

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: CHIEF EXECUTIVE OFFICE

BOARD AGENDA # B-14

Urgent _____ Routine _____

AGENDA DATE February 27, 2001

CEO Concurs with Recommendation YES mm NO _____
(Information Attached)

4/5 Vote Required YES _____ NO _____

SUBJECT:

APPROVAL OF PLANS AND SPECIFICATIONS FOR THE JUVENILE HALL SPECIAL
NEEDS HOUSING UNIT PROJECT AND RELATED ACTIONS.

STAFF
RECOMMEN-
DATIONS:

1. APPROVE THE DESIGN APPROACH AND CONSTRUCTION BID DOCUMENTS FOR THE JUVENILE HALL SPECIAL NEEDS HOUSING UNIT AND APPROVE THE RECOMMENDED BID ALTERNATIVES.
2. AUTHORIZE THE STAFF TO REVIEW BIDS AND RECOMMEND AWARD FOR BID APPROVAL.
3. AUTHORIZE THE PROJECT MANAGER TO ADVERTISE AND ISSUE INVITATIONS TO BID. SET BID DATE FOR APRIL 4, 2001 AT 2:30 P.M.

(Continued Page 2)

FISCAL
IMPACT:

The estimated project cost is \$4,351,854. Of this \$3,006,854 is reimbursable from a grant approved by the California Board of Corrections. The remaining \$1,345,000 is a County cost. The Board has established an initial allocation of \$400,000 to begin design through bid documents and approved the remaining \$945,000 in the 2000/2001 County budget. The anticipated ongoing operational staffing cost for the addition will be \$1,090,000 beginning in November 2002.

BOARD ACTION

No. 2001-151

On motion of Supervisor Blom, Seconded by Supervisor Caruso, and approved by the following vote,

Ayes: Supervisors: Mayfield, Blom, Simon, Caruso, and Chair Paul

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) _____ Denied

3) _____ Approved as amended

Motion:

Christine Ferrero

File No.

STAFF
RECOMMEN-
DATIONS

(Con'd.)

4. AUTHORIZE THE AUDITOR TO TRANSFER THE COUNTY MATCH FUNDS APPROVED IN 2000/2001 BUDGET AND AUTHORIZE THE AUDITOR TO MAKE THE PROPER JOURNAL ENTRIES.
5. AUTHORIZE THE PROJECT MANAGER TO ADVERTISE FOR TESTING SERVICES AND NEGOTIATE AND SIGN A CONTRACT ON BEHALF OF THE BOARD
6. AUTHORIZE THE PROJECT MANAGER TO NEGOTIATE AND AWARD INSPECTION CONTRACT.
7. AUTHORIZE THE PROJECT MANAGER TO NEGOTIATE A FINAL CONTRACT WITH THE STATE BOC FOR THE GRANT AND TO RETURN THE CONTRACT TO THE BOARD FOR EXECUTION.

DISCUSSION:

In December 1996 the Board of Supervisors adopted the study and recommendations of the Juvenile Justice Master Plan Advisory Committee. The report outlined a vision for a balanced response to Juvenile crime problems in Stanislaus County. The plan contained elements ranging from prevention and early intervention to suppression and enforcement.

The enforcement recommendation of the plan included three facility recommendations:

- ❖ Expand Juvenile Hall to 153 beds.
- ❖ Create a 60-bed Camp/Ranch.
- ❖ Develop a Special Needs Housing Unit to provide mental health and substance abuse services at Juvenile Hall.

The County has been successful in obtaining four grants totaling \$5.5 million, which has enabled the construction of 30-maximum security beds, a new health services unit, a new control center, upgraded security electronics, installation of fire safety equipment, a police sally port and the 40-bed special needs unit at Juvenile Hall.

The Special Needs Unit was originally envisioned a 30-bed housing unit, where wards requiring health or substance abuse counseling could be separated from the other wards to prevent victimization and provide enhanced treatment programs.

The capacity of the housing unit was increased to 36-beds when the grant was submitted to the Board of Correction (BOC). This could be done with no increase in construction cost and it enabled the County to better compete with other Counties on a cost per bed model.

