO CONTRACTORS: INVITATION FOR BIDS**

**GENERAL PROVISIONS: SAN BENITO COUNTY**

**PUBLIC WORKS DIVISION PROJECTS**

**SPECIAL PROVISIONS**

**COUNTY PROJECT NO. PWB-1805**

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

**IN**

**SAN BENITO COUNTY**

**2301 Technology Parkway, Hollister, CA 95023**

**(831) 636-4170**

**SIGNATURE SHEET**

**NOTICE TO CONTRACTORS**

**INVITATION FOR BIDS**

**GENERAL PROVISIONS**

**SAN BENITO COUNTY PUBLIC WORKS DIVISION PROJECTS**

**SPECIAL PROVISIONS AND SAMPLE CONTRACT**

**COUNTY PROJECT NO. PWB-1805**

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

The special provisions contained herein have been prepared by or under the direction of the following Registered Persons.

Gregory J. Bucknell, PE

NAME		05/24/18
	SIGNATURE	DATE



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**ATTACHMENTS**

**TESQUISQUITA SLOUGH BRIDGE PLANS**

**NOTICE TO CONTRACTORS: INVITATION FOR BIDS**

BOARD OF SUPERVISORS  
COUNTY OF SAN BENITO  
STATE OF CALIFORNIA

Notice is hereby given that the County of San Benito is soliciting bids for the:

**County Contract No. PWB-1805**

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

in San Benito County, as shown on the plans and in accordance with the specifications and other requirements therefore.

Sealed bids will be received at the San Benito County Resource Management Agency Public Works Division, 2301 Technology Parkway, Hollister, California, 95023, until August 23, 2018 at 2:00 P.M., at which time they will be publicly opened and read by the Resource Management Agency Director or authorized representative in the Public Works Division, 2301 Technology Parkway, Hollister, California 95023. Bidders or their agents are invited to be present.

Bids must be signed by the bidder or by a duly authorized officer of the bidding organization, delivered along with all required documents, sealed and plainly addressed to the County as specified above. The envelope should bear on the outside the bidder's name, address, and license number, and the name of the project for which the bid is submitted. If forwarded by mail or other delivery, the sealed envelope containing the bid must be enclosed in another envelope addressed to the County as specified above. Use of U.S. Mail or other delivery methods will be at the bidder's risk.

**ALL BIDS MUST BE SEALED AND MUST BE RECEIVED ON OR BEFORE THE DATE AND TIME LISTED ABOVE. AN UNSEALED BID OR A BID RECEIVED AFTER THE DATE AND TIME LISTED ABOVE SHALL NOT BE CONSIDERED. FACSIMILE TRANSMISSION OF BIDS IS NOT ACCEPTABLE.**

All costs of the preparation of a bid shall be the responsibility of the bidder. All materials submitted in response to the Invitation for Bid become the property of the County of San Benito and shall not be returned.

Bidders must satisfy themselves of the accuracy of the estimated quantities in the Bid Schedule by examination of the site and a review of the plans and specification, including addenda. If a prospective bidder has any questions relating to this Invitation for Bids, the questions, in writing, must be received by the county representative ten (10) days before the deadline for bids. Questions will not be accepted by facsimile transmission, telephone or orally. All questions and responses thereto will be distributed to all persons requesting an Invitation for Bids package and those already submitting bids. The County of San Benito reserves its rights to decline to respond to any question if, in the County's assessment, the information cannot be obtained and shared with all potential bidders in a timely manner.

The bidder may withdraw a bid by submitting a written request for its withdrawal to the County representative at any time prior to the bid submission deadline. The withdrawal shall be signed by the bidder or an authorized agent of the bidder. The bidder may thereafter submit a new bid prior to the deadline. Modifications of a bid offered in any manner, oral or written, will not be considered after the deadline. No bidder may withdraw a Bid within sixty (60) days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the County and the Bidder.

The County is under no obligation to award any contract. The County reserves the right to reject any and all bids received pursuant to the Invitation for Bids and/or waive all informalities, minor defects or

irregularities in the bidding process. The County also reserves the right to determine which bid is, in the County's judgment, the lowest responsible bid of a bidder or group of bidders.

Award will be made to the lowest responsive, responsible Bidder. The County reserves the right to determine which Bid is, in the County's judgment, the lowest responsive Bid and the lowest responsible Bidder of a bidder or group of bidders. The lowest responsive, responsible Bidder will be determined by: (1) lowest overall cost to the County, (2) evaluation of Bidder's experience and, (3) a Bid that complies with all the requirements prescribed in this document.

There shall be no appeal of any decision of the County, or any County representative in connection with the bidding process and the selection of the successful bidder.

All bids must be made on the required Bid form. All blank spaces for Bid prices must be filled in (in ink or typewritten), and the Bid form must be fully completed and executed when submitted. Bids are required for the entire work described herein. Prices on alternative construction methods or materials will be considered only when specified. Each Bidder shall supply the names and addresses of major material suppliers and Subcontractors when submitting the Bid.

General work description: The project includes, but is not limited to clearing and grubbing, shoulder backing, and refill/reset temporary crash cushion modules.

Special attention of the prospective bidders is called to the "Bid Requirements and Conditions" section of the special provisions. A bidder's bond in an amount equal to at least ten percent of the amount of the bid must accompany the bid. A blank Bidder's Bond form is attached herein.

A payment bond and a performance bond, each in the amount of 100 percent of the Contract, are required as specified by Section 3-1.02, "Contract Bonds," of the Standard Specifications.

Prospective bidders shall be licensed contractors in the State of California and shall be skilled and regularly engaged in the general class or type of work called for under the contract. The contractor shall possess a Class "A" General Engineering Contractor or "C-12" Earthwork and Paving Contractor license at the time this contract is awarded and throughout the entire period of construction.

The County may make such investigations as deemed necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the County all such information and data for this purpose as the County may request. The County reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the County that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein.

This contract is subject to state contract nondiscrimination and compliance requirements pursuant to Government Code, Section 12990.

The CONTRACT DOCUMENTS may be examined at the following location:

County of San Benito Resource Management Agency  
Public Works Division  
2301 Technology Parkway  
Hollister, CA 95023  
Telephone No. (831) 636-4170

The complete bid package, drawings, specifications, and addendum will be issued ELECTRONICALLY and are available for free by downloading the bidding documents on the County's Website, Quicklinks, BIDS & RFPs Link. Plan holders must register before they can view or download the bid package. The downloaded electronic files or the electronic CD can be used to print full or half-size drawings, specifications, geo-tech reports, and other documents at any printing company.

Potential bidders, sub-bidders, and suppliers are responsible for reviewing the complete bidding documents and for collecting all addenda prior to placing a bid. Addenda and revisions will not be forwarded automatically. All bidders shall register at the County's website as a plan holder to receive



updates and addenda and to view the bidding documents and the plan holders list. Potential bidders are advised to check the County's website periodically and prior to submitting their bid.

Bidders are required to familiarize themselves with the site of the proposed project prior to submitting a bid. Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to its Bid. The CONTRACT DOCUMENTS contain the provisions required for the construction of the project. Information obtained from an officer, agent, or employee of the County or any other person shall not affect the risks or obligations assumed by the Contractor or relieve the Contractor from fulfilling any of the conditions of the contract.

State of California, Department of Transportation, *Standard Specifications* and *Standard Plans* are available through the Publications Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone No. (916) 445-3520.

Technical questions should be directed only to the County of San Benito Resource Management Agency, 2301 Technology Parkway, Hollister, CA 95023, Telephone No. (831) 636-4170.

Cross sections for this project are not available.

Upon the Contractor's request, the County of San Benito will make payment of funds withheld from progress payments pursuant to the requirements of Public Contract Code Section 22300 if the Contractor deposits in escrow with the County Treasurer or with a bank acceptable to the County of San Benito, securities eligible for the investment of State funds under Government Code Section 16430 or bank or savings and loan certificates of deposit, upon conditions specified in Contract documents.

Any addenda issued before the time in which to submit bids expires shall be part of the contract documents and shall be covered in the bid. Bidders shall acknowledge and confirm receipt of any and all addenda in their proposals.

The County of San Benito affirms that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation.

The successful bidder shall furnish a payment bond and a performance bond within 10 working days of notice of award.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at County of San Benito, 2301 Technology Parkway, Hollister, CA 95023 and available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/DLSR/PWD>. The Federal minimum wage rates for this project as predetermined by the United States Secretary of Labor are set forth in the bid documents and may be examined at the offices described above where project plans, special provisions, and bid forms may be seen. Addenda to modify the Federal minimum wage rates, if necessary, will be issued to holders of bid documents. Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the Contractor and subcontractors shall pay not less than the higher wage rate. The Department will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors shall

pay not less than the Federal minimum wage rate, which most closely approximates the duties of the employees in question.

The U.S. Department of Transportation (DOT) provides a toll-free "hotline" service to report bid rigging activities. Bid rigging activities can be reported Mondays through Fridays, between 8:00 a.m. and 5:00 p.m., Eastern Time, Telephone No. 1-800-424-9071. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report these activities. The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

SPECIAL INSTRUCTIONS TO BIDDERS: "Bidders must satisfy themselves by personal examination of the location of the proposed work and by such other means as they prefer as to the actual conditions and requirements of the work, and shall not any time after the submission of the bid dispute, complain, or assert that there was any misunderstanding in regard to the nature or amount of work to be done".

DATE: 06/26/18

BY: JOHN GUERTIN, DIRECTOR  
RESOURCE MANAGEMENT AGENCY

**BID LIST**

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE  
BID SCHEDULE**

<u>Bid Item No.</u>	<u>Bid Item Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Item Total</u>
1	MOBILIZATION	1	LS		
2	CONSTRUCTION AREA SIGNS	1	LS		
3	TEMPORARY CRASH CUSHION MODULE (REFILL & RESET)	11	LS		
4	PORTABLE CHANGEABLE MESSAGE SIGN	2	EA		
5	TRAFFIC CONTROL SYSTEM	1	LS		
6	PREPARE WATER POLLUTION CONTROL PROGRAM	1	LS		
7	CLEARING AND GRUBBING	1	LS		
8	IMPORTED MATERIAL (SHOULDER BACKING)	4	TON		

**FEMA – SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

**BID SCHEDULE TOTAL:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_  
(Please Type or Print Business Name)

**BY:** \_\_\_\_\_  
(Signature)

**Date:** \_\_\_\_\_

NAME (Please Type or Print): \_\_\_\_\_

The quantities are approximate only, being given as a basis for the comparison of bids; and the Public Works Division does not, expressly or by implication, agree that the actual amounts of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work as may be deemed necessary or expedient by the Engineer. All bids are to be compared on the bid sheet of the quantities to be done.

JOHN GUERTIN, RESOURCE MANAGEMENT AGENCY DIRECTOR  
COUNTY OF SAN BENITO  
STATE OF CALIFORNIA



**GENERAL PROVISIONS: SAN BENITO COUNTY PUBLIC WORKS AND ROADS PROJECTS**

- |   |  |
|---|--|
| 1. Definitions  | 19. Payment to Contractor                  |
| 2. Additional Instructions & Detail Drawings          | 20. Acceptance of Final Payment as Release |
| 3. Schedules, Reports & Records                       | 21. Insurance                              |
| 4. Plans & Specifications                             | 22. Contract Security                      |
| 5. Shop Drawings                                      | 23. Assignments                            |
| 6. Material, Services & Facilities                    | 24. Indemnification                        |
| 7. Inspection & Testing                               | 25. Separate Contracts                     |
| 8. Substitutions                                      | 26. Subcontracting                         |
| 9. Patents  | 27. Architect/Engineer's Authority         |
| 10. Surveys, Permits & Regulations                    | 28. Land and Rights-of-Way                 |
| 11. Protection of Work, Property, & Persons           | 29. Guarantee                              |
| 12. Supervision by Contractor; Independent Contractor | 30. Resolution of Construction Claims      |
| 13. Changes in the Work                               | 31. Taxes                                  |
| 14. Changes in Contract Price                         | 32. Conflict of Interest                   |
| 15. Time for Completion; Liquidated Damages           | 33. Project Sign                           |
| 16. Correction of Work                                | 34. Pre-construction Conference            |
| 17. Subsurface Conditions                             | 35. Access to Contractor's Records         |
| 18. Suspension of Work, Termination & Delay           | 36. Environmental Requirements             |
|   | 37. Miscellaneous Provisions               |

**1. DEFINITIONS**

- 1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof:
- 1.2 ADDENDA - Written or graphic instruments issued prior to the execution of the Agreement that modify or interpret the contract documents, plans and specifications, by additions, deletions, clarifications, or corrections.
- 1.3 BID - The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.
- 1.4 BIDDER - Any person, firm or corporation submitting a bid for the work.
- 1.5 BONDS - Bid, Performance, and Payment bonds and other instruments of surety, furnished by the CONTRACTOR and the CONTRACTOR'S SURETY in accordance with the CONTRACT DOCUMENTS.
- 1.6 CHANGE ORDER - A written order to the CONTRACTOR authorizing an addition, deletion, or revision in the work within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the contract price or contract time. No change order is effective unless approved in writing by an authorized COUNTY Representative.
- 1.7 CONTRACT DOCUMENTS - The CONTRACT, Invitation for Bids, Bid Proposal, bid bond, Notice of Award, payment bond, performance bond, Notice to Proceed, General Provisions, Special Provisions, change orders, technical plans, specifications, drawings and addenda. All CONTRACT DOCUMENTS are intended to cooperate, so that any work called for in one and not mentioned in another is to be executed the same as if mentioned in all. However, should there be any conflict between the terms of the CONTRACT, Invitation for Bids, General Provisions, Special Provisions or technical plans, specifications or drawings and the CONTRACTOR'S bid or proposal, then the CONTRACT, Invitation for Bids, General Provisions, Special Provisions and/or technical plans, specifications and drawings shall control. Where the specific terms and conditions in any of the referenced CONTRACT DOCUMENTS conflict with general terms and conditions in any referenced CONTRACT DOCUMENTS, the

more specific terms and conditions shall be deemed to control. However, the general terms and conditions in any referenced CONTRACT DOCUMENTS shall remain in full force and effect, to the extent they do not conflict with the specific terms and conditions in any referenced CONTRACT DOCUMENTS.

- 1.8 CONTRACT PRICE - The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.
- 1.9 CONTRACT TIME - The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.
- 1.10 CONTRACTOR - The person, firm, or corporation with whom the COUNTY has executed the Agreement.
- 1.11 COUNTY – The County of San Benito, a political subdivision of the State of California, for whom the work is to be performed.
- 1.12 ENGINEER (ARCHITECT/ENGINEER) - The person, firm, or corporation named as such in the CONTRACT DOCUMENTS.
- 1.15 FIELD ORDER - A written order effecting a change in the work not involving an adjustment in the contract price or an extension of the contract time, issued by the ARCHITECT/ENGINEER to the CONTRACTOR during construction.
- 1.16 NOTICE OF AWARD - written notice of the acceptance of the bid from the COUNTY to the successful bidder.
- 1.17 NOTICE TO PROCEED - Written communication issued by the COUNTY to the CONTRACTOR authorizing him/her to proceed with the work and establishing the date for commencement of the work.
- 1.18 PLANS - The parts of the CONTRACT DOCUMENTS that show the characteristics and scope of the work to be performed and which have been prepared or approved by the ARCHITECT/ENGINEER.
- 1.19 PROJECT - The undertaking to be performed as provided in the CONTRACT DOCUMENTS.
- 1.20 RESIDENT PROJECT REPRESENTATIVE - The authorized representative of the COUNTY who is assigned to the project site or any part thereof.
- 1.21 SHOP DRAWINGS - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the work shall be fabricated or installed.
- 1.22 SPECIFICATIONS - A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship and including the General Provision and Special Provisions.
- 1.23 SUBCONTRACTOR - An individual, firm, or corporation having a direct contract with CONTRACTOR or with any other subcontractor for the performance of a part of the work at the site.
- 1.24 SUBSTANTIAL COMPLETION - That date certified by the ARCHITECT/ENGINEER when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the project or specified part can be utilized for the purposes for which it is intended.
- 1.25 SPECIAL PROVISIONS - Additions and modifications to the General Provisions, as required by project-specific requirements and applicable laws. Should there be any conflict between the Special Provisions and/or technical plans, specifications and drawings and the General Provisions, then the Special Provisions and/or technical plans, specifications and drawings shall control.