The Board of Corrections awarded \$3,006,854, on July 15, 1999, to construct the Special Needs Housing Unit. Construction must begin prior to May 1, 2001 and be completed by October 2, 2002.

Subsequently the Board of Corrections recommended the capacity be further increased to 40-beds to maximize the staff to ward ratio.

In June 2000, the Board authorized staff to contract with TRG/LRS Justice to design the 40-bed Special Needs Housing Unit.

There has been significant input from Probation, to the Architect, resulting in the design presented to you today. The design has been reviewed by the BOC, the State Fire Marshal and Carl Mileff and Associates (CMA) who contracted with the County to do the Code Review.

On October 24, 2000, the Board of Supervisors approved the proposed schematic design for the Special Needs Housing Unit at Juvenile Hall. The Special Needs Housing Unit is a 12,890 square foot, single level housing pod divided into two 20-bed units. It is located at the north end of the recently constructed hallway, allowing space for a future programmed maximum unit. This placement allows for immediate access to the outdoor recreation yard. Each unit has ten 100 square foot 2-person cells. This will allow for classification flexibility up to its maximum capacity of 40-wards. On the west side of the housing unit are storage, interview space and an academic classroom that can serve as a group counseling room after school hours.

The unit is designed to have a medium level of security, consisting of stainless fixtures, metal doors and impact resistant glass. The exterior doors are controlled electronically from central control; interior doors are controlled from within the unit. Wards housed in this unit will eat at the dining facilities located outside of the unit, though they can be fed within the unit if needed. Wards will recreate in the existing outside recreation yard.

Though the capacity of the housing pod has increased from 30 to 40, the new design is within the budget for construction. The construction budget is \$3,070,265. The estimate of probable construction cost by the Architectural team and reviewed by the Construction Manager is \$3,005,500. Nine Bid Alternates have been identified for cost control. These nine alternates could reduce the construction bid by more than \$200,000 if necessary to maintain the budget.

The project is required by law to have code required testing and the Project Manager recommends contracting for Quality Control Inspections to protect the interest of the County. The Project Manager recommends issuing a Request for Proposals to qualified test laboratories in order to negotiate a contract with appropriate firm.

APPROVAL OF PLANS AND SPECIFICATIONS FOR THE JUVENILE HALL SPECIAL NEEDS HOUSING UNIT PROJECT
AND RELATED ACTIONS

Page 4

Although the grant has been approved by the Board of Corrections the contract cannot be signed until after the bids are received and a contract awarded to the General Contractor. The Project Manager requests permission to compete the contract negotiation with the state and to return the contract to the Board for execution.

POLICY

ISSUE:

The expansion of Juvenile Hall is consistent with the Board of Supervisors policy for developing a safe and healthy community.

STAFFING

IMPACT:

The Special needs Unit will require an addition of 16.5 full-time equivalent employees to the Probation Office. One additional clinician and one counselor added to Mental Health. The enlargement of the capacity of this unit from 30 to 40-beds should not affect staffing size.

STANISLAUS
COUNTY
JUVENILE HALL

SPECIAL NEEDS
HOUSING UNIT

REQUEST FOR BIDS

VOLUME 1 OF 2

STANISLAUS COUNTY
JUVENILE HALL SPECIAL NEEDS HOUSING UNIT

Modesto, California

Issued for Bid February 28, 2001

OWNER

STANISLAUS COUNTY
1010 10th Street, 6th Floor
Modesto, CA 95354

CONSTRUCTION MANAGER

STANISLAUS COUNTY CAPITAL PROJECTS
850 10th Street
Modesto, CA 95354
(209) 558-4100

ARCHITECTS

LRS ARCHITECTS
1121 SW Salmon Street, Suite 100
Portland, OR 97205
(503) 221-1121 (503) 222-4737

in

Association with

TRG CONSULTING
75342 Montecito Drive
Indian Wells, CA 92210
(760) 862-0050 (760) 862-0027

TABLE OF CONTENTS

**STANISLAUS COUNTY JUVENILE HALL
SPECIAL NEEDS HOUSING UNIT**

VOLUME 1 of 2

PART A Notice Inviting Bids

PART B Instruction to Bidders

PART C BID FORM

PART D Noncollusion Affidavit/Nondiscrimination Affidavit

PART E General Design/Construction Contract

PART F Performance and Payment Bonds

PART G General Conditions

PART H Division 1

VOLUME 2 of 2

PART J Technical Specifications

**STANISLAUS
COUNTY**

**SPECIAL
NEEDS
HOUSING
UNIT**

Owner: STANISLAUS COUNTY
Attn: Chief Executive Office
1010 10th Street, Suite 6800
Modesto, CA 95354

Architect: LRS Architects, Inc.
in association with
TRG Consulting, Inc.

Construction
Manager:
Stanislaus
Capital Projects

Part A

**Invitation to
Bid**

INVITATION TO BID

Contractors are invited to submit written, formal bids for the

STANISLAUS COUNTY JUVENILE HALL SPECIAL NEEDS HOUSING UNIT

NOTICE IS HEREBY GIVEN that sealed bids will be received by the County of Stanislaus, by the Clerk of the Board of Supervisors, 1010 10th Street, 6th Floor, Modesto, California, 95354, until **2:30 PM, on April 4, 2001**, for furnishing all labor, materials, equipment, tax, transportation, and services necessary for the Stanislaus County Juvenile Hall Special Needs Housing Project, all in accordance with the Contract Documents now on file with the County's Capital Projects, located as noted above.

Bids will be opened by or on behalf of the Board at the Board of Supervisors Chambers, located at 1010 10th Street, Basement Level, immediately **after 2:30 PM on said April 4, 2001**. Bids will be tabulated after the bid opening by the County's Project Manager.

Copies of the Contract Documents may be obtained from Stanislaus Capital Projects located at 850 10th Street, Modesto, CA 95354, attn: Millie Longstreet. The Contract Documents will cost **\$100.00, Nonrefundable. "Make checks payable to "Stanislaus County."**

Bidders should contact the County's Capital Projects with any questions concerning the bid documents or the bid process:

Stanislaus Capital Projects
Attn: Don Phemister
(209)558-4100
(209)558-4078 Fax

A Mandatory Prebid Conference is scheduled for **10:00 AM, March 22, 2001**, at the Stanislaus County Juvenile Hall, 2215 Blue Gum Avenue, Modesto, CA 95358.

No bidder may withdraw his bid for a period of ninety (90) calendar days after the time set for the opening of bids, and the Board will act to accept or reject bids within that period of time. This period may be extended by mutual consent of the Owner and the successful Contractor.

Approved by the Board of Supervisors of the County of Stanislaus on February 27, 2001.

By: Christine Ferraro Tallman, Clerk of the Board
Stanislaus County
State of California

Part B

**Instructions to
Bidders**

INSTRUCTIONS TO BIDDERS

1. Bids: To receive consideration, bids shall be made in accordance with the following instructions:
 - A. Bids shall be made on the bid form provided by the Owner, a copy of which is included in the bid documents. All items on the bid form should be filled out; numbers should be stated both in writing and in figures; and the signatures of all individuals must be in longhand. The completed bid form shall be without interlineation, alterations, or erasures.
 - B. Bids shall not contain any recapitulation of the work to be done. Alternative bids will not be considered unless requested.
 - C. Should a bidder find discrepancies in or omissions from the drawings or other contract drawings, or be in doubt as to their meaning, the bidder shall at once notify in writing the County's Construction Manager. The Owner will send written responses to questions submitted by bidders. No verbal interpretations should be made. Inquiries will be answered in writing and distributed to all bidders in the form of addenda to the Contract in ample time before the bid opening date.
 - D. All addenda issued during the bidding period will become a part of the Contract Documents for the project.
 - E. Pursuant to the provisions of Section 4100 et seq. of the Public Contract Code, every bidder shall in his bid set forth:
 1. The name and location of the place of business of each subcontractor who will perform work or labor or render service to the bidder in or about the work in an amount in excess of one-half of one percent of the total bid.
 2. The portion of the work which will be done by each subcontractor. If the bidder fails to specify a subcontractor for any portion of work to be performed under the Contract in excess of one-half of one percent of the total bid, the bidder agrees to perform that portion himself. The successful bidder shall not, without the consent of the Owner:
 - a. Permit any subcontractor to be assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the bid.
 - b. Other than in the performance of change orders, sublet or subcontract any portion of the work in excess of one-half of one percent of total bid as to which the bidder's original bid did not designate a subcontractor.