- 1.26 SUPPLIER - Any person or organization who supplies materials or equipment for the work, including that fabricated to a special design, but who does not perform labor at the site.
- 1.27 WORK - All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the project.
- 1.28 WRITTEN NOTICE - Any notice to any party of the CONTRACT relative to any part of the CONTRACT. Written notice is considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at their last given address, or delivered in person to said party or their authorized representative on the work.
- 2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**
- 2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ARCHITECT/ENGINEER, as necessary to carry out the work required by the CONTRACT DOCUMENTS.
- 2.2 The additional drawings and instructions thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the work in accordance with the additional detail drawings and instructions.
- 3. SCHEDULES, REPORTS AND RECORDS**
- 3.1 The CONTRACTOR shall submit to the COUNTY such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.
- 3.2 Prior to the first partial payment estimate, the CONTRACTOR shall submit construction progress schedules showing the order in which the CONTRACTOR proposes to carry on the WORK, including dates at which the various parts of the WORK will be started, estimated date of completion of each part and, as applicable:
- 3.2.1 The dates at which special detail DRAWINGS will be required; and
- 3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.
- 3.3 The CONTRACTOR shall also submit a schedule of payments that the CONTRACTOR anticipates will be earned during the course of the WORK.
- 4. PLANS AND SPECIFICATIONS**
- 4.1 The intent of the plans and specifications is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the work in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the project in an acceptable manner, ready for use, occupancy or operation by the COUNTY.
- 4.2 In case of conflict between the plans and specifications, the specifications shall govern. Figure dimensions on plans shall govern over general plans and drawings.
- 4.3 Any discrepancies found between the plans and specifications and site conditions or any inconsistencies or ambiguities in the plans and specifications shall be immediately reported to the ARCHITECT/ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the CONTRACTOR after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.
- 5. SHOP DRAWINGS**
- 5.1 The CONTRACTOR shall provide shop drawings as may be necessary for the prosecution of the work as required by the CONTRACT DOCUMENTS. The ARCHITECT/ENGINEER shall promptly review all shop drawings. The ARCHITECT/ENGINEER'S approval of any shop drawing shall not release the CONTRACTOR from responsibility for deviations from the

CONTRACT DOCUMENTS. The approval of any shop drawing that substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a change order.

- 5.2 When submitted for the ARCHITECT/ENGINEER'S review, shop drawings shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the shop drawings and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.
- 5.3 Portions of the work requiring a shop drawing or sample submission shall not begin until the shop drawing or submission has been approved by the ARCHITECT/ENGINEER. A copy of each approved shop drawing and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ARCHITECT/ENGINEER.

## **6. MATERIALS, SERVICES AND FACILITIES**

- 6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the work within the specified time.
- 6.2 Material and equipment shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection.
- 6.3 Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.4 Materials, supplies, and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ARCHITECT/ENGINEER.
- 6.5 Materials, supplies, and equipment to be incorporated into the work shall not be purchased by the CONTRACTOR or the subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

## **7. INSPECTIONS AND TESTING**

- 7.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.
- 7.2 The COUNTY shall provide all inspection and testing services unless specified to be provided by the CONTRACTOR.
- 7.3 The CONTRACTOR shall provide at the CONTRACTOR'S expense the testing and inspection services required by the CONTRACT DOCUMENTS.
- 7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ARCHITECT/ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ARCHITECT/ENGINEER with the required certificates of inspection, testing or approval.
- 7.5 Inspections, tests, or approvals by the ARCHITECT/ENGINEER or others shall not relieve the CONTRACTOR from the obligations to perform the work in accordance with the requirements of the CONTRACT DOCUMENTS.
- 7.6 The ARCHITECT/ENGINEER and the ARCHITECT/ENGINEER'S representatives will at all times have access to the work. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records on personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the work and also for any inspection or testing thereof.



- 7.7 If any work is covered contrary to the written instructions of the ARCHITECT/ENGINEER it must, if requested by the ARCHITECT/ENGINEER, be uncovered for the ARCHITECT/ENGINEER'S observation and replaced at the CONTRACTOR'S expense.
- 7.8 If the ARCHITECT/ENGINEER considers it necessary or advisable that covered work be inspected or tested by others, the CONTRACTOR, at the ARCHITECT/ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ARCHITECT/ENGINEER may require, that portion of the work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such work is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction; if, however, such work is not found to be defective, the CONTRACTOR will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate change order shall be issued.
- 7.9 A pre-final inspection of the work will be made by the ARCHITECT/ENGINEER, project inspector, and a designated representative of the COUNTY. This inspection shall be made as soon as practical after the CONTRACTOR has notified the COUNTY in writing that the work is ready for this inspection. The pre-final inspection shall be made prior to acceptance of any portion of the work as being substantially complete and prior to filing of the Notice of Completion.
- 7.10 A final inspection of all the work will be made by the ARCHITECT/ENGINEER, CONTRACTOR, and a COUNTY representative prior to acceptance of the work.
- 7.11 Forty-eight hours prior to work being accomplished, the CONTRACTOR will notify the ARCHITECT/ENGINEER of the proposed working hours to accomplish the work for that day. Work may be accomplished on weekends or holidays only if the CONTRACTOR provides prior notification, ARCHITECT/ENGINEER approves the request, and the CONTRACTOR pays for the additional inspection costs for weekend, holiday or overtime inspection costs. The weekday assumes inspection hours between 7:00 AM and 5:00 PM are normal working hours.
- 8. SUBSTITUTIONS**
- 8.1 Whenever a material, article, or piece of equipment is identified on the plans or specifications by reference to brand name or catalogue numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ARCHITECT/ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ARCHITECT/ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the contract price and the contract documents shall be appropriately modified by the change order. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the contract price or contract time.
- 9. PATENTS**
- 9.1 The CONTRACTOR shall pay all applicable royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and save the COUNTY harmless from loss on account thereof, except that the COUNTY shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified; however, if the CONTRACTOR has reason to believe that the design, process or product

specified is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless the CONTRACTOR promptly gives such information to the ARCHITECT/ENGINEER.

**10. SURVEYS, PERMITS, AND REGULATIONS**

- 10.1 The COUNTY shall furnish all boundary surveys and establish all baselines for locating the principal component parts of the work together with a suitable number of benchmarks adjacent to the work as shown in the CONTRACT DOCUMENTS. From the information provided by the COUNTY, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, finish grade stakes, bridge layout, stakes for pipe locations and other working points, lines, elevations and cut sheets.
- 10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.
- 10.3 Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the CONTRACTOR unless otherwise stated in the Special Provisions. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the COUNTY, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, the CONTRACTOR shall promptly notify the ARCHITECT/ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

**11. PROTECTION OF WORK, PROPERTY, AND PERSONS**

- 11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The CONTRACTOR will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the work and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The CONTRACTOR will erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection. The CONTRACTOR will notify COUNTY of adjacent utilities when prosecution of the work may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by the CONTRACTOR, any subcontractor or anyone directly or indirectly employed by any of them or anyone of whose acts of any of them will be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the COUNTY, of the ARCHITECT/ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.
- 11.3 In emergencies affecting the safety of persons or the work or property at the site or adjacent thereto, the CONTRACTOR, without special instructions or authorization from the ARCHITECT/ENGINEER or COUNTY, shall act to prevent threatened damage, injury or loss. The CONTRACTOR will give the ARCHITECT/ENGINEER prompt written notice of any significant changes in the work or deviations from the CONTRACT DOCUMENTS caused



thereby, and a change order shall thereupon be issued covering the changes and deviations involved.

- a. For all excavations in excess of five (5) feet, the CONTRACTOR shall, pursuant to Labor Code Section 6865, submit in advance of any excavation hereunder a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from caving ground. No such excavation shall be made until said detailed plan is submitted by CONTRACTOR and accepted by the COUNTY or the duly authorized ARCHITECT/ENGINEER.

## **12. SUPERVISION BY CONTRACTOR; INDEPENDENT CONTRACTOR**

- 12.1 The CONTRACTOR will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.
- 12.2 CONTRACTOR and its officers and employees, in the performance of this CONTRACT, are independent contractors in relation to the COUNTY and not officers or employees of the COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of the COUNTY. The CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. The CONTRACTOR further represents to the COUNTY that the CONTRACTOR has no expectation of receiving any benefits incidental to employment.

## **13. CHANGES IN THE WORK**

- 13.1 The COUNTY may, at any time, as the need arises, order changes within the scope of the work without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the work, an equitable adjustment shall be authorized by a written change order.
  - a. The ARCHITECT/ENGINEER also, may at any time, by issuing a written field order make changes in details of the work. The CONTRACTOR shall proceed with the performance of any changes in the work so ordered by the ARCHITECT/ ENGINEER "unless" the CONTRACTOR believes that such field order entitles the CONTRACTOR to a change in CONTRACT PRICE or time, or both, in which event the CONTRACTOR shall give the ARCHITECT/ENGINEER written notice thereof within three (3) business days after the receipt of the ordered change. The CONTRACTOR shall not execute such changes pending the receipt of an executed written change order from the COUNTY.

## **14. CHANGES IN CONTRACT PRICE**

- 14.1 All changes, which affect the cost or time of the construction of the project, must be authorized by means of a written change order. The change order will include extra work, work for which quantities have been altered from those shown in the bidding schedule, as well as decreases or increases in the quantities of installed units which are different than those shown in the bidding schedule because of final measurements. All changes should be recorded on a change order as they occur. Each change order must contain complete and detailed justification for all items addressed by the change order. All change orders must be approved in writing by COUNTY prior to execution of the work by the CONTRACTOR.

- 14.2 The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below:
- a. Unit prices previously approved.
  - b. A negotiated total price with all costs for materials and labor outlined by the CONTRACTOR plus a mark-up item for overhead and profit limited to a maximum 15 percent of the outlined costs for the CONTRACTOR doing the work, and a maximum of an additional 5 percent for the prime CONTRACTOR if the work is performed by any subcontractor.

**15. TIME FOR COMPLETION; LIQUIDATED DAMAGES**

- 15.1 The date of beginning and the time for completion of the work are essential conditions of the CONTRACT DOCUMENTS and the work embraced shall be commenced on the date specified in the Notice To Proceed.
- 15.2 The CONTRACTOR will proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the CONTRACTOR and the COUNTY, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.
- 15.3 If the CONTRACTOR shall fail to complete the work within the contract time, or extension of time granted by the COUNTY, then the CONTRACTOR will pay to the COUNTY the amount for liquidated damages as specified in the bid for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.
- 15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following and the CONTRACTOR has promptly given written notice of such delay to the COUNTY or ARCHITECT/ENGINEER.
- 15.4.1 To any preference, priority or allocation order duly issued by the COUNTY.
  - 15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the COUNTY, acts of another CONTRACTOR in the performance of a contract with the COUNTY, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and
  - 15.4.3 To any delays caused by the failure of the COUNTY or the owner of any utility to provide for removal or relocation of such utility facilities pursuant to Government Code section 4215.
  - 15.4.4 To any delays of subcontractors occasioned by any of the causes specified in paragraphs 15.4.1, 15.4.2 and 15.4.3 of this article.

**16. CORRECTION OF WORK**

- 16.1 The CONTRACTOR shall promptly remove from the premises all work rejected by the ARCHITECT/ENGINEER or COUNTY for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the work in accordance with the CONTRACT DOCUMENTS 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.
- 16.2 All removal and replacement work shall be done at CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected work within ten (10) days after receipt of written notice, the COUNTY may remove such work and store the materials at the expense of the CONTRACTOR.



**17. SUBSURFACE CONDITIONS**

- 17.1 The CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the COUNTY by written notice of:
- 17.1.1 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.
  - 17.1.2 Subsurface or latent physical conditions at the site differing from those indicated.
  - 17.1.3 Unknown physical conditions at the site of an unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the CONTRACT.
- 17.2 Upon such notification, the COUNTY 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 time required for performance of any part of the work, shall issue a change order under the procedures described in the CONTRACT.
- 17.3 In the event that a dispute arises between the COUNTY and the CONTRACTOR whether the conditions do materially so 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.

**18. SUSPENSION OF WORK, TERMINATION, AND DELAY**

- 18.1 The COUNTY may suspend the work or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by the CONTRACTOR, by written notice to the CONTRACTOR and the ARCHITECT/ENGINEER, which shall fix the date on which work shall be resumed. The CONTRACTOR will resume that work on the dates so fixed. The CONTRACTOR will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributing to any suspension.
- 18.2 If the CONTRACTOR is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of its property, or if CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or repeatedly fails to supply sufficient skilled workmen or suitable material or equipment, or repeatedly fails to make prompt payments to subcontractors or for labor, materials or equipment or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the work or disregards the authority of the ARCHITECT/ENGINEER, or otherwise violates any provision of the CONTRACT DOCUMENTS, then the COUNTY may, without prejudice to any other right or remedy and after giving the CONTRACTOR and its surety a minimum of ten (10) days from delivery of a written notice, terminate the services of the CONTRACTOR and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the work by whatever method the COUNTY may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the COUNTY. Such costs incurred by the COUNTY will be determined by the ARCHITECT/ENGINEER and incorporated in a change order.

- 18.3 Where the CONTRACTOR'S services have been so terminated by the COUNTY, said termination shall not affect any right of the COUNTY against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the COUNTY due to the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.
- 18.4 After ten (10) days from delivery of a written notice to the CONTRACTOR and the ARCHITECT/ENGINEER, the COUNTY may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the CONTRACT. In such case the CONTRACTOR shall be paid for all work executed and any expense sustained plus reasonable profit.
- 18.5 If, through no act or fault of the CONTRACTOR, the work is suspended for a period of more than ninety (90) days by the COUNTY or under an order of court or other public authority, or the ARCHITECT/ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted, or the COUNTY fails to pay the CONTRACTOR substantially the sum approved by the ARCHITECT/ENGINEER or awarded by arbitrators within thirty (30) days after its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a written notice to the COUNTY and the ARCHITECT/ENGINEER terminate the CONTRACT and recover from the COUNTY payment for all work executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ARCHITECT/ENGINEER has failed to act on a request for payment or if the COUNTY has failed without good cause to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days written notice to the COUNTY and the ARCHITECT/ENGINEER stop the work until paid all amounts then due, in which event and upon resumption of the work, change orders shall be issued for adjusting the contract price or extending the contract time or both to compensate for the costs and delays attributable to the stoppage of the work.
- 18.6 If the performance of all or any portion of the work is suspended, delayed, or interrupted as a result of a failure of the COUNTY or ARCHITECT/ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the contract price or an extension of the contract time, or both, shall be made by change order to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the COUNTY or ARCHITECT/ENGINEER.
- 19. PAYMENT TO CONTRACTOR**
- 19.1 Approximately 30 days prior to submittal of a Partial Payment Estimate for a Progress Payment the CONTRACTOR shall submit an Estimate Of 30-day Needs to alert the COUNTY to the amount of funds the CONTRACTOR projects the CONTRACTOR will be requesting as a progress payment in the next Partial Payment Estimate. This is especially important where state or federal funds are involved, which the COUNTY must request from the state or federal source as an Advance through a Cash Request draw down.
- 19.2 At least ten (10) days before the end of the month as each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the COUNTY Representative and/or the ARCHITECT/ENGINEER a Partial Payment Estimate filled out and signed by the CONTRACTOR covering the work performed during the period covered by the partial payment estimate and supported by such data as the COUNTY Representative and/or ARCHITECT/ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at or near the site, the Partial Payment Estimate shall also be accompanied by such supporting data, such as paid invoices, or other written evidence satisfactory to the COUNTY, as will establish the COUNTY'S title to the material and equipment and protect the COUNTY'S interest therein, including applicable insurance. The COUNTY Representative and/or



ARCHITECT/ENGINEER will, within ten (10) days after receipt of each Partial Payment Estimate, either indicate in writing approval of the progress payment, and present the Partial Payment Estimate to the COUNTY, or return the Partial Payment Estimate to the CONTRACTOR indicating in writing the reasons for refusing to approve progress payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Partial Payment Estimate. The COUNTY will, within twenty (20) days of presentation of an approved Partial Payment Estimate, pay the CONTRACTOR a progress payment on the basis of the approved Partial Payment Estimate less the retainage. The retainage shall be an amount equal to 10% of said estimate. If at any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained. Upon substantial completion of the work, any amount retained may be paid to the CONTRACTOR. When the work has been substantially completed except for work which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the COUNTY are valid reasons for non-completion, the COUNTY may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work to be completed.

- 19.3 Payments will not be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the CONTRACTOR.
- 19.4 All CONTRACT progress payments and the final payment shall be approved in writing by the COUNTY.
- 19.5 Prior to substantial completion, the COUNTY, with the approval of the ARCHITECT/ENGINEER, and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work.
- 19.6 The COUNTY shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the work, or the restoration of any damaged work, except such as may be caused by agents or employees of the COUNTY.
- 19.7 Upon completion and acceptance of the work, the ARCHITECT/ENGINEER shall issue a certificate attached to the final payment request that the work has been accepted under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the COUNTY, shall be paid to the CONTRACTOR thirty (30) days after the timely recording of a Notice of Completion, or within ninety (90) days after completion and acceptance of the work, whichever is earlier.
- 19.8 The CONTRACTOR will indemnify and save the COUNTY or the COUNTY'S agents harmless from all claims growing out of the lawful demand of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the work. The CONTRACTOR shall, at the COUNTY'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the COUNTY may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the COUNTY to either the CONTRACTOR, the CONTRACTOR'S SURETY, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the COUNTY shall be considered

as a payment made under the CONTRACT DOCUMENTS by the COUNTY to the CONTRACTOR and the COUNTY shall not be liable to the CONTRACTOR for any such payments made in good faith.