The Owner may legally consent to a substitution only in the limited cases enumerated in Section 4107 of the Public Contract Code.

- F. Bids must be accompanied by a certified or cashier's check, or bidder's bond for an amount not less than ten percent (10%) of the bid, made payable to the order of the County of Stanislaus. A bond shall be issued by a California-admitted surety. Said check or bond shall be given as a guarantee that the bidder will enter into a contract if awarded the work, and in case of refusal or failure to enter into a contract, it is agreed that the check or bond, as the case may be, shall be retained by the Owner as the measure of stipulated liquidated damages.
 - G. Bids shall be addressed to the Owner and shall be delivered to the Owner enclosed in an opaque sealed envelope, addressed to the Board of Supervisors of Stanislaus County, 1010 10th Street, 6th Floor, Suite 6700, Modesto, CA 95354. Each envelope shall bear the title of the work and the name of the bidder. No telephone or telegraphic bids or amendments to bids shall be effective.
 - H. Bids will be opened in the Board of Supervisor's Chambers, 1010 10th Street, Basement Level, Modesto, CA 95354.
2. Withdrawal of Bids: Bids may be withdrawn by the bidder prior to but not after the time fixed for opening of bids. Bidders, or their representatives, and other interested persons may be present at the opening of the bids.
 3. Award or Rejection of Bids: The Owner reserves the right to reject any or all bids received. The Contract, if awarded, will be awarded to the **LOWEST RESPONSIBLE BIDDER** based on the lowest total bid received (base bid plus selected alternates) provided the bid is compliance with these instructions and the advertised Invitation to Bid, provided the bidder's bid is reasonable, and it is to the interest of the Owner to accept the bid.
 4. Alternates: The bid may contain additive and/or deductive unit prices and alternates. The Owner, for cost considerations, may select additive and/or deductive prices before determining the lowest bidder. The Owner's selection of alternates will be based on price, cost, and budget considerations, and not the identity of the Contractor.
 5. Responsibility: Any bidder before being awarded a contract will be required to furnish evidence satisfactory to the Owner that the bidder and the bidder's proposed subcontractors have sufficient means and experience in the type of work called for to assure completion of the Contract in a satisfactory manner. The Owner reserves the right to reject the bid of any bidders who have previously failed to perform properly or to complete on time Contract of a nature similar to this Project.
 6. Contractor's License Classification: The Contractor shall possess the following classification of Contractor's license at the time the contract is awarded: B (Public Contract Code Section 3300).

7. Rejection of Bids; Waiver of Informality or Irregularity: The Owner reserves the right to reject any or all bids or alternates and waive any informality or irregularity in the bids or in the bidding process.
8. Examination of Contract Documents and Site of Work: Before submitting a bid, bidders should examine the Contract Documents and become thoroughly familiar with same. They should visit the site of the proposed work, examine any improvement and any work that may have been done thereon. They should fully inform themselves of all conditions on, in, at, and about the site, the building, and the proposed new work that is to be done.
9. Form of Contract: The form of Contract which the successful bidder will be required to execute, if awarded the work, is the Stanislaus County General Construction Contract, a copy of which is included herein.
10. Equals: Pursuant to Section 3400 of the Public Contract Code, any item or requirement calling for a designated material, product, thing, or service by specific brand or trade name shall be construed as being followed by the work "or equal" so that bidders may furnish any material, product, thing, or service **which is in all respects equal to the time specified, or better**, including but not limited to size, quantity, guarantees, and materials.

If the Contractor elects to provide a product he considers to be equal to or better than the specified item, it is the Contractor's responsibility to submit complete documentation to the Architect and the Owner to demonstrate that the proposed equal is in fact equivalent in all respects to the specified product. Also, documentation shall be submitted in accordance with the time limits and other requirements of Clause 21 of the General Conditions. If the proposed equal is rejected by the Architect, the Contractor must provide the specified product or one of the equivalent products listed in the specifications at no increased cost to the Owner. A request for substitution and all information substantiating the request for substitution shall be provided to the Construction Manager within fifteen (15) days of bid opening, and prior to award of the Contract (See Public Contract Code Section 3400).