- 19.9 If the COUNTY fails to make payment within the time specified in section 19.7, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.
- 19.10 The ARCHITECT/ENGINEER may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any approved partial payment estimate to such extent as may be necessary to protect the COUNTY from loss on account of:
- a. Defective work not remedied.
  - b. Claims filed or reasonable evidence indicating probable filing of claims.
  - c. Failure of CONTRACTOR to make payments properly to subcontractors or for material or labor.
  - d. A reasonable doubt that the work can be completed for the balance then unpaid.
  - e. Damage to another CONTRACTOR.
  - f. Performance of work in violation of the terms of the CONTRACT DOCUMENTS.
- 19.11 Where work on unit price items are substantially complete but lack clean-up and/or corrections ordered by the ARCHITECT/ENGINEER, amounts shall be deducted from unit prices in partial payment estimates to amply cover such clean-up and corrections.
- 19.12 In lieu of COUNTY retaining a portion of progress payments due CONTRACTOR, the CONTRACTOR may elect to deposit qualifying securities equivalent to the amount to be withheld. Upon such deposit under an escrow agreement substantially in the form specified in section 22300(e) of the Public Contracts Code, the funds shall be released.

## **20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE**

- 20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the COUNTY of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by 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. Any payment, however, final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under the CONTRACT DOCUMENTS or the performance and payment bonds.

## **21. INSURANCE**

- 21.1 Without limiting the CONTRACTOR'S duty to indemnify the COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the CONTRACT. Required insurance policies shall satisfy the following requirements:
- 21.1.1 The CONTRACTOR shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of, or result from the CONTRACTOR'S execution of the work, whether such execution be by the CONTRACTOR, any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
- a. Claims under worker's compensation, disability benefit and other similar employee benefit acts;
  - b. Claims for damages because of bodily injury, occupational sickness or disease, or death of employees;

- c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees;
  - d. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and
  - e. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.
- 21.1.2 Each policy shall be issued by a company authorized by law to transact business in the State of California.
- 21.1.3 Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or non-renewal thereof.
- 21.1.4 The required coverage shall be maintained in effect throughout the term of this contract.
- 21.1.5 CONTRACTOR shall require all subcontractors performing work under this CONTRACT to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this CONTRACT.
- 21.2 The CONTRACTOR shall procure and maintain in full force and effect, at the CONTRACTOR'S own expense, and in case any work is sublet, the CONTRACTOR shall require such subcontractor similarly to procure and maintain in full force and effect, at the CONTRACTOR'S or subcontractor's own expense, during the term of this CONTRACT, insurance policies as hereinafter specified, with policy limits of coverage specified in the CONTRACT or in the minimum coverage requirements set forth in this section, whichever amount is higher:
- 21.2.1 CONTRACTOR'S Comprehensive General and Excess Public Liability and Property Damage Insurance, including vehicle coverage, issued to the CONTRACTOR and protecting the CONTRACTOR from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by the CONTRACTOR or by any subcontractor employed by the CONTRACTOR or anyone directly or indirectly employed by the CONTRACTOR or by a subcontractor employed by the CONTRACTOR, and shall provide an endorsement naming the COUNTY and its officers, agents and employees as additional insureds. The minimum coverage requirements are as follows:
- a. For personal injury claims, the insurance policy shall provide coverage in an amount not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting there from, sustained by any one person in any one accident and a limit of liability of not less than \$1,000,000 aggregate for any such damages sustained by two or more persons in any one accident.
  - b. For property damage claims, the insurance policy shall provide coverage with a limit of liability of not less than \$250,000 for all property damage sustained by any one person in any one accident and a limit of liability of not less than \$500,000 aggregate for any such damage sustained by two or more persons in any one accident.
- 21.2.2 The CONTRACTOR shall acquire and maintain Fire and Extended Coverage insurance upon the project to the full insurable value thereof for the benefit of the COUNTY, the CONTRACTOR, and subcontractors as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the project.
- 21.2.3 The CONTRACTOR shall secure "All Risk" type Builder's Risk Insurance for work to be performed. Unless specifically authorized by the COUNTY, the amount of such insurance shall not be less than the contract price totaled in the bid. The policy shall cover not less than

the losses due to fire, explosion, vehicle damage, theft, flood, earthquake, civil commotion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the contract time, and until the work is accepted by the COUNTY. The policy shall name as the insured the CONTRACTOR, and the COUNTY.

- 21.2.4 The CONTRACTOR shall acquire and maintain Environmental Impairment Pollution Liability Insurance upon the project to the full insurable value thereof for the benefit of the COUNTY, the CONTRACTOR, and subcontractors as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the project or to repair or remediate environmental damage or pollution.
- 21.3 Prior to commencement of work by the CONTRACTOR or any subcontractor and prior to any obligation by the COUNTY, the CONTRACTOR shall file Certificates of Insurance acceptable to the COUNTY, showing that the CONTRACTOR and all subcontractors have in effect the insurance required by this CONTRACT. The certificates shall contain a provision that coverage afforded under the policies will not be canceled unless at least 15 days prior written notice has been given to the COUNTY. The CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy that would alter the information on the certificate then on file. In lieu of providing proof of insurance, the CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. The CONTRACTOR shall warrant that the CONTRACTOR'S or subcontractor's self-insurance provides substantially the same protection to the COUNTY as the insurance required herein. The CONTRACTOR further agrees to notify the COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this CONTRACT within 15 days of such change.
- 21.4 In accordance with section 3700 of the Labor Code, the CONTRACTOR shall procure and maintain, at the CONTRACTOR'S own expense, during the contract time, in accordance with the provisions of the laws of the state in which the work is performed, Worker's Compensation Insurance, including occupational disease provisions, for all of the CONTRACTOR'S employees at the site of the project and in case any work is sublet, the CONTRACTOR shall require such subcontractor similarly to provide Worker's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under Worker's Compensation statute, the CONTRACTOR shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of its employees not otherwise protected.

## **22. CONTRACT SECURITY**

- 22.1 The CONTRACTOR shall within ten (10) working days after the receipt of the Notice Of Award furnish the COUNTY with a performance bond and a payment bond in penal sums equal to the amount of the contract price, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the work provided by the CONTRACT DOCUMENTS. Such bonds shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these bonds shall be borne by the CONTRACTOR. If at any time a SURETY on any such bond is declared a bankrupt or loses its right to do business in the state in which the work is to be performed or is removed from the list of surety companies accepted on Federal Bonds, CONTRACTOR shall within ten (10) days after



notice from the COUNTY to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the COUNTY. The premiums on such bond shall be paid by the CONTRACTOR. No further CONTRACT payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the COUNTY.

- 22.2 The performance bond and the payment bond to be furnished by the CONTRACTOR shall be executed on the forms provided by this document.

**23. ASSIGNMENTS**

- 23.1 Neither the CONTRACTOR nor the COUNTY shall sell, transfer, assign, or otherwise dispose of the CONTRACT or any portion thereof, or of any right, title or interest therein, or any obligations thereunder, without written consent of the other party.

**24. INDEMNIFICATION**

- 24.1 The CONTRACTOR will indemnify and hold harmless the COUNTY and the ARCHITECT/ENGINEER and their officers, agents and employees from and against any and all claims, damages, losses and expenses such as attorney's fees, court costs, investigation costs, and experts' fees, arising out of, resulting from or in any way related to the performance of the work, including but not limited to, claims for property damage, personal injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use there from, caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts or emissions any of them may be liable. "Performance" includes a party's action or inaction and the action or inaction of its officers, agents, and employees.
- 24.2 In any and all claims against the COUNTY or the ARCHITECT/ENGINEER, or any of their officers, agents or employees, by any employee of the CONTRACTOR, or any subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.
- 24.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ARCHITECT/ENGINEER, its agents or employees arising out of the preparation or approval of maps, plans, opinions, reports, surveys, change orders, designs or specifications.

**25. SEPARATE CONTRACTS**

- 25.1 The COUNTY reserves the right to let other contracts in connection with this project. The CONTRACTOR shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate the work with theirs. If the proper execution or results of any part of the CONTRACTOR'S work depends upon the work of any other contractors, the CONTRACTOR shall inspect and promptly report to the ARCHITECT/ENGINEER any defects in such work that render it unsuitable for such proper execution and results.
- 25.2 The COUNTY may perform additional work related to the project or the COUNTY may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other contractors who are parties to such contracts (or the COUNTY, if the COUNTY is performing the additional work) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate the work with theirs.
- 25.3 If the performance of additional work by other contractors or the COUNTY is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof

shall be given to the CONTRACTOR prior to starting any such additional work. If the CONTRACTOR believes that the performance of such additional work by the COUNTY or others involves it in additional expense or entitles it to an extension of the contract time, the CONTRACTOR may make a claim thereof as provided in Sections 14 and 15.

**26. SUBCONTRACTING**

- 26.1 The CONTRACTOR may utilize the services of specialty subcontracts on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
- 26.2 The CONTRACTOR shall not award work to subcontractor(s), in excess of fifty (50%) percent of the contract price, without prior written approval of the COUNTY.
- 26.3 The CONTRACTOR shall be fully responsible to the COUNTY for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as the CONTRACTOR is for the acts and omissions of persons directly employed by the CONTRACTOR.
- 26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the work of subcontractors and give the CONTRACTOR the same power as regards terminating any subcontract that the COUNTY may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.
- 26.5 Nothing contained in this CONTRACT shall create any contractual relation between any subcontractor and the COUNTY.

**27. ARCHITECT/ENGINEER'S AUTHORITY**

- 27.1 The ARCHITECT/ENGINEER shall act as the COUNTY'S representative during the construction period shall decide questions which may arise as to quality and acceptability of materials furnished and work performed, and shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ARCHITECT/ENGINEER will make visits to the site and determine if the work is proceeding in accordance with the CONTRACT DOCUMENTS.
- 27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship, and execution of the work. Inspections may be at the factory or fabrication plant of the source of material supply.
- 27.3 The ARCHITECT/ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.
- 27.4 The ARCHITECT/ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

**28. LAND AND RIGHTS-OF-WAY**

- 28.1 Prior to issuance of Notice To Proceed, the COUNTY shall obtain all land and rights-of-way necessary for carrying out and for the completion of the work to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.
- 28.2 The COUNTY shall provide to the CONTRACTOR information, which delineates and describes the lands owned and rights-of-way acquired.
- 28.3 The CONTRACTOR shall provide at its own expense and without liability to the COUNTY any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

**29. GUARANTEE**

- 29.1 The CONTRACTOR shall guarantee all materials and equipment furnished and work performed for a period of one (1) year from the date of substantial completion. The CONTRACTOR



warrants and guarantees for a period of one (1) year from the date of substantial completion of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of the damage of other parts of the system resulting from such defects. The COUNTY will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the COUNTY may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

### **30. RESOLUTION OF CONSTRUCTION CLAIMS**

- 30.1 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 this CONTRACT, payment not otherwise expressly provided the CONTRACT, or (c) any separate demand by the CONTRACTOR, the amount of which is disputed by the COUNTY. If this is a "Public Works Contract" as defined in 22200 of the California Public Contract Code, claims shall be resolved pursuant to Sections 20104 et seq. of the California Public Contract Code. These sections are summarized as follows:
- 30.1.1 For claims less than \$50,000, the COUNTY shall respond in writing to all written claims within forty-five (45) days of receipt of the claim, or may request in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to any defenses the COUNTY may have against such claim. The COUNTY'S written response to the claim, as further documented, will be submitted to the CONTRACTOR within fifteen (15) days from receipt of the further documentation, or within a period of time no greater than that taken by the CONTRACTOR in producing the additional documentation, whichever is greater.
- 30.1.2 For claims over \$50,000 and less than or equal to \$375,000, the COUNTY shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to any defenses the COUNTY may have against such claim. The COUNTY'S written response to the claim, as further documented, will be submitted to the CONTRACTOR within thirty (30) days from receipt of the further documentation, or within a period of time no greater than that taken by the CONTRACTOR in producing the additional documentation, whichever is greater.
- 30.1.3 If the CONTRACTOR disputes the COUNTY'S written response, or the COUNTY fails to respond within the time specified, the CONTRACTOR may notify the COUNTY in writing within either fifteen (15) days of receipt of the COUNTY'S response, or within fifteen (15) days of the COUNTY'S failure to respond within the statutorily prescribed time, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand, the COUNTY shall schedule a meeting and confer conference within thirty (30) days for settlement of the dispute.
- 30.1.4 Following the meet and confer conference, if the claim or any portion remains in dispute, the CONTRACTOR may file a claim pursuant to Government Code Sections 900, et seq. The period of time within to file such a claim shall be defined in Public Contract Code Section 20104.2(e).
- 30.2 All claims, disputes, and other matters in question arising out of, or relating to, the CONTRACT DOCUMENTS or the breach thereof, except for claims that have been waived by the making and acceptance of final payment, as provided by Section 20, may be decided by arbitration if the parties mutually agree. Any agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The arbitration will be conducted pursuant to 10240 - 10240.13 of the

California Public Contract Code. The award rendered by the arbitrators shall be final, the judgment may be entered upon it in any court having jurisdiction thereof.

- 30.2.1 Notice of the request for arbitration shall be filed in writing with the other party to the CONTRACT DOCUMENTS and a copy shall be filed with the ARCHITECT/ENGINEER. Request for arbitration shall in no event be made on any claim, dispute, or other matter in question which would be barred by the applicable statute of limitations.
- 30.2.2 The CONTRACTOR will carry on the work, and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.
- 30.2.3 Arbitration awards must be presented in writing and include the following elements:
  - a. Legal "findings of fact" established by the arbiter.
  - b. Specific breakdown of the dollar amounts allocated for each issue under arbitration.
  - c. The arbiter's "conclusions of law".
  - d. A summary of the evidence.
  - e. Reasons underlying the arbiter's award.

### **31. TAXES**

- 31.1 The CONTRACTOR will pay all sales, consumer, use, and other similar taxes required by the laws of the place where the work is performed.

### **32. CONFLICT OF INTEREST**

- 32.1 No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this CONTRACT or to any benefit that may arise there from, but this provision shall not be constructed to extend to this CONTRACT if made with a corporation for its general benefit.
- 32.2 No official of the COUNTY who is authorized in such capacity and on behalf of the COUNTY to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply CONTRACT or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this CONTRACT or in any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for the COUNTY who is authorized in such capacity and on behalf of the COUNTY who is in any legislative, executive, supervisory, or other similar functions in connections with the construction of the project, shall become directly or indirectly interested personally in this CONTRACT or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.
- 32.3 The CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. The CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed. The CONTRACTOR certifies that no one who has or will have any financial interest under this contract is an officer or employee of the COUNTY.

### **33. PROJECT SIGN**

- 33.1 The CONTRACTOR will place a project sign at a location if designated by the ARCHITECT/ENGINEER or COUNTY. If required, a sign measuring 4' x 8', will be made of 3/4" exterior grade plywood and adhere to the format and details as given on the sheet at the end of this section. If the project sign is to be combined with another agency's required project sign, then COUNTY approval must be obtained through the ARCHITECT/ENGINEER. If a sign is required the sign will be prepared by a professional sign painter.

CONFERENCE.

**34. PRE-CONSTRUCTION CONFERENCE**

- 34.1 Prior to the start of construction, the COUNTY will schedule a pre-construction conference. At the conference, the ARCHITECT/ENGINEER and/or COUNTY, and if Davis-Bacon or State Prevailing wages are involved, a Labor Specialist will review the project work and related requirements and procedures with the CONTRACTOR, CONTRACTOR'S Payroll Representative, CONTRACTOR'S subcontractors, and other interested parties.

**35. ACCESS TO CONTRACTOR'S RECORDS**

- 35.1 CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this CONTRACT for a minimum of three (3) years from the close of the fiscal year in which final payment is made under this CONTRACT. CONTRACTOR shall contractually require that all subcontractors performing work called for under this CONTRACT also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.
- 35.2 CONTRACTOR shall maintain and preserve all records related to this CONTRACT and shall also assure the maintenance of such records in the possession of any subcontractor or any third party performing work related to this CONTRACT, for a period of three years from the close of the fiscal year in which final payment under this contract is made. Such records shall be retained beyond the three-year period if any audit involving such records is then pending, until the audit findings are resolved.
- 35.3 For each negotiated (non-bid) CONTRACT in excess of \$2,500, the COUNTY, the comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to a specific Federal grant or loan program for the purpose of making audits, examinations, excerpts, and transcriptions.

**36. ENVIRONMENTAL REQUIREMENTS:**

The CONTRACTOR, when constructing a project involving trenching and/or other related earth excavation, shall comply with the following environmental constraints:

- 36.1 The CONTRACTOR shall comply with the intent of Executive Order 11990, which necessitates the preservation of wetlands. The CONTRACTOR, when disposing excess spoil or other construction materials on public or private property, WILL NOT FILL IN or convert such wetlands.
- 36.2 The CONTRACTOR shall comply with the intent of Executive Order 11988, which necessitates the preservation of floodplains. The CONTRACTOR when disposing excess spoil or other construction materials on public or private property WILL NOT FILL IN or convert the 100-year Floodplain areas classified as Zone A on the latest FEMA Floodplain Maps.
- 36.3 The CONTRACTOR shall comply with the intent of the Protection of Historical Properties 36 CFR Part 800. Any excavation by the CONTRACTOR that yields historical or archaeological artifacts shall be immediately reported to the project ARCHITECT/ENGINEER and a representative of the COUNTY. Construction shall be temporarily halted pending the notification process and further directions issued by the State Historical Preservation Officer (SHPO).
- 36.4 The CONTRACTOR shall comply with the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) regarding the protection of threatened and endangered species and their critical habitat. Should any evidence of the presence of endangered and/or threatened species or

their critical habitat be brought to the attention of the CONTRACTOR, the CONTRACTOR will immediately so advise the project ARCHITECT/ENGINEER and a representative of the COUNTY. Such activity shall be temporarily halted pending consultation with and advice from the U. S. Fish and Wildlife Service.

**37. MISCELLANEOUS PROVISIONS**

- 37.1 Compliance With Applicable Laws: The CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.
- 37.2 Nondiscrimination: The CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.
- 37.3 Bankruptcy: The CONTRACTOR shall immediately notify the COUNTY in the event that the CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.
- 37.4 Prohibition Against Assignment and Delegation of Duties: Except as specifically authorized herein, no rights under this CONTRACT may be assigned and no duties under this CONTRACT may be delegated by the CONTRACTOR without the prior written consent of the COUNTY, and any attempted assignment or delegation without such consent shall be void.
- 37.5 Negotiated Contract: This CONTRACT has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this CONTRACT within the meaning of California Civil Code Section 1654.
- 37.6 Severability: Should any provision herein be found or deemed to be invalid, this CONTRACT shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this CONTRACT are declared to be severable.
- 37.7 Entire Contract: This CONTRACT is the entire agreement of the parties. There are no understandings or agreements pertaining to this CONTRACT except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.
- 37.8 Time is of the Essence: Time is of the essence in the performance of this CONTRACT.
- 37.9 Notices: Notices to the parties in connection with the administration of this CONTRACT shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:
- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
  - (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or
  - (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.



- 37.10 Responsibility of Contract Administrators: All matters concerning this CONTRACT which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective CONTRACT administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.
- 37.11 Materiality: The parties consider each and every term, covenant, and provision of this CONTRACT to be material and reasonable.
- 37.12 Waiver: Waiver by either party of a breach of any covenant of this CONTRACT will not be construed to be a continuing waiver of any subsequent breach. The COUNTY'S receipt of consideration with knowledge of the CONTRACTOR'S violation of a covenant does not waive its right to enforce any covenant of this CONTRACT. The parties shall not waive any provisions of this CONTRACT unless the waiver is in writing and signed by all parties.
- 37.13 Authority and Capacity: The CONTRACTOR and the CONTRACTOR'S signatory each warrant and represent that each has full authority and capacity to enter into this CONTRACT.
- 37.14 Binding on Successors: All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of the CONTRACTOR. The CONTRACTOR and all of the CONTRACTOR'S heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this CONTRACT.
- 37.15 Cumulation of Remedies: All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.
- 37.16 Independent Advice: Each party hereby represents and warrants that in executing this CONTRACT it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this CONTRACT and the rights and duties arising out of this CONTRACT, or that such party willingly foregoes any such consultation.
- 37.17 No Reliance on Representations: Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this CONTRACT may hereafter turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this CONTRACT shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.
- 37.18 Reduction of Consideration: The CONTRACTOR agrees that the COUNTY shall have the right to deduct from any payments to the CONTRACTOR under this CONTRACT any amount owed to the COUNTY by the CONTRACTOR as a result of any obligation arising prior to the execution of this CONTRACT. For purposes of this paragraph, obligations arising prior to the execution of this CONTRACT may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If the COUNTY exercises the right to reduce any payment to the CONTRACTOR, the COUNTY shall give the CONTRACTOR notice of the amount of any off-set and the reason for the deduction.

37.19 Counterparts: This CONTRACT may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one CONTRACT.

**SPECIAL PROVISIONS  
BOARD OF SUPERVISORS  
COUNTY OF SAN BENITO  
STATE OF CALIFORNIA**

CONTRACT NO. PWB-1805

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

**SECTION 1. SPECIFICATIONS AND PLANS**

The work embraced herein shall be done in accordance with the Standard Specifications dated 2015, the latest Revisions dated 04-20-2018, and the Standard Plans dated 2015, of the State of California, Department of Transportation, insofar as the same may apply and in accordance with the following special provisions.

In case of conflict between the Standard Specifications and these special provisions, the special provisions shall take precedence over and be used in lieu of such conflicting portions.

**1-1.01 INTERPRETATION OF STANDARD SPECIFICATIONS**

For the purpose of this Contract, certain terms or pronouns in place of them used throughout the Standard Specifications, shall be interpreted as follows: Attention is directed to Section 1, "Definition and Terms," of the Standard Specifications and these special provisions:

**1-1.01A DEFINITIONS**

The following terms defined in Section 1, "Definitions and Terms," of the Standard Specifications shall be interpreted to have the following meaning and intent:

<b>State</b>	County of San Benito
<b>Department</b>	The San Benito County Public Works Division
<b>Director</b>	Chair of the Board of Supervisors
<b>Engineer</b>	Resource Management Agency Director of San Benito County, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them
<b>Laboratory</b>	Any established laboratory designated by the Engineer to test materials and work involved in the Contract
<b>Attorney General</b>	County Counsel of San Benito County

**1-1.01B DEFINITIONS**

Whenever in the special provisions and other contract documents, the following terms, or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

<b>Clerk of the Board</b>	The Clerk to the San Benito County Board of Supervisors
<b>Construction Manager</b>	The consultant firm hired and paid by the County, to administer the construction contract
<b>County</b>	County of San Benito
<b>Highway</b>	Roadway
<b>Design Engineer</b>	The consultant firm hired and paid by the County that prepared the Plans and Special Provisions for the construction contract
<b>Public Works Director</b>	San Benito County Engineer
<b>State</b>	County of San Benito

## **AMENDMENTS TO 2015 STANDARD SPECIFICATIONS**

### ***DESCRIPTION***

All roadway work covered by these special provisions shall conform to the provisions in the State of California Department of Transportation (Caltrans) Standard Plans, Standard Specifications dated 2015, the latest Revision dated 04-20-2018, and these special provisions. From this point forward, the Caltrans Standard Plans and Caltrans Standard Specifications will simply be referred to as the Standard Plans and Standard Specifications. Any and all references made to "Section" throughout this SPECIAL PROVISIONS shall be interpreted to mean the corresponding Caltrans Standard Plans and Standard Specification section.

Road work shall be performed at the following locations:

### **On San Felipe Road north of Bolsa Road at the Tesquisquito Slough**

In addition to the above, the work includes but is not limited to, all work shown on the plans, specified herein or in the Standard Plans and Standard Specifications, or required to complete the roadway improvements and/or modifications as determined by the San Benito County Engineer.

## **DIVISION I GENERAL PROVISIONS**

### **SECTION 7 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC**

#### ***7-1.01 GENERAL***

*The Contractor shall keep fully informed of all existing and future State and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with, and shall cause all the Contractor's agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work; and shall protect and indemnify the County of San Benito, and all officers and employees thereof connected with the work, including but not limited to the Director and the Engineer, against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order or decree, whether by the Contractor or the Contractor's employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications or contract for the work in relation to any law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing.*

#### ***7-1.02K(3) Certified Payroll Records (Labor Code & 1776)***

- 3. Submit certified payroll records upon request by and to the Construction Manager.*

### **SECTION 9 PAYMENT; 9.1.16D MOBILIZATION; 9-1.16D(1) GENERAL**

*Full compensation for conforming in this section shall be considered as included in the lump sum (LS) price for mobilization.*

## **DIVISION II GENERAL CONSTRUCTION**

### **SECTION 12 TEMPORARY TRAFFIC CONTROL; 12-1.04 PAYMENT**

*Full compensation for furnishing, erecting, maintaining and removing any additional temporary traffic control construction area signs the Contractor may deem necessary will be considered as included in the lump sum price paid for TRAFFIC CONTROL SYSTEM and no additional compensation will be allowed therefor.*



12-3.11 CONSTRUCTION AREA SIGNS; 12-3.11 CONSTRUCTION AREA SIGNS; 12-3.11D Payment  
 Full compensation for erecting, maintaining and removing construction area signs as included in the lump sum (LS) price paid for construction area signs and no additional compensation will be allowed therefor.

12-3.22 TEMPORARY CRASH CUSHION MODULES; 12-3.22D Payment  
 Full compensation for conforming in this section shall be considered as included in the each (EA) price for Temporary Crash Cushion Modules (Refill & Reset).

12-3.32 PORTABLE CHANGEABLE MESSAGE SIGNS; 12-3.32D Payment  
 Full compensation for conforming in this section shall be considered as included in the each (EA) price for Portable Changeable Message Signs.

12-4 MAINTAINING TRAFFIC; 12-4.02 TRAFFIC CONTROL SYSTEMS;  
 12-4.02C(3) Closure Requirements and Charts

**Replace *Reserved* in section 12-4.02C(3)(m) with:**

Comply with the requirements for a lane closure shown in the following chart:

Chart No. 1																									
Location: San Felipe Road												Direction: N/A													
Closure limits: Project limits.																									
Hour	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Mon-Thu											R	R	R	R	R	R	R								
Fri										R	R	R	R	R	R	R									
Sat																									
Sun																									
Legend:																									
I		Provide at least 1 city street lane open in the direction of travel.																							
C		Street may be closed.																							
		No work is allowed.																							
R		Provide at least 1 through traffic lane not less than 10 feet in width for use by both directions of travel. (Reversing Control)																							
REMARKS:																									

For a one-way reversing traffic-control lane closure, traffic may be stopped in 1 direction for periods not to exceed 15 minutes. After each stoppage, all accumulated traffic for that direction must pass through the work zone before another stoppage is made.

For lane closure or road closure, post a special advance notice publicity sign at least 7 days before closure.

*12-4.02D Payment*

*Full compensation for conforming in this section shall be considered as included in the lump sum (LS) price for Traffic Control Systems.*

SECTION 13 WATER POLLUTION CONTROL

*SECTION 13-2 WATER POLLUTION CONTROL PROGRAM; 13-2.04 PAYMENT*

*Full compensation for conforming in this section shall be considered as included in the lump sum (LS) price for Water Pollution Control Program.*

**DIVISION III EARTHWORK AND LANDSCAPE**

SECTION 17 GENERAL

*17-2 CLEARING AND GRUBBING; 17-2.01 GENERAL; 17-2.04 PAYMENT*

*Full compensation for conforming in this section shall be considered as included in the lump sum (LS) price for Clearing and Grubbing.*

SECTION 19 EARTHWORK

*19-9 SHOULDER BACKING; 19-9.04 Payment*

*Full compensation for conforming in this section shall be considered as included in the TON price for Shoulder Backing.*

**FEMA REQUIREMENTS**

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies

a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, A.

b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, B.

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

### 3. Equal Employment Opportunity.

a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, C.

#### b. Key Definitions.

(1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. 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 considerations 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, Current as of 1-9-17 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 as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

#### 4. Davis Bacon Act and Copeland Anti-Kickback Act.

a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**

b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II, D.

c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be



conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act.”** However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

“Compliance with the Copeland “Anti-Kickback” Act.

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

## 5. Contract Work Hours and Safety Standards Act.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, E.

c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

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

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

6. Rights to Inventions Made Under a Contract or Agreement.

a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program**, as FEMA awards under these programs do not meet the definition of “funding agreement.”

b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, F.

c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority,

and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, G.

a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and

activities. See 2 C.F.R. Part 200, Appendix II, H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual Chapter IV, 6.d, and Appendix C, 2* [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, 6.d and Appendix C, 2.

d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.

e. Specifically, a covered transaction includes the following contracts for goods or services:

(1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

(2) The contract requires the approval of FEMA, regardless of amount.

(3) The contract is for federally-required audit services.

(4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

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

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

(3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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

9. Byrd Anti-Lobbying Amendment.



- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, I; 44 C.F.R. Part 18; *PDAT Supplement*, Chapter IV, 6.c; Appendix C, 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See *PDAT Supplement*, Chapter IV, 6.c and Appendix C, 4.
- d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

#### APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any. Signature of Contractor's Authorized Official Name and Title of Contractor's Authorized Official Date"

#### 10. Procurement of Recovered Materials.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, 7.

c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

"(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

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

#### 11. Additional FEMA Requirements.

a. The Uniform Rules authorize FEMA to require additional provisions for non- Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

##### b. Changes.

To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

- (1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, XXV (2013).

b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: "The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

**END OF AMENDMENTS**

**SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS**

**2-1.01 GENERAL**

The bidder's attention is directed to the provisions in Section 2, "Bidding," of the Standard Specifications and these special provisions for the requirements and conditions which the bidder must observe in the preparation of and the submission of the bid.

The bidder's bond shall conform to the bond form in the bid documents for the project and shall be properly filled out and executed. The bidder's bond form included in the bid documents may be used.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the bid documents. Signing the bid documents shall also constitute signature of the Noncollusion Affidavit.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR (Code of Federal Regulations) part 26 in the award and administration of US DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate. Each subcontract signed by the bidder must include this assurance.

Failure of the bidder to fulfill the requirements of the Special Provisions for submittals required to be furnished after bid opening, including but not limited to escrowed bid documents, where applicable, may subject the bidder to a determination of the bidder's responsibility in the event it is the apparent low bidder on a future public works contracts.

This contract will require a Class "A" General Engineering Contractor or "C-12" Earthwork and Paving Contractor license.

**2-1.01A DESIGN ENGINEER MAY NOT BID ON CONSTRUCTION CONTRACT**

No engineering or architectural firm that has provided design services for a project shall be eligible to bid on the contract to construct the project. The firms ineligible to bid include the prime Contractor for design, subcontractors of portions of the design, and affiliates of either. An affiliate is a firm that is subject to the control of the same persons, through joint ownership or otherwise.

**2-1.02 REQUIRED LISTING OF PROPOSED SUBCONTRACTORS**

Each bid shall have listed therein the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent of his total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code.

The bidder's attention is directed to other provisions of said Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized Subcontractors or by making unauthorized substitutions.



A sheet for listing the subcontractors, as required herein by Law, is included in the Bid.

### **SECTION 3. CONTRACT AWARD AND EXECUTION**

#### **3-1.01 GENERAL**

The bidder's attention is directed to the provisions in Section 3, "Contract Award and Execution," of the Standard Specifications and these special provisions for the requirements and conditions concerning award and execution of contract.

Bid protests are to be delivered to the following address: 2301 Technology Parkway, Hollister, CA 95023.

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose bid complies with all the requirements prescribed.

The contract shall be executed by the successful bidder and shall be returned, together with the contract bonds, to the Agency so that it is received within 10 working days, after the bidder has received the contract for execution. Failure to do so shall be just cause for forfeiture of the proposal guaranty. The executed contract documents shall be delivered to the following address: Public Works Division, 2301 Technology Parkway, Hollister, CA 95023

#### **3-1.02 AWARD OF CONTRACT**

Section 3-1.04, "Contract Award," of the Standard Specifications is amended to read:

Award of Contract. The right is reserved to reject any and all bids and/or waive any irregularities or informalities in the bids.

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose bid complies with all the requirements prescribed. Such award, if made, will be made within 45 days after the opening of the bids. This period will be subject to extension for such further period as may be agreed upon in writing between the Department and the bidder concerned.

All bids will be compared on the basis of the Engineer's Estimate of the quantities of work to be done.

#### **3-1.03 CONTRACT BONDS**

Each of the two bonds shall be in a sum equal to at least 100% the contract price.

### **SECTION 4. PROSECUTION AND PROGRESS**

The bidder's attention is directed to Section 8, "Prosecution and Progress," of the Standard Specifications and these special provisions.

Particular attention is directed to the provisions in Sections 8-1.04, "Start of Job Activities," 8-1.05, "Time," and 8-1.10, "Liquidated Damages," of the Standard Specifications and these special provisions. The Contractor will be held liable for all damages, fines and assessments incurred in these agreements.

#### **4-1.01 PRE-CONSTRUCTION CONFERENCE**

Prior to the issuance of the Notice to Proceed, a pre-construction conference will be held at the office of the San Benito County Public Works Division, 2301 Technology Parkway, Hollister, California 95023, for the purpose of discussing with the Contractor the scope of work, contract drawings, specifications, existing conditions, materials to be ordered, equipment to be used, and all essential matters pertaining to the prosecution of and the satisfactory completion of the project as required. The Contractor's representatives at this conference shall include all major superintendents for the work and may include major sub-contractors.