Items considered by the Contractor to be equal but rejected by the Architect, may be considered as substitutions only if a request is submitted in accordance with Clause 21 of the General Conditions. If accepted by the Owner and the Architect, the difference in cost between the proposed substitution and the specified items may result in a change of the Contract amount.

11. Insurance/Bonds:
 - A. The successful bidder will be required to obtain the following insurance as specified in Clause 11 of the General Conditions:
 - 1) Workers' Compensation Insurance and Employer's Liability Insurance. A written endorsement providing a waiver of subrogation is required. The Contract to whom this public work's contract is awarded certifies as follows:

“I am aware of the provision of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers’ Compensation or to undertake self-insurance in accordance with the provisions of the code, and I will comply with such provisions before commencing the performance of the work on this Contract”

- 2) Auto Liability Insurance and General Liability Insurance (covering Bodily Injury and Property Damage), providing coverage on “an occurrence” basis. A written endorsement providing a waiver of subrogation is required. Additionally, the County of Stanislaus, its officers, agents and employees, shall be named as additional insured by separate endorsement.
 - 3) Builder’s Risk (Fire) Insurance.
- B. The successful bidder will also be required to furnish Faithful Performance and Payment (Labor and Material) Surety Bonds. The required Bond Forms are included in Part D. The bonds shall be issued by a California-admitted surety.
 - C. Bonds and insurance shall be provided by the Contractor within ten (10) days of award of the Construction Contract.
12. Retention; Substitution of Securities; Escrow in Lieu of Retention: The Contract provides that funds will be withheld from the Contractor as retention (See Clause 65 of the General Conditions). The Contractor may elect to substitute securities for funds withheld or enter into an Escrow Agreement for Security Deposits in Lieu of Retention pursuant to Public Contract Code Section 22300.
 13. Completion Date/Liquidated Damages: Time is of the essence in this Contract. The Contractor must commence work on the project the first working day following receipt of Notice to Proceed issued by the Owner. The project must be completed within Three Hundred and Eighty (380) Calendar days after receipt of the Notice to Proceed. The Contract will provide for **Liquidated Damages in the amount of SEVEN HUNDRED FIFTY DOLLARS (\$750) per day** for each day the work is not completed beyond the time specified in the preceding paragraph and in the bid form.
 14. Anti-Discrimination: The successful bidder shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. The Contractor shall comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and all rules, regulations, and relevant order of the President’s Committee on Equal Employment Opportunity created thereby. The Contractor will be required to certify that the Contractor does not discriminate against the handicapped. A copy of the required certification document is included herein.
 15. Noncollusion Affidavit. Each bidder is required to sign the noncollusion affidavit included herein.

16. Unique Requirements: The Contractor is advised to carefully review all Contract Documents, including both the General Conditions, Supplemental General Conditions and Division 1 for unique requirements.
17. Notice to Proceed:
 - A. The Notice to Proceed is contingent upon (1) award of the Contract, (2) the receipt by the County of an executed Contract, (3) the receipt by the County acceptable payment and performance bonds, (4) the receipt by the County of all insurance requirements, and (5) the receipt by the County of all bidding information identified in the following paragraph. The Contractor must complete and provide to the County all of these requirements within ten days after award of the Construction Contract.
 - B. The Contractor shall not begin construction until he has notified the Construction Manager of his intention to do so, stating the time when work is to commence. Such notices shall be issued at least twenty-four (24) hours prior to the time when actual work is scheduled to commence. The job shall be continuously staffed with no interruption of work by the Contractor. The Contractor shall keep the Construction Manager advised of his work schedule with weekly work plans.
18. Bidding Information: The Contractor shall, in a separate, sealed envelope(s), provide all information upon which the bid is based, including but not limited to logs, quotes, telephone records, estimates, spread sheets, etc. This information must be submitted prior to issuance of the notice to proceed, together with insurance and bonds. The bid information will be transmitted with a letter certifying that all information contained in the sealed envelope(s) is complete and was the basis of the bid. The information will remain sealed unless there is need for the information as determined by the County for change or claims. The information will be returned to the Contractor at the end of the project upon receipt of a release of liens and claims.
19. Security Clearance. The Contractor and all subcontractors working on the project may be required to comply with the County's security clearance procedures.
20. Mandatory Prebid Conference: A Mandatory Prebid Conference is schedule for March 22, 2001, at 10:00 A.M., at the following location: Stanislaus County Juvenile Hall, 2215 Blue Gun Avenue, Modesto, CA 95358
21. Security Clearance: The Contractor and all subcontractors working on the Project will be required to comply with Stanislaus County's Juvenile Hall Security Clearance Procedures.