#### **4-1.02 BEGINNING OF WORK**

In accordance with Section 8-1.05, "Time," of the Standard Specifications and these special provisions, the Contractor shall begin work within 15 calendar days after contractor is given written

Notice to Proceed. The Notice to Proceed will indicate the first working day for purposes of Time of Completion.

#### **4-1.03 TIME OF COMPLETION**

The work shall be diligently prosecuted to completion of the contract as provided in Section 8-1.05, "Time," of the Standard Specifications and these special provisions before the expiration of **25 WORKING DAYS**.

#### **4-1.04 LIQUIDATED DAMAGES**

As provided in Section 8-1.10, "Liquidated Damages," of the Standard Specifications and these special provisions, the Contractor shall pay the County of San Benito the sum of **three thousand dollars (\$3,000)** per day for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

#### **DOUBLE SHIFT CLAUSE**

The time limit specified for the completion of the work contemplated herein is considered sufficient to permit completion of the work by the Contractor working a normal number of hours per day or week on a single shift basis. Should the Contractor fail to maintain the progress of the work in conformance with "Progress Schedule (Critical Path Method)" of these special provisions, additional shifts will be required to the extent necessary to ensure that the progress conforms to the above mentioned schedule and that the work will be completed within the time limit specified.

Full compensation for any additional costs occasioned by compliance with the provisions in this section shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

### **SECTION 5. GENERAL**

#### **SECTION 5-1. MISCELLANEOUS**

##### **5-1.01 LABOR NONDISCRIMINATION**

Attention is directed to the following Notice that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

##### **NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM (GOV. CODE, SECTION 12990)**

Your attention is called to the "Nondiscrimination Clause", set forth in Section 7 1.021(2), "Nondiscrimination," of the Standard Specifications, which is applicable to all nonexempt state contracts and subcontracts, and to the "Standard California Nondiscrimination Construction Contract Specifications" set forth therein. The Specifications are applicable to all nonexempt state construction contracts and subcontracts of \$5,000 or more.

Required for ALL contracts administered under the Caltrans Standard Specifications. The contractor typically must pay the higher of either the State general prevailing wage rates or Federal minimum wage rates.

##### **5-1.02 GENERAL PREVAILING WAGE**

Attention is directed to Section 7-1.02K, "Labor Code," of the Standard Specifications.

The general prevailing wage rates determined by the Director of Industrial Relations, for the county or counties in which the work is to be done, are available at the County of San Benito, Public Works Division, 2301 Technology Parkway, Hollister, CA 95023 address. These wage rates are not included in the Bid book for the project. Changes, if any, to the general prevailing wage rates will be available at the same location.

Required for ALL projects on the State highway system.

##### **5-1.03 PUBLIC SAFETY**

The Contractor shall provide for the safety of traffic and the public in accordance with the provisions in Section 7-1.04, "Public Safety," of the Standard Specifications and these special provisions.

The Contractor shall install temporary railing (Type K) between any lanes carrying public traffic and any excavation, obstacle, or storage area when the following conditions exist:

(1) Excavations. - Any excavation, the near edge of which is 12 feet or less from the edge of the lane, except:

- (a) Excavations covered with sheet steel or concrete covers of adequate thickness to prevent accidental entry by traffic or the public.
- (b) Excavations less than one foot deep.
- (c) Trenches less than one foot wide for irrigation pipe or electrical conduit, or excavations less than one foot in diameter.
- (d) Excavations parallel to the lane for the purpose of pavement widening or reconstruction.
- (e) Excavations in side slopes, where the slope is steeper than 4:1.
- (f) Excavations protected by existing barrier or railing.

(2) Temporarily Unprotected Permanent Obstacles. - Whenever the work includes the installation of a fixed obstacle together with a protective system, such as a sign structure together with protective railing, and the Contractor elects to install the obstacle prior to installing the protective system; or whenever the Contractor, for his convenience and with permission of the Engineer, removes a portion of an existing protective railing at an obstacle and does not replace such railing complete in place during the same day.

(3) Storage Areas. - Whenever material or equipment is stored within 12 feet of the lane and such storage is not otherwise prohibited by the specifications.

The approach end of temporary railing (Type K), installed in accordance with the requirements in this section "Public Safety" and in Section 7-1.04, "Public Safety," of the Standard Specifications shall be offset a minimum of 15 feet from the edge of the traffic lane open to public traffic. The temporary railing shall be installed on a skew toward the edge of the traffic lane of not more than one foot transversely to 10 feet longitudinally with respect to the edge of the traffic lane. If the 15-foot minimum offset cannot be achieved, the temporary railing shall be installed on the 10 to 1 skew to obtain the maximum available offset between the approach end of the railing and the edge of the traffic lane, and an array of temporary crash cushion modules shall be installed at the approach end of the temporary railing.

Temporary railing (Type K) shall conform to the provisions in Section 12-3.20, "Type K Temporary Railing," of the Standard Specifications. Temporary railing (Type K), conforming to the details shown on 2015 Standard Plan T3A or T3B may be used.

The fourteenth paragraph of Section 12-3.20, "Type K Temporary Railing," of the Standard Specifications is amended to read:

Each rail unit placed within 10 feet of a traffic lane shall have a reflector installed on top of the rail as directed by the Engineer. A Type P marker panel shall also be installed at each end of railing installed adjacent to a two-lane, two-way highway and at the end facing traffic of railing installed adjacent to a one-way roadbed. If the railing is placed on a skew, the marker shall be installed at the end of the skew nearest the traveled way. Type P marker panels shall conform to the provisions in Section 82, "Signs and Markers," except that the Contractor shall furnish the marker panels.

Reflectors on temporary railing (Type K) shall conform to the provisions in "Pre-qualified and Tested Signing and Delineation Materials," of these special provisions.

Temporary crash cushion modules shall conform to the provisions in "Temporary Crash Cushion Module" elsewhere in these special provisions.



Except for installing, maintaining and removing traffic control devices, whenever work is performed or equipment is operated in the following work areas the Contractor shall close the adjacent traffic lane unless otherwise provided in the specifications:

Approach speed of public traffic (Posted Limit) (Miles Per Hour)	Work Areas
Over 45	Within 6 feet of a traffic lane but not on a traffic lane.
35 to 45	Within 3 feet of a traffic lane but not on a traffic lane.

The lane closure provisions of this section shall not apply if the work area is protected by permanent or temporary railing or barrier.

When traffic cones or delineators are used to delineate a temporary edge of traffic lane, the line of cones or delineators shall be considered to be the edge of traffic lane, however, the Contractor shall not reduce the width of an existing lane to less than 10 feet without written approval from the Engineer.

When work is not in progress on a trench or other excavation that required closure of an adjacent lane, the traffic cones or portable delineators used for the lane closure shall be placed off of and adjacent to the edge of the traveled way. The spacing of the cones or delineators shall be not more than the spacing used for the lane closure.

Suspended loads or equipment shall not be moved nor positioned over public traffic or pedestrians.

Full compensation for conforming to the requirements in this section "Public Safety," including furnishing and installing temporary railing (Type K) and temporary crash cushion modules, shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

#### **5-1.04 REMOVAL OF ASBESTOS AND HAZARDOUS SUBSTANCES**

When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications, and the Contractor encounters materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe, and shall immediately cease work in the affected area and report the condition to the Engineer in writing.

In accordance with Section 25914.1 of the Health and Safety Code, all such removal of asbestos or hazardous substances including any exploratory work to identify and determine the extent of such asbestos or hazardous substance will be performed by separate contract.

If delay of work in the area delays the current controlling operation, the delay will be considered a right of way delay and the Contractor will be compensated for such delay as provided in Section 8-1.07, "Delays," of the Standard Specifications.

#### **5-1.05 SUBCONTRACTING**

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., the County of San Benito may exercise the remedies provided under Pub Cont Code § 4110. The County of San Benito may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).



Submit copies of subcontracts upon request by the Engineer.

Before subcontracted work starts, submit a Subcontracting Request form.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations' Web site.

Upon request by the Engineer, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

Each subcontract and any lower tier subcontract that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions. Noncompliance shall be corrected. Payment for subcontracted work involved will be withheld from progress payments due, or to become due, until correction is made. Failure to comply may result in termination of the contract.

#### **5-1.6 PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS**

A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

#### **5-1.7 PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS**

The County shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the County, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the County. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

#### **5-1.8 PARTNERING**

The County of San Benito County will promote the formation of a "Partnering" relationship with the Contractor in order to effectively complete the contract to the benefit of both parties. The purpose of this relationship will be to maintain cooperative communication and mutually resolve conflicts at the lowest possible management level.

The Contractor may request the formation of such a "Partnering" relationship by submitting a request in writing to the Engineer after approval of the contract. If the Contractor's request for "Partnering" is approved by the Engineer, scheduling of a "Partnering" workshop, selecting the "Partnering" facilitator and workshop site, and other administrative details shall be as agreed to by both parties.

The costs involved in providing a facilitator and a workshop site will be borne equally by the County of San Benito County and the Contractor. The Contractor shall pay all compensation for the wages and expenses of the facilitator, and of the expenses for obtaining the workshop site. The State's share of such costs will be reimbursed to the Contractor in a change order written by the Engineer. Markups will

not be added. All other costs associated with the "Partnering" relationship will be borne separately by the party incurring the costs.

The establishment of a "Partnering" relationship will not change or modify the terms and conditions of the contract and will not relieve either party of the legal requirements of the contract.

#### **5-1.9 ENCROACHMENT PERMIT - BLANK**

#### **5-1.10 LABOR CODE REQUIREMENTS**

Section 7-1.02K(5), "Working Hours," of the Standard Specifications is amended to read:

Eight hours labor constitutes a legal day's work. The Contractor or any subcontractor under the Contractor shall forfeit, as a penalty to the State of California, \$25 for each worker employed in the execution of the contract by the respective Contractor or subcontractor for each calendar day during which that 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 the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of Contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay, as provided in Section 1815 thereof.

Section 7-1.02K(2), "Wages," of the Standard Specifications is amended to read:

The Contractor and any subcontractor under the Contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the Contractor and any subcontractor under the Contractor shall forfeit to the State or political subdivision on whose behalf the contract is made or awarded a penalty of not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by the Contractor or by any subcontractor under the Contractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor or subcontractor had knowledge of the obligations under the Labor Code. In addition to the penalty and pursuant to Labor Code Section 1775, 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. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project is not liable for the penalties described above 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 Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
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 subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, 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 the subcontractor's employees on the public works project and any amounts due pursuant to Section 1813 of the Labor Code.

Pursuant to Section 1775 of the Labor Code, 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. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if the Department did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. The Contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the Contractor within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, the Contractor shall pay all moneys retained from the subcontractor to the Department. These moneys shall be retained by the Department pending the final decision of an enforcement action.

Pursuant to the provisions of Section 1773 of the Labor Code, the Department has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.8 of the Labor Code, apprenticeship or other training programs authorized by Section 3093 of the Labor Code, and similar purposes) applicable to the work to be done, for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workmen concerned. The general prevailing wage rates and any applicable changes to these wage rates are available at the Labor Compliance Office at the offices of the District Director of Transportation for the district in which the work is situated. For work situated in District 9, the wage rates are available at the Labor Compliance Office at the offices of the District Director of Transportation for District 6, located at Fresno. General prevailing wage rates are also available from the California Department of Industrial Relations' Internet Web Site at: <http://www.dir.ca.gov>.

The wage rates determined by the Director of Industrial Relations for the project refer to expiration dates. Prevailing wage determinations with a single asterisk after the expiration date are in effect on the date of advertisement for bids and are good for the life of the contract. Prevailing wage determinations with double asterisks after the expiration date indicate that the wage rate to be paid for work performed after this date has been determined. If work is to extend past this date, the new rate shall be paid and incorporated in the contract. The Contractor shall contact the Department of Industrial Relations as indicated in the wage rate determinations to obtain predetermined wage changes.

Pursuant to Section 1773.2 of the Labor Code, general prevailing wage rates shall be posted by the Contractor at a prominent place at the site of the work.

Changes in general prevailing wage determinations, which conform to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204 shall apply to the project when

issued by the Director of Industrial Relations at least 10 days prior to the date of the Notice to Contractors for the project.

The State will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining the bid, and will not under any circumstances be considered as the basis of a claim against the State on the contract.

**7-1.01K(3) WAGES** - Attention is directed to the requirements of Section 1773.8 of the Labor Code. The Contractor shall make travel and subsistence payments to each workman, needed to execute the work, in accordance with the requirements in Labor Code Section 1773.8.

The first and second paragraphs of Section 7-1.02K(3), "Certified Payroll Records," of the Standard Specifications are amended to read:

**7-1.02K(3) Certified Payroll Records** - Attention is directed to the provisions of Labor Code Section 1776, a portion of which is quoted below. Regulations implementing Labor Code Section 1776 are located in Sections 16016 through 16019 and Sections 16207.10 through 16207.19 of Title 8, California Code of Regulations.

"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 shall 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.



"(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) 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 in a manner so as 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.

"(f) 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.

"(g) The contractor or subcontractor shall have 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 10-day period, he or she 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 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."

The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the provisions of Section 1776 may be deducted from any moneys due or which may become due to the Contractor.

#### **5-1.11 WORKERS' COMPENSATION**

The first paragraph of Section 7-1.06C, "Workers' Compensation and Employees Liability," of the Standard Specifications is amended to read:

**7-1.01A(6) Workers' Compensation.** - Pursuant to the requirements of Section 1860 of the Labor Code, the Contractor will be required to secure the payment of workers' compensation to the Contractor's employees in accordance with the provisions of Section 3700 of the Labor Code. Such Workers' Compensation coverage shall include a waiver of subrogation naming the County of San Benito, Design Engineer, Construction Manager, their respective consultants, and each of their directors, officers, agents, and employees.

#### **5-1.12 CONTRACTOR'S LICENSING LAWS**

The third paragraph of Section 2-1.03, "Contractor Registration," of the Standard Specifications is amended to read:

Attention is also directed to the provisions of Public Contract Code Section 10164. In all projects where Federal funds are involved, the Contractor shall be properly licensed at the time the contract is awarded.

**5-1.13 AIR POLLUTION CONTROL**  
Air pollution control shall conform to the provisions in Section 14.9.02, "Air Pollution Control," of the Standard Specifications and these special provisions.

Material to be disposed of shall not be burned unless the Contractor has obtained a permit to burn combustible material resulting from clearing and grubbing operations from an air pollution control officer of the local or regional authority. A copy of the permit shall be filed with the Engineer before beginning any burning. All such burning shall be conducted in strict conformance with the provisions stipulated in said permit and at such times and in such manner as to prevent the fire from spreading to areas adjoining the right of way.

In case the burning precedes construction operations, the piles may be placed in the center of the right of way; otherwise, the piles shall be placed in the most convenient location at the side of the right of way and beyond slope lines where they may be burned without damage to the surrounding forest cover or adjacent property.

Full compensation for conforming to the provisions in this section shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

#### **5-1.14 SOUND CONTROL REQUIREMENTS**

Sound control shall conform to the provisions in Section 14-8, "Noise and Vibration," of the Standard Specifications and these special provisions.

In accordance with local and County noise ordinances relating to construction, work shall occur only between the hours of 7:00 a.m. and 7:00 p.m. Monday through Saturday. No construction shall occur on Sundays or federally observed holidays.

Said noise level requirement shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.

Full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various contract items of work involved and no additional compensation will be allowed therefore.

#### **5-1.15 RESPONSIBILITY FOR DAMAGE**

Section 7-1.05, "Indemification," of the Standard Specifications is amended to read:

The State of California, County of San Benito, Design Engineer, Construction Manager, their respective consultants and each of their directors, officers, agents, and employees thereof connected with the work, including but not limited to the Director and the Engineer, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the work; for injury to or death of any person, either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or the Contractor's workers, or anyone employed by the Contractor.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including but not limited to workers and the public, or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance.

The Contractor shall indemnify and save harmless the State of California, County of San Benito, Design Engineer, Construction Manager, their respective consultants and each of their directors, officers, agents, and employees thereof connected with the work, including but not limited to the Director and the Engineer, from all claims, suits or actions of every name, kind and description, brought forth, or on account of, injuries to or death of any person including but not limited to workers and the public, or damage to property resulting from the performance of this contract, except as otherwise provided by statute. The duty of the Contractor to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code.

With respect to third party claims against the Contractor, the Contractor waives any and all rights to any type of express or implied indemnity against the State of California, County of San Benito, Design Engineer, Construction Manager, their respective consultants and each of their directors, officers, agents, and employees.

It is the intent of the parties that the Contractor will indemnify and hold harmless the State of California, County of San Benito, Design Engineer, Construction Manager, their respective consultants and each of their directors, officers, agents, and employees from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence on the part of the State of California, County of San Benito, Design Engineer, Construction Manager, the Contractor, the subcontractor or employee of any of these, other than the sole active negligence of the State of California, County of San Benito, Design Engineer, Construction Manager, their respective consultants and each of their directors, officers, agents, and employees.

The following insurance requirements shall apply:

A. The Contractor shall maintain in effect at all times during performance of the work described in the Agreement at least the coverages and limits of insurance with insurers satisfactory to the County of San Benito set forth herein. Certificates of all such insurance and evidence of policy endorsement for additional insured and waiver of subrogation requirements, executed by the insurer in form satisfactory to the County of San Benito, shall be furnished to the County of San Benito, Design Engineer, and Construction Manager immediately upon execution of the Agreement and prior to the Contractor commencing work:

(1) Contractual Liability Insurance for liability assumed by the Contractor under agreement with the County of San Benito. Such insurance as is afforded by the policy to the Contractor for Contractual Property Damage Liability insurance shall include coverage for property damage caused by blasting, collapse, structural injuries or damage to underground utilities. The policy shall not contain the so-called "x" "c" "u" exclusions. The minimum limits of liability for this insurance shall be as follows:

<u>Type of Coverage</u>	<u>Limits</u>
Worker's Compensation and Employer Liability, Including coverage under the United States Longshoremen's and Harbor Workers Act, Where applicable	Statutory
Comprehensive general liability which shall Include, or be endorsed to include: 1. Cross Liability Coverage 2. Blanket Contractual Liability Coverage 3. Contractor's Protective Liability Coverage 4. Product and Completed Operations Coverage 5. Broad Form Property Damage Coverage 6. Explosion, Collapse and Underground Property Damage Liability Coverage	\$5,000,000 combined single limit bodily injury and property damage, per occurrence
Automobile Liability Insurance covering all Automobiles, trucks, motorcycles, tractors, Trailers, or other automotive equipment, Whether owned or rented by the Contractor, or Owned by employees of the Contractor	\$5,000,000 combined single limit bodily injury and property damage, per occurrence

(2) An Additional Insured Endorsement to the Contractor's Liability insurance policy naming the State of California, County of San Benito, Design Engineer, Construction Manager, their respective consultants and each of their directors, officers, agents, and employees as additional insureds in the form approved by the County of San Benito shall also be furnished. A copy of the approved endorsement form may be obtained from the



County of San Benito at the address to obtain bid packages as shown in the Notice to Contractors. The insurance afforded to the additional insureds is primary insurance and if the additional insureds have other insurance, which might be applicable to any loss, the amount of this insurance shall not be reduced or prorated due to the existence of such other insurance.

(3) A waiver of subrogation endorsement to the Contractor's Workers' Compensation policy naming the State of California, County of San Benito, Design Engineer, Construction Manager, their respective consultants and each of their directors, officers, agents, and employees shall also be furnished.

B. Evidence of insurance (Contractual Liability insurance and Additional Insured Endorsement) in compliance with the requirements of Paragraph A herein shall be furnished to the County of San Benito, Design Engineer, and Construction Manager by the Contractor with the Certificate of Insurance in the form as approved by the County of San Benito. A copy of the approved certificate form may be obtained from the County of San Benito at the address to obtain bid packages as shown in the Notice to Contractors. Certificates of insurance shall, without any qualification thereto, contain the following statement:

"Should any of the described policies be canceled, modified, or reduced in limits before the expiration date thereof, the issuing company will mail 30 days' advance written notice to the named certificate holders."

C. The insurance shall be issued by a company or companies authorized to transact business in the State of California and shall have a rating of at least B VIII in accordance with the current Best's rating.

D. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude the State of California, County of San Benito, Design Engineer, or Construction Manager from taking such other actions as is available to them under any other provision of this contract (except retainage of money due the Contractor) or otherwise in law.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including but not limited to workers and the public, or damage to property and shall indemnify and save harmless any county, city or district, its officers and employees connected with the work, within the limits of which county, city or district the work is being performed hereunder, all in the same manner and to the same extent as provided above for the protection of the State of California and all officers and employees thereof connected with the work, except that no retention of money due the Contractor under and by virtue of the contract will be made by the State of California, County of San Benito, Design Engineer, or Construction Manager, pending disposition of suits or claims for damages brought against the county, city or district.

Nothing in the contract is intended to create the public or any member thereof a third party beneficiary hereunder, nor is any term and condition or other provision of the contract intended to establish a standard of care owed to the public or any member thereof.

**Required when total estimate is greater than \$ 1.0 M and construction contract is administered under the Caltrans Standard Specifications.**

#### **5-1.16 AREAS FOR CONTRACTOR'S USE**

Attention is directed to the requirements specified in Section 5-1.01, "General," of the Standard Specifications and these special provisions.

The highway right of way shall be used only for purposes that are necessary to perform the required work. The Contractor shall not occupy the right of way, or allow others to occupy the right of way, for purposes, which are not necessary to perform the required work.



There are no State-owned parcels adjacent to the right of way for the exclusive use of the Contractor within the contract limits. The Contractor shall secure at his own expense any area required for plant sites, storage of equipment or materials, or for other purposes.

Use of the Contractor's work areas and other State-owned property shall be at the Contractor's own risk, and the State shall not be held liable for any damage to or loss of materials or equipment located within such areas.

The Contractor shall obtain encroachment permits prior to occupying State-owned parcels outside the contract limits. The required encroachment permits may be obtained from the San Benito County Department of Public Works, 2301 Technology Parkway, Hollister, California 95023.

Residence trailers will not be allowed within the highway right of way, except that one trailer will be allowed for yard security purposes.

The Contractor shall remove all equipment, materials, and rubbish from the work areas and other State-owned property, which he occupies and shall leave the areas in a presentable condition, in accordance with the provisions in Section 4-13, "Cleanup," of the Standard Specifications.

The Contractor shall secure at his own expense any area required for plant sites, storage of equipment or materials, or for other purposes if sufficient area is not available to him within the contract limits, or at the sites designated on the plans outside the contract limits.

#### **5-1.17 FINAL PAY QUANTITIES**

Section 9-1.02C, "Final Pay Item Quantities," of the Standard Specifications is amended to read:

When an item of work is designated as (F) or (S-F) in the Engineer's Estimate, the estimated quantity for that item of work shall be the final pay quantity, unless the dimensions of any portion of that item are revised by the Engineer, or the item or any portion of the item is eliminated. If the dimensions of any portion of the item are revised, and the revisions result in an increase or decrease in the estimated quantity of that item of work, the final pay quantity for the item will be revised in the amount represented by the changes in the dimensions, except as otherwise provided for minor structures in Section 51-7.010, "Payment." If a final pay item is eliminated, the estimated quantity for the item will be eliminated. If a portion of a final pay item is eliminated, the final pay quantity will be revised in the amount represented by the eliminated portion of the item of work.

The estimated quantity for each item of work designated as (F) or (S-F) in the Engineer's Estimate shall be considered as approximate only, and no guarantee is made that the quantity which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantity. No allowance will be made in the event that the quantity based on computations does not equal the estimated quantity.

In case of discrepancy between the quantity shown in the Engineer's Estimate for a final pay item and the quantity or summation of quantities for the same item shown on the plans, payment will be based on the quantity shown in the Engineer's Estimate.

#### **5-1.18 NOTICE OF POTENTIAL CLAIM**

Section 5-1.43 "Potential Claims and Dispute Resolution" of the Standard Specifications is amended to read:

The Contractor shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the Engineer, including failure or refusal to issue a change order, or for the happening of any event, thing, occurrence, or other cause, unless he shall have given the Engineer due written notice of potential claim as hereinafter specified. Compliance with this Section 8-1.02D(8) shall not be a prerequisite as to matters within the scope of the protest provisions in Section 8-1.02D(8)(c) "Ordered Changes" or Section 8.1.07B "Time Adjustments" or the notice provisions in Section 8-1.07A General or Section 8-1.10, "Liquidated Damages," nor to any claim which is based on differences in measurements or errors of computation as to contract quantities.

The written notice of potential claim shall be submitted to the Engineer prior to the time that the Contractor performs the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Engineer, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim.

The written notice of potential claim shall be submitted on Form CEM-6201 furnished by the Department and shall be certified with reference to the California False Claims Act, Government Code Sections 12650 - 12655. The notice shall set forth the reasons for which the Contractor believes additional compensation will or may be due and the nature of the costs involved. Unless the amount of the potential claim has been stated in the written notice, the Contractor shall, within 15 days of submitting said notice, furnish an estimate of the cost of the affected work and impacts, if any, on project completion. Said estimate of costs may be changed or updated by the Contractor when conditions have changed. When the affected work is completed, the Contractor shall submit substantiation of his actual costs. Failure to do so shall be sufficient cause for denial of any claim subsequently filed on the basis of said notice of potential claim.

It is the intention of this Section 8-1.07 "DELAYS" that differences between the parties arising under and by virtue of the contract be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that he shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed.

Should the Contractor, in connection with or subsequent to the assertion of a potential claim, request inspection and copying of documents or records in the possession of the Department that pertain to the potential claim, Contractor shall make its records of the project, as deemed by the Department to be pertinent to the potential claim, available to the Department for inspection and copying.

#### **5-1.19 PAYMENTS**

Attention is directed to Section 8-1.02D(10), "Payment," and 9-1.17, "Payment After Contract Acceptance," of the Standard Specifications and these special provisions.

For the purpose of making partial payments pursuant to Section 8-1.02D(10), "Payments," of the Standard Specifications, the amount set forth for the contract items of work hereinafter listed shall be deemed to be the maximum value of said contract item of work, which will be recognized for progress payment purposes.

Prepare Water Pollution Control Program	Not Applicable
Implement Water Pollution Control Program	Not Applicable
Construction Area Signs	Not Applicable
Clearing and Grubbing	Not Applicable
Develop Water Supply	Not Applicable

After acceptance of the contract pursuant to Section 3-1.18, "Contract Execution," of the Standard Specifications, the amount, if any, payable for a contract item of work in excess of the maximum value for progress payment purposes herein above-listed for said item, will be included for payment in the first estimate made after acceptance of the contract.

In determining the partial payments to be made to the Contractor, only the following listed materials will be considered for inclusion in said payment as materials furnished but not incorporated in the work:

None

## 5-1.20 PARTIAL PAYMENTS

Attention is directed to the requirements specified in Section 8-1.02D(10), "Payment," of the Standard Specifications and these special provisions.

Attention is directed to the prohibitions and penalties pertaining to unlicensed contractors as provided in Business and Professions Code Sections 7028.15(a) and 7031.

## 5-1.21 FINAL PAYMENT AND CLAIMS

Section 9-1.17D, "Final Payment and Claims," of the Standard Specifications is amended to read:

**9-1.17D Final Payment and Claims.** - After acceptance by the Director, the Engineer will make a proposed final estimate in writing of the total amount payable to the Contractor, including therein an itemization of said amount, segregated as to contract item quantities, extra work and any other basis for payment, and shall also show therein all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the contract. All prior estimates and payments shall be subject to correction in the proposed final estimate. The Contractor shall submit written approval of the proposed final estimate or a written statement of all claims arising under or by virtue of the contract so that the Engineer receives such written approval or statement of claims no later than close of business of the thirtieth day after receiving the proposed final estimate. If the thirtieth day falls on a Saturday, Sunday or legal holiday, then receipt of such written approval or statement of claims by the Engineer shall not be later than close of business of the next business day. No claim will be considered that was not included in the written statement of claims, nor will any claim be allowed as to which a notice or protest is required under the provisions in Sections 5-1.43 "Potential Claims and Dispute Resolution," 8-1.02D(8)(c), "Ordered Changes," 8-1.07B, "Time Adjustments," 8-1.10, "Liquidated Damages," or the notice provisions in Section 8-1.07A unless the Contractor has complied with the notice or protest requirements in said sections.

On the Contractor's approval, or if he files no claim within said period of 30 days, the Engineer will issue a final estimate in writing in accordance with the proposed final estimate submitted to the Contractor and within 30 days thereafter the State will pay the entire sum so found to be due. Such final estimate and payment thereon shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefore, except as otherwise provided in Section 9-1.21, "Clerical Errors."

If the Contractor within said period of 30 days files claims, the Engineer will issue a semifinal estimate in accordance with the proposed final estimate submitted to the Contractor and within 30 days thereafter the State will pay the sum so found to be due. Such semifinal estimate and payment thereon shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefore, except insofar as affected by the claims filed within the time and in the manner required hereunder and except as otherwise provided in Section 9-1.21, "Clerical Errors."

Claims filed by the Contractor shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of said claims. If additional information or details are required by the Engineer to determine the basis and amount of said claims, the Contractor shall furnish such further information or details so that the information or details are received by the Engineer no later than the fifteenth day after receipt of the written request from the Engineer. If the fifteenth day falls on a Saturday, Sunday or legal holiday, then receipt of such information or details by the Engineer shall not be later than close of business of the next business day. Failure to submit such information and details to the Engineer within the time specified will be sufficient cause for denying the claim.

The Contractor shall keep full and complete records of the costs and additional time incurred for any work for which a claim for additional compensation is made. The Engineer or any designated claim investigator or auditor shall have access to those records and any other records as may be



required by the Engineer to determine the facts or contentions involved in the claims. Failure to permit access to such records shall be sufficient cause for denying the claims.

Claims submitted by the Contractor shall be accompanied by a notarized certificate containing the following language:

Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et. seq., the undersigned,

\_\_\_\_\_  
(Name)

\_\_\_\_\_ of  
(Title)

\_\_\_\_\_  
(Company)

hereby certifies that the claim for the additional compensation and time, if any, made herein for the work on this contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the contract between parties.

Dated \_\_\_\_\_

/s/ \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

Notary Public

My Commission Expires \_\_\_\_\_

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

Any claim for overhead type expenses or costs, in addition to being certified as stated above, shall be supported by an audit report of an independent Certified Public Accountant. Any such overhead claim shall also be subject to audit by the State at its discretion.

Any costs or expenses incurred by the State in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the State within the meaning of the California False Claims Act.

The District Director of the District, which administers the contract, will make the final determination of any claims, which remain in dispute after completion of claim review by the Engineer. A board or person designated by said District Director will review such claims and make a written recommendation thereon to the District Director. The Contractor may meet with the review board or person to make a presentation in support of such claims.

Upon final determination of the claims, the Engineer will then make and issue his final estimate in writing and within 30 days thereafter the State will pay the entire sum, if any, found due thereon. Such final estimate shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefore, except as otherwise provided in Sections 9-1.03C, "Records," and 9-1.09, "Clerical Errors."

#### **5-1.22 MEASUREMENT AND PAYMENT**

Attention is directed to Section 9, "Payment," of the Standard Specifications and these special provisions.

Section 9-1.03 "Payment Scope" Arbitration as defined in the Standard Specifications, is deleted from this contract. In lieu of arbitration, the following shall apply (from the Public Contract Code):



- A. Application of article; inclusion of article in plans and specifications: (Public Contracts Codes 20104)
- 1.a. 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 the County of San Benito.
  - 1.b. This article shall not apply to any claims resulting from a contract between the Contractor and the County of San Benito 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, of the Public Contract Code.)
  - 2.a. "Public Works" has the same meaning as in Sections 3100 and 3106 of the Civil Code.
  - 2.b. "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.
  3. 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.
  4. This article applies only to contracts entered into on or after January 1, 1991.
- B. Claims; requirements: (Public Contracts Codes 20104.2).

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

1. 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.
- 2.a. 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.b. 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.
- 2.c. 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.
- 3.a. 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.
- 3.b. 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.c. 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.
4. 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.

5. If following the meet and confer conference the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

C. Procedures for civil actions filed to resolve claims: (Public Contracts Codes 20104.4)

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

1. 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.

- 2.a. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 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.b. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

D. Payment by local agency of undisputed portion of claim; interest on arbitration award or judgment: (Public Contracts Codes 2104.6)

1. The County of San Benito shall not fail to pay money as to any portion of a claim, which is undisputed except as otherwise provided in the contract.
2. In any suit filed under Section 20104.4, County of San Benito shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue the date the suit is filed in a court of law.

### **5-1.23 PROJECT APPEARANCE**

The Contractor shall maintain a neat appearance to the work.

In any area visible to the public, the following shall apply:

When practicable, broken concrete and debris developed during clearing and grubbing shall be disposed of concurrently with its removal. If stockpiling is necessary, the material shall be removed or disposed of weekly.

The Contractor shall furnish trash bins for all debris from structure construction. All debris shall be placed in trash bins daily. Forms or false work that is to be re-used shall be stacked neatly

concurrently with their removal. Forms and false work that are not to be re-used shall be disposed of concurrently with their removal.

Full compensation for conforming to the provisions in this section, not otherwise provided for, shall be considered as included in prices paid for the various contract items of work involved and no additional compensation will be allowed therefore.

#### **5-1.24 MATERIAL SITES**

Local material sites used by the Contractor shall be graded so that, at the time of final inspection of the contract, they will drain and will blend in with the surrounding terrain.

Full compensation for conforming to the provisions in this section shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

### **SECTION 10. CONSTRUCTION DETAILS**

#### **SECTION 10-1. GENERAL**

##### **10-1.01 ORDER OF WORK**

Order of work shall conform to the provisions in Section 10-1.02, "Work Sequencing," of the Standard Specifications and these special provisions.

Temporary railing (Type K) and temporary crash cushions shall be secured in place prior to commencing work for which the temporary railing and crash cushions are required.

Attention is directed to "Maintaining Traffic" and "Temporary Pavement Delineation" of these special provisions and to the stage construction sheets of the plans.

The work shall be performed in conformance with the stages of construction shown on the plans. Non-conflicting work in subsequent stages may proceed concurrently with work in preceding stages, provided satisfactory progress is maintained in the preceding stages of construction.

In each stage, after completion of the preceding stage, the first order of work shall be the removal of existing pavement delineation as directed by the Engineer. Pavement delineation removal shall be coordinated with new delineation so that lane lines are provided at all times on traveled ways open to public traffic.

Before obliterating any pavement delineation (traffic stripes, pavement markings, and pavement markers) that is to be replaced on the same alignment and location, as determined by the Engineer, the pavement delineation shall be referenced by the Contractor, with a sufficient number of control points to reestablish the alignment and location of the new pavement delineation. The references shall include the limits or changes in striping pattern, including one- and 2-way barrier lines, limit lines, crosswalks and other pavement markings. Full compensation for referencing existing pavement delineation shall be considered as included in the contract prices paid for new pavement delineation and no additional compensation will be allowed therefore.

At those locations exposed to public traffic where guard railings or barriers are to be constructed, reconstructed, or removed and replaced, the Contractor shall schedule operations so that at the end of each working day there shall be no post holes open nor shall there be any railing or barrier posts installed without the blocks and rail elements assembled and mounted thereon.

##### **10-1.02 WATER POLLUTION CONTROL**

##### **10-1.03 PRESERVATION OF PROPERTY**

Attention is directed to Section 5-1.36 "Property and Facility Preservation," Section 5-1.39, "Damage Repair and Restoration," of the Standard Specifications and these special provisions.

Existing trees, shrubs and other plants, that are not to be removed as shown on the plans or specified in these special provisions, and are injured or damaged by reason of the Contractor's operations, shall be



replaced by the Contractor. The minimum size of tree replacement shall be 24 inch box. Replacement planting shall conform to the requirements in Section 5-1.36B "Landscape" and Section 5-1.39C, "Landscape Damage," of the Standard Specifications. The Contractor shall water replacement plants in conformance with the provisions in Section 20-1.02B, "Water," of the Standard Specifications.

Damaged or injured plants shall be removed and disposed of outside the highway right of way in conformance with the provisions in Section 5-1.36B "Landscape" and Section 5-1.39C, "Landscape Damage" of the Standard Specifications. At the option of the Contractor, removed trees and shrubs may be reduced to chips. The chipped material shall be spread within the highway right of way at locations designated by the Engineer.

Replacement planting of injured or damaged trees, shrubs and other plants shall be completed not less than 20 working days prior to acceptance of the contract. Replacement plants shall be watered as necessary to maintain the plants in a healthy condition.

**10-1.04 OBSTRUCTIONS**

Attention is directed to Section 5-1.36 "Property and Facility Preservation" the Standard Specifications and these special provisions..

The Contractor shall notify the Engineer and the appropriate regional notification center for operators of subsurface installations at least 2 working days, but not more than 14 calendar days, prior to performing any excavation or other work close to any underground pipeline, conduit, duct, wire or other structure. Regional notification centers include, but are not limited to, the following:

Notification Center	Telephone Number
Underground Service Alert- Northern California (USA)	1-800-642-2444 1-800-227-2600
Underground Service Alert- Southern California (USA)	1-800-422-4133 1-800-227-2600

**10-1.05 CONSTRUCTION AREA TRAFFIC CONTROL DEVICES**

Flagging, signs, and all other traffic control devices furnished, installed, maintained, and removed when no longer required shall conform to the provisions in Section 12, "Temporary Traffic Control," of the Standard Specifications and these special provisions.

Category 1 traffic control devices are defined as those devices that are small and lightweight (less than 45 kg {100 pounds}), and have been in common use for many years. The devices shall be known to be crashworthy by crash testing, crash testing of similar devices, or years of demonstrable safe performance. Category 1 traffic control devices include traffic cones, plastic drums, portable delineators, and channelizers.

If requested by the Engineer, the Contractor shall provide written self-certification for crashworthiness of Category 1 traffic control devices. Self-certification shall be provided by the manufacturer or Contractor and shall include the following: date, Federal Aid number (if applicable), expenditure authorization, district, county, route and kilometer post {post mile} of project limits; company name of certifying vendor, street address, city, state and zip code; printed name, signature and title of certifying person; and an indication of which Category 1 traffic control devices will be used on the project. The Contractor may obtain a standard form for self-certification from the Engineer.

Category 2 traffic control devices are defined as those items that are small and lightweight (less than 45 kg {100 pounds}), that are not expected to produce significant vehicular velocity change, but may



otherwise be potentially hazardous. Category 2 traffic control devices include: barricades and portable sign supports.

Category 2 traffic control devices purchased on or after October 1, 2000 shall be on the Federal Highway Administration (FHWA) Acceptable Crashworthy Category 2 Hardware for Work Zones list. This list is maintained by FHWA and can be located at the following internet address: <http://safety.fhwa.dot.gov/fourthlevel/hardware/listing.cfm?code=workzone>. The Department maintains a secondary list at the following internet address: <http://www.dot.ca.gov/hq/traffops/signtech/signdel/pdf.htm>.

Category 2 traffic control devices that have not received FHWA acceptance, and were purchased before October 1, 2000, may continue to be used until they complete their useful service life or until January 1, 2003, whichever comes first. Category 2 devices in use that have received FHWA acceptance shall be labeled with the FHWA acceptance letter number and the name of the manufacturer by the start of the project. The label shall be readable. After January 1, 2003, all Category 2 devices without a label shall not be used on the project.

If requested by the Engineer, the Contractor shall provide a written list of Category 2 devices to be used on the project at least 5 days prior to beginning any work using the devices. For each type of device, the list shall indicate the FHWA acceptance letter number and the name of the manufacturer..

Full compensation for providing self-certification for crashworthiness of Category 1 traffic control devices and for providing a list of Category 2 devices used on the project and labeling Category 2 devices as specified shall be considered as included in the prices paid for the various contract items of work requiring the use of the Category 1 or Category 2 traffic control devices and no additional compensation will be allowed therefore.

#### **10-1.06 CONSTRUCTION AREA SIGNS**

Construction area signs shall be furnished, installed, maintained, and removed when no longer required in conformance with the provisions in Section 12, "Temporary Traffic Control," of the Standard Specifications and these special provisions.

Attention is directed to the provisions in "Prequalified and Tested Signing and Delineation Materials" of these special provisions. Type II retroreflective sheeting shall not be used on construction area sign panels.

Attention is directed to "Construction Project Information Signs" of these special provisions regarding the number and type of construction project information signs to be furnished, erected, maintained, and removed and disposed of.

The Contractor shall notify the appropriate regional notification center for operators of subsurface installations at least 2 working days, but not more than 14 calendar days, prior to commencing excavation for construction area sign posts. The regional notification centers include, but are not limited to, the following:

Notification Center	Telephone Number
Underground Service Alert- Northern California (USA)	1-800-642-2444 1-800-227-2600
Underground Service Alert- Southern California (USA)	1-800-422-4133 1-800-227-2600

Excavations required to install construction area signs shall be performed by hand methods without the use of power equipment, except that power equipment may be used if it is determined there are no utility facilities in the area of the proposed post holes.

Sign substrates for stationary mounted construction area signs may be fabricated from fiberglass reinforced plastic as specified under "Prequalified and Tested Signing and Delineation Materials" of these special provisions.

The Contractor may be required to cover certain signs during the progress of the work. Signs that are no longer required or that convey inaccurate information to the public shall be immediately covered or removed or the information shall be corrected. Covers for construction area signs shall be of sufficient size and density to completely block out the complete face of the signs. The retroreflective face of the covered signs shall not be visible either during the day or at night. Covers shall be fastened securely so that the signs remain covered during inclement weather. Covers shall be replaced when they no longer cover the signs properly.

#### **10-1.07 MAINTAINING TRAFFIC**

Attention is directed to Sections 7-1.03, "Public Convenience," 7-1.04, "Public Safety," and Section 12, "Temporary Traffic Control," of the Standard Specifications and to the provisions in "Public Safety" of these special provisions and these special provisions. Nothing in these special provisions shall be construed as relieving the Contractor from the responsibilities specified in Section 7 Legal Relations and Responsibility to the Public.

Lane closures shall conform to the provisions in section "Traffic Control System for Lane Closure" of these special provisions..

Personal vehicles of the Contractor's employees shall not be parked on the traveled way including any section closed to public traffic.

The Contractor shall notify local authorities of the Contractor's intent to begin work at least 5 days before work is begun. The Contractor shall cooperate with local authorities relative to handling traffic through the area and shall make arrangements relative to keeping the working area clear of parked vehicles.

Whenever vehicles or equipment are parked on the shoulder within 1.8 m {6 feet} of a traffic lane, the shoulder area shall be closed with fluorescent traffic cones or portable delineators placed on a taper in advance of the parked vehicles or equipment and along the edge of the pavement at 7.5 m {25-foot} intervals to a point not less than 7.5 m {25 feet} past the last vehicle or piece of equipment. A minimum of 9 cones or portable delineators shall be used for the taper. A C23 (Road Work Ahead) or C24 (Shoulder Work Ahead) sign shall be mounted on a portable sign stand with flags. The sign shall be placed where designated by the Engineer.

A minimum of one paved traffic lane, not less than 3.6 m {12 feet} wide, shall be open for use by public traffic. When construction operations are not actively in progress, not less than 2 of these lanes shall be open to public traffic.

7\*. Use when traffic delays are anticipated. Edit as required. If delays of more than a few minutes are anticipated, advance warning and advisory signs must be erected in order that motorists may consider alternative routes.

#### **10-1.08 TRAFFIC CONTROL SYSTEM FOR LANE CLOSURE**

A traffic control system shall consist of closing traffic lanes in conformance with the details shown on the plans, the provisions in Section 12, "Temporary Traffic Control," of the Standard Specifications, the provisions under "Maintaining Traffic" and "Construction Area Signs" of these special provisions, and these special provisions.

The provisions in this section will not relieve the Contractor from the responsibility to provide additional devices or take measures as may be necessary to comply with the provisions in Section 7-1.04, "Public Safety," of the Standard Specifications.

During traffic stripe operations and pavement marker placement operations using bituminous adhesive, traffic shall be controlled, at the option of the Contractor, with either stationary or moving lane closures. During other operations, traffic shall be controlled with stationary lane closures. Attention is directed to the provisions in Section 84-2.03, "Construction," of the Standard Specifications.



If components in the traffic control system are displaced or cease to operate or function as specified, from any cause, during the progress of the work, the Contractor shall immediately repair the components to the original condition or replace the components and shall restore the components to the original location.

#### STATIONARY LANE CLOSURE

When lane closures are made for work periods only, at the end of each work period, all components of the traffic control system, except portable delineators placed along open trenches or excavation adjacent to the traveled way shall be removed from the traveled way and shoulder. If the Contractor so elects, the components may be stored at selected central locations designated by the Engineer within the limits of the highway right of way..

When traffic is under one-way control on unpaved areas, the cones shown along the centerline on the plan need not be placed.

Utilizing a pilot car will be at the option of the Contractor. If the Contractor elects to use a pilot car, the cones shown along the centerline on the plan need not be placed. The pilot car shall have radio contact with personnel in the work area. The maximum speed of the pilot car through the traffic control zone shall be 40 kilometers per hour {25 mph}.

#### MOVING LANE CLOSURE

Flashing arrow signs used in moving lane closures shall be truck-mounted. Flashing arrow signs shall be in the caution display mode when used on 2-lane highways. Changeable message signs used in moving lane closure operations shall conform to the provisions in Section 12-3.32, "Portable Changeable Message Signs," of the Standard Specifications, except the signs shall be truck-mounted. The full operation height of the bottom of the sign may be less than 2.1 m {7 feet} above the ground, but should be as high as practicable.

Truck-mounted attenuators (TMA) for use in moving lane closures shall be any of the following approved models, or equal:

- A. Hexfoam TMA Series 3000, Alpha 1000 TMA Series 1000 and Alpha 2001 TMA Series 2001, manufactured by Energy Absorption Systems, Inc., One East Wacker Drive, Chicago, IL 68601-2076, Telephone (312) 467-6750.
  1. Distributor (Northern): Traffic Control Service, Inc., 8585 Thys Court, Sacramento, CA 95828, Telephone 1-800-884-8274, FAX (916) 387-9734.
  2. Distributor (Southern): Traffic Control Service, Inc., 1881 Betmor Lane, Anaheim, CA 92805, Telephone 1-800-222-8274.
- B. Cal T-001 Model 2 or Model 3, manufacturer and distributor; Hexcel Corporation, 11711 Dublin Boulevard, P.O. Box 2312, Dublin, CA 94568, Telephone (510) 828-4200.
- C. Renco Rengard Model Nos. CAM 8-815 and RAM 8-815, manufacturer and distributor, Renco Inc., 1582 Pflugerville Loop Road, P.O. Box 730, Pflugerville, TX 78660-0730, Telephone 1-800-654-8182.

Each TMA shall be individually identified with the manufacturer's name, address, TMA model number, and a specific serial number. The names and numbers shall each be a minimum 13 mm {1/2 inch} high and located on the left (street) side at the lower front corner. The TMA shall have a message next to the name and model number in 13 mm {1/2 inch} high letters which states, "The bottom of this TMA shall be \_\_\_\_\_ mm  $\pm$  \_\_\_\_\_ mm {\_\_\_\_\_ inches  $\pm$  \_\_\_\_\_ inches} above the ground at all points for proper impact performance." A TMA which is damaged or appears to be in poor condition shall not be used unless recertified by the manufacturer. The Engineer shall be the sole judge whether used TMAs supplied under this contract need recertification. Each unit shall be certified by the manufacturer to meet the requirements for TMAs in conformance with the standards established by the Transportation Laboratory.

Approvals for new TMA designs proposed as equal to the above approved models shall be in conformance with the procedures (including crash testing) established by the Transportation Laboratory. For information regarding submittal of new designs for evaluation contact: Transportation Laboratory, 5900 Folsom Boulevard, Sacramento, CA 95819.

New TMAs proposed as equal to approved TMAs or approved TMAs determined by the Engineer to need recertification shall not be used until approved or recertified by the Transportation Laboratory.



**SECTION 11. BID FORMS**

**BIDDER'S BOND**

Know All Men by These Present,

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

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the Principal has submitted the above-  
mentioned bid to the County of San Benito, as aforesaid, for certain construction specifically described as follows, for  
which bids are to be opened at \_\_\_\_\_, California, on or about \_\_\_\_\_,  
(City where bid opening) (Date bid opening)

for \_\_\_\_\_  
\_\_\_\_\_  
(exact description including location as on proposal)

NOW, THEREFORE, If the aforesaid Principal is awarded the contract and, within the time and manner required  
under the specifications, after the prescribed forms are presented to him for signature, enters into a written contract, in  
the prescribed form, in accordance with the bid, and files two bonds with the County of San Benito, one to guarantee  
faithful performance and the other to guarantee payment for labor and materials, as required by law, then this obligation  
shall be null and void; otherwise, it shall be and remain in full force and virtue.

IN WITNESS WHERE OF the above-bounden parties have executed this instrument under their several seals this  
\_\_\_\_\_ day of \_\_\_\_\_, 2010, the name and corporate seal of each corporate party being hereto affixed and  
these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

\_\_\_\_\_  
Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Title \_\_\_\_\_

(Attach notary acknowledgment for all signatures and attorney-in-fact certificate for signature by surety's  
representative)

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

The bidder \_\_\_\_\_, proposed subcontractor \_\_\_\_\_, hereby certifies that he has \_\_\_\_\_, has not \_\_\_\_\_, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Date: \_\_\_\_\_

\_\_\_\_\_  
Bidder's business name

By \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Notary Public in and for the County \_\_\_\_\_ of \_\_\_\_\_, State of California

My commission expires \_\_\_\_\_.

[Notary Stamp]

**PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE**

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

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

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

If the answer is yes, explain the circumstances in the following space.

Date: \_\_\_\_\_

\_\_\_\_\_  
Bidder's business name

By \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Notary Public in and for the County \_\_\_\_\_ of \_\_\_\_\_, State of California

My commission expires \_\_\_\_\_.  
[Notary Stamp]

**PUBLIC CONTRACT SECTION 10232 STATEMENT**

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

Note: The above Statement and Questionnaire are part of the Bid.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Date: \_\_\_\_\_

\_\_\_\_\_  
Bidder's business name

By \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Notary Public in and for the County \_\_\_\_\_ of \_\_\_\_\_, State of California

My commission expires \_\_\_\_\_.  
[Notary Stamp]



**PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT**

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder

has \_\_\_\_, has not \_\_\_\_

been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

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

The above Statement is part of the Bid.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Date: \_\_\_\_\_ Bidder's business name \_\_\_\_\_

By \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_ of \_\_\_\_\_, State of California  
Notary Public in and for the County

My commission expires \_\_\_\_\_.  
[Notary Stamp]

**NONCOLLUSION AFFIDAVIT**  
(Title 23 United States Code Section 112 and  
Public Contract Code Section 7106)

To the CITY / COUNTY of \_\_\_\_\_  
*PUBLIC WORKS DIVISION.*

In accordance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

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**To the Clerk of the Board  
San Benito County Board of Supervisors  
Ladies and Gentlemen:**

The undersigned as bidder declares that he or she has carefully examined the location of the proposed work, the plans and specifications and the proposed contract annexed thereto and agrees that if this bid is accepted, to contract with San Benito County, in the form of the copy of the contract attached to the specifications, to provide all the materials (except those specifically mentioned to be furnished by the San Benito County), necessary machinery, tools, apparatus, and other means of construction and do all the work specified in the contract in the manner and time set forth for the improvement of the specified work entitled: COUNTY PROJECT NO. PWB-1805

**Construction shall be in strict conformity with the plans and specifications prepared by the San Benito County Engineer, copies of which are on file in the office of the San Benito County Public Works Department, and which plans and specifications are hereby made a part hereof.**

**The bidder proposes and agrees to contract with San Benito County to perform all of the work, including subsidiary obligations as defined in said specifications for the following prices to wit:**

**COUNTY PROJECT NO. PWB-1805**

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

**BID LIST**

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

**BID SCHEDULE**

<u>Bid Item No.</u>	<u>Bid Item Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Item Total</u>
1	MOBILIZATION	1	LS		
2	CONSTRUCTION AREA SIGNS	1	LS		
3	TEMPORARY CRASH CUSHION MODULE (REFILL & RESET)	11	LS		
4	PORTABLE CHANGEABLE MESSAGE SIGN	2	EA		
5	TRAFFIC CONTROL SYSTEM	1	LS		
6	PREPARE WATER POLLUTION CONTROL PROGRAM	1	LS		
7	CLEARING AND GRUBBING	1	LS		
8	IMPORTED MATERIAL (SHOULDER BACKING)	4	TON		

**FEMA – SAN FELIPE ROAD – TESQUISQUITA SLOUGH BRIDGE**

**BID SCHEDULE TOTAL:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_  
(Please Type or Print Business Name)



BY: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

NAME (Please Type or Print): \_\_\_\_\_

The quantities are approximate only, being given as a basis for the comparison of bids; and the Public Works Division does not, expressly or by implication, agree that the actual amounts of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work as may be deemed necessary or expedient by the Engineer. All bids are to be compared on the bid sheet of the quantities to be done.

JOHN GUERTIN, RESOURCE MANAGEMENT AGENCY DIRECTOR  
COUNTY OF SAN BENITO  
STATE OF CALIFORNIA

NOTES:1. COMPLETE THE FOLLOWING "LIST OF SUBCONTRACTORS" AND "ADDENDUM ACKNOWLEDGEMENT".

**LIST OF SUBCONTRACTORS**

**COUNTY PROJECT NO. PWB-1805**

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

In compliance with the Subletting and Subcontracting Fair Practices Act (Chapter 4 [commencing with Section 4100], Part 1, Division 2 of the Public Contract Code) and any amendments thereto, each bidder shall set forth below: (a) the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement to be performed under this contract or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications in an amount in excess of one-half of one percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of one percent of the prime contractor's total bid or \$10,000, whichever is greater, and (b) the portion of the work which will be done by each subcontractor under this Act. The prime contractor shall list only one subcontractor for each such portion as is defined by the prime contractor in this bid.

If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of the work to be performed under the contract in excess of one-half of one percent of the prime contractor's total bid, he shall be deemed to have agreed that he is fully qualified to perform that portion himself, and that he shall perform that portion himself.

No prime contractor whose bid is accepted shall: (a) substitute any subcontractor, (b) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by any one other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work in excess of one-half of one percent of the prime contractor's total bid as to which his original bid did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act. Subletting or subcontracting of any portion of the work in excess of one-half of one percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the authority awarding this contract setting forth the facts constituting the emergency or necessity.

Portion of Work	Name of Subcontractor	Location and Place of Business
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



**ADDENDUM ACKNOWLEDGEMENT**

**COUNTY PROJECT NO. PWB-1805**

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

TO: COUNTY OF SAN BENITO  
Resource Management Agency  
Public Works Division  
2301 Technology Parkway  
Hollister, CA 95023

1. Pursuant to and in compliance with your Notice to Contractors Inviting Formal Bids and with the other documents relating thereto, the undersigned bidder, having become familiar with the terms of the contract, the local conditions affecting the performance of the contract, the cost of the work at the place where the work is to be done, the project plans and specifications, and the other contract documents, hereby proposes and agrees to perform within the time stipulated and to provide and furnish any and all labor, materials, equipment, transportation, utilities, and services necessary to perform the contract and complete in a workmanlike manner all of the work required in connection with the following project: County Project Number **PWB-1805**, all in strict conformity with the drawing details and specifications and other contract documents, including addenda nos. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, for the sum hereinafter stated.



**SAMPLE CONTRACT**



**COUNTY OF SAN BENITO  
STATE OF CALIFORNIA**

THIS CONTRACT, made and entered into this \_\_ day of \_\_, 2018 between County of San Benito, a political subdivision of the State of California, hereinafter referred to as County, and \_\_\_\_\_, hereinafter referred to as Contractor;

WHEREAS, the San Benito County Board of Supervisors caused plans and specifications for the work hereinafter mentioned to be prepared, and approved and adopted the plans and specifications; and

WHEREAS, the San Benito County Board of Supervisors caused to be noticed for the time and in the manner required by law a Notice inviting sealed Bids for the performance of the work described in the adopted plans and specifications; and

WHEREAS, Contractor, in response to the Notice, submitted a sealed Bid for the performance of the work specified in the adopted plans and specifications to the San Benito County Board of Supervisors within the time and in the manner specified in the Notice; and

WHEREAS, in the manner provided by law, the San Benito County Board of Supervisors received, publicly opened and canvassed the Bids submitted in response to the Notice, including the Bid submitted by Contractor; and

WHEREAS, Contractor was the lowest responsive, responsible Bidder for the performance of said work, and the San Benito County Board of Supervisors, as a result of the canvass of Bids submitted, determined and declared Contractor to be the lowest responsive, responsible Bidder for the work and awarded to it a contract therefore.

NOW, THEREFORE, in consideration of the above, it is mutually agreed between the parties hereto as follows:

1. The CONTRACTOR will commence and complete the construction of the following public work project:

\_\_\_\_\_  
COUNTY PROJECT #PWB-18\_\_

2. The CONTRACTOR shall do all of the work and furnish all of the materials, supplies, tools, equipment, labor, and other services necessary to construct and complete in a good, workmanlike and substantial manner and to the COUNTY'S satisfaction, the project as described in the Invitation for Bids package, including all of the CONTRACT DOCUMENTS.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within \_\_\_\_\_ calendar days after the date of the Notice To Proceed and will complete the same within \_\_\_\_\_ calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.
4. The CONTRACTOR agrees to perform all of the work described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$).

5. The term "CONTRACT DOCUMENTS" means and includes the following, all of which documents are incorporated herein by reference:
- a. INVITATION FOR BIDS "THE BID PACKAGE" INCLUDING BUT NOT LIMITED TO THE FOLLOWING:
    - (1) INVITATION FOR BIDS INCLUDING BUT NOT LIMITED TO THE FOLLOWING:
      - (a) NOTICE TO CONTRACTORS: INVITATION FOR BIDS
      - (b) BID LIST/SCHEDULE
      - (c) GENERAL PROVISIONS: SAN BENITO COUNTY PUBLIC WORKS AND ROADS PROJECTS
      - (d) SPECIAL PROVISIONS
    - (2) PLANS
    - (3) ADDENDA:
      - No. \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_
      - No. \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_
  - b. THE ACCEPTED BID INCLUDING BUT NOT LIMITED TO THE FOLLOWING:
    - (1) BIDDER'S BOND
    - (2) EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION
    - (3) PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE
    - (4) PUBLIC CONTRACT CODE SECTION 10232 STATEMENT
    - (5) PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT (DEBARMENT AND SUSPENSION CERTIFICATION)
    - (6) NON-COLLUSION AFFIDAVIT
    - (7) BID LIST/SCHEDULE
    - (9) SIGNATURE SHEET
    - (10) LIST OF SUBCONTRACTORS
    - (11) ADDENDUM ACKNOWLEDGEMENT
    - (12) CERTIFICATE AS TO WORKER'S COMPENSATION
    - (13) AFFIDAVIT CONCERNING EMPLOYMENT OF UNDOCUMENTED ALIENS
  - c. NOTICE OF AWARD
  - d. CONTRACT, SIGNED BY THE COUNTY AND THE CONTRACTOR
  - e. PERFORMANCE BOND
  - f. PAYMENT BOND
  - g. NOTICE TO PROCEED

h. FUTURE CHANGE ORDERS

All CONTRACT DOCUMENTS are intended to cooperate, so that any work called for in one and not mentioned in another is to be executed the same as if mentioned in all. However, should there be any conflict between the terms of this instrument and the CONTRACTOR'S Bid, then this instrument shall control. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the CONTRACTOR'S Bid, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of the Bid conflicting herewith. Where the specific terms and conditions in any of the referenced CONTRACT DOCUMENTS conflict with general terms and conditions in any referenced CONTRACT DOCUMENTS, the more specific terms and conditions shall be deemed to control. However, the general terms and conditions in any referenced CONTRACT DOCUMENTS shall remain in full force and effect, to the extent they do not conflict with the specific terms and conditions in any referenced CONTRACT DOCUMENTS.

6. The COUNTY will pay to the CONTRACTOR in the manner and at such times set forth in the CONTRACT DOCUMENTS such amounts as required by the CONTRACT DOCUMENTS.
7. In lieu of the COUNTY retaining a portion of progress payments due the CONTRACTOR, the CONTRACTOR may elect to deposit qualifying securities equivalent to the amount to be withheld. Upon such deposit under an escrow agreement substantially in the form specified in section 22300(e) of the Public Contracts Code, the funds shall be released.
8. Eight (8) hours of labor shall constitute a legal day's work, and the CONTRACTOR or any subcontractor under him, in the performance of the contract, shall not require more than eight (8) hours of labor in any calendar day, or more than forty (40) hours of labor in any calendar week, from any person employed by the CONTRACTOR in the performance of the work under this Contract, except as permitted under the provisions of Section 1815 of the Labor Code of the State of California. The CONTRACTOR shall forfeit, as penalty to the County, twenty-five dollars (\$25.00) for each worker employed by the CONTRACTOR or any subcontractor under the CONTRACTOR in the performance of the contract for each calendar day during which any worker is required or permitted to labor more than eight (8) hours and for each calendar week during which any worker is required or permitted to labor more than forty (40) hours, in violation of the provisions of such Labor Code.
9. The Contractor and subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
10. Pursuant to Section 1770 et seq. of the California Labor Code, the CONTRACTOR shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. The statement of prevailing wages appearing in the General Prevailing Wage Rates, as established by the California Department of Industrial Relations, is hereby specifically referred to and by this reference is made a part of this contract. Copies of the Prevailing Wage Scale are available at the following website: [http://www.dir.ca.gov/DLSR/statistics\\_research.html#PWD](http://www.dir.ca.gov/DLSR/statistics_research.html#PWD). Those copies shall be made available to any interested party upon request. Failure to pay such prevailing wages shall subject the employer to the penalties set forth in 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 the worker was paid less than the prevailing wage rate shall be paid to each worker by the CONTRACTOR or subcontractor. An error on the part of the COUNTY does not relieve the CONTRACTOR or any subcontractor from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code sections 1770 through 1775.

11. The CONTRACTOR and each subcontractor must keep accurate payroll records of employees on public contracts and certify these records upon request, pursuant to Section 1776 of the California Labor Code and implementing regulations set forth in Title 8, Division 1, Chapter 8, Subchapter 3, sections 16000 and 16400 through 16404 of the California Code of Regulations. Payroll records must be made available for inspection by employees, the County, and the Division of Labor Standards Enforcement. The CONTRACTOR shall be responsible for compliance by the CONTRACTOR'S subcontractors.
12. The CONTRACTOR shall be subject to the examination and audit of the State auditor, at the request of the County or as part of any audit of the County, for a period of three (3) years after final payment under the contract.
13. During the performance of this Contract, Contractor agrees as follows:
  - a. During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability, medical condition (cancer related), marital status, pregnancy, age (over 18), sex, sexual orientation, veteran's status or any other non-merit factor unrelated to job duties. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
  - b. The Contractor shall, in all solicitations or advertisements for employees by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, pregnancy, sex, sexual orientation, age (over 18), veteran status, or any other non-merit factor unrelated to job duties.
  - c. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.
14. The CONTRACTOR offers and agrees to assign to the COUNTY all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this CONTRACT. This assignment shall be made and become effective at the time the COUNTY tenders final payment to the CONTRACTOR, without further acknowledgment by the parties.
15. This CONTRACT shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
16. The following individuals are the parties CONTRACT Administrators:

COUNTY'S Contract Administrator:

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

CONTRACTOR'S Contract Administrator:

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

This CONTRACT shall not be effective unless and until approved by a duly authorized representative of County of San Benito and San Benito County Counsel.



IN WITNESS WHEREOF, County of San Benito and Contractor have caused this Agreement to be signed as of the day and year first above written.

**CONTRACTOR (FIRM)**

\_\_\_\_\_ Date \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

*COUNTY OF SAN BENITO*

\_\_\_\_\_ Date \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**  
San Benito County Counsel's Office

\_\_\_\_\_ Date \_\_\_\_\_  
Shirley L. Murphy, Deputy County Counsel

**COUNTY OF SAN BENITO**  
**PAYMENT BOND**  
(Civil Code Section 3249)

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, the County of San Benito has awarded to Principal, as Contractor, a contract for the following project:

COUNTY CONTRACT NO. **PWB-1805**

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

AND WHEREAS, Principal, as Contractor, is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics, materialmen, and other persons furnishing labor and materials on the project, as provided by law.

NOW, THEREFORE, we \_\_\_\_\_, as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto the County of San Benito, a political subdivision of the State of California (hereinafter called "County"), and to the persons named in California Civil Code section 3181 in the penal sum of \_\_\_\_\_, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the Principal, or any of Principal's heirs, executors, administrators, successors, assigns, or subcontractors, (1) fails to pay in full all of the persons named in Civil Code Section 3181 with respect to any labor or materials furnished by said persons on the project described above, or (2) fails to pay in full all amounts due under the California Unemployment Insurance Code with respect to work or labor performed on the project described above, or (3) fails to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Unemployment Insurance Code section 13020 with respect to such work and labor, then the Surety shall pay for the same.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract on the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

If suit is brought upon this bond by the County and judgment is recovered, the Surety shall pay all litigation expenses incurred by the County in such suit, including court costs, expert witness fees and investigation expenses.

This bond inures to the benefit of any of the persons named in Civil Code section 3181, and such persons or their assigns shall have a right of action in any suit brought upon this bond, subject to any limitations set forth in Civil Code sections 3247 et seq. (Civil Code, Division 3, Part 4, Title 15, Chapter 7: Payment Bond for Public Works).

IN WITNESS WHERE OF the above-bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

Surety

By \_\_\_\_\_

Title \_\_\_\_\_

(Attach notary acknowledgment for all signatures and attorney-in-fact certificate for signature by surety's representative)

**COUNTY OF SAN BENITO  
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, the County of San Benito has awarded to Principal, \_\_\_\_\_ as Contractor, a contract for the following project:

**FEMA - SAN FELIPE ROAD - TESQUISQUITA SLOUGH BRIDGE**

AT

**SOUTH OF TESQUISQUITO SLOUGH AND NORTH OF BOLSA ROAD  
ON THE SANTA ANA CREEK**

COUNTY CONTRACT NO. PWB-1805

WHEREAS, Principal, as Contractor, is required to furnish a bond in connection with said contract, to secure the faithful performance of said contract.

NOW, THEREFORE, we \_\_\_\_\_, as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto the County of San Benito, a political subdivision of the State of California (hereinafter called "County"), in the penal sum of \_\_\_\_\_, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the Principal, as Contractor, or Principal's heirs, executors, administrators, successors, or assigns, (1) shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions, and agreements in said contract and any alteration thereof made as therein provided, on Principal's part to be kept and performed, at the time and in the manner therein specified and in all respects according to their true intent and meaning, and (2) shall defend, indemnify and save harmless the County, the members of its board of supervisors, and its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and virtue.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract on the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

If suit is brought upon this bond by the County and judgment is recovered, the Surety shall pay all litigation expenses incurred by the County in such suit, including court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.



(Corporate Seal)

Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Title \_\_\_\_\_

(Attach notary acknowledgment for all signatures and attorney-in-fact certificate for signature by surety's representative)