BUILDERS' EXCHANGE LIST

8/7/00

B.I.D.S., Inc.

3935 Coronado Avenue
Stockton, CA 95204
(209) 464-4559
(209) 464-0522 **Fax**
Attn: Valerie

North Coast Builders' Exchange

987 Airway Court
Santa Rosa, CA 95403
(707) 542-9502
(707) 542-2027 **Fax**

Builders' Exchange of Stockton

Plan Room
7500 North West Lane (95210)
P. O. Box 8040 (95208)
Stockton, CA
(209) 478-1000
(209) 478-2132 **Fax**

Sacramento Builders' Exchange

1331 T Street
Sacramento, CA 95814
(916) 442-8991
(916) 446-3117 **Fax**

Construction Data

130 Doolittle Drive
San Leandro, CA 94577
(510) 636-1812
(510) 636-1858 **Fax**

Shasta County Builders' Exchange

2990 Innsbruck Drive
Redding, CA 96003
(530) 221-5556
(530) 221-2140 **Fax**

Construction Market Data

1540 River Park Drive, Suite 117
Sacramento, CA 95815
(916) 568-2747
(916) 568-2749 **Fax**

Valley Builders' Contractor's Exchange

951 East Eighth Street
Chico, CA 95928
(530) 343-1981
(530) 343-3503 **Fax**

Builders' Exchange of Alameda County

3055 Alvarado Street
San Leandro, CA 94577
(510) 483-8880
(510) 352-1509 **Fax**
Attn: Maureen

Peninsula Builders' Exchange

735 Industrial Road
San Carlos, CA 94070
(650) 591-4486
(650) 591-8108 **Fax**
Attn: Mike

Daily Pacific Builders

F.W. Dodge Reports

1625 Van Ness Avenue, 3rd Floor
San Francisco, CA 94109-3609
(415) 447-7870
(415) 447-7872 **Fax**
Attn: Mavis - Plan Room

Sacramento Builders' Exchange

North Roseville Office
1 Sierragate Plaza, #120A
Roseville, CA 95678
(916) 782-4762 or 969-5315
(916) 782-4792 **Fax**
Attn: Sally

(Send Specs, Plans & Addendums Only)

BUILDERS' EXCHANGE LIST

8/7/00

Fresno Builder's Exchange

1244 North Mariposa Street
Fresno, CA 93703
(559) 237-1831
(559) 264-2532 **Fax**

San Francisco Builders' Exchange

850 South Van Ness Avenue
San Francisco, CA 94110
(415) 282-8220
(415) 821-0363 **Fax**

Merced-Mariposa Builders' Exchange

410 West Main Street, Suite C (95340)
P. O. Box 761 (95341-0761)
Merced, CA
(209) 722-3612
(209) 722-0207 **Fax**

Tulare Kings County Builders' Exchange

636 West Oak
Visalia, CA 93291
(559) 732-4568
(559) 732-7568 **Fax**

Contra Costa Builders' Exchange

1900 Bates Avenue, Suite E
Concord, CA 94520
(925) 685-8630
(925) 685-3424 **Fax**
Attn: Jessica Patrice

Valley Builders' Exchange

1118 Kansas Avenue
Modesto, CA 95351
(209) 522-9031
(209) 522-0616 **Fax**

Humboldt Builders' Exchange

2355 Myrtle Avenue
Eureka, CA 95501
(707) 442-3708
(707) 442-6051 **Fax**

Builders' Exchange of Santa Clara County

400 Reed Street
P. O. Box 58032
Santa Clara, CA 95050
(408) 727-4000
(408) 727-2779 **Fax**

El Dorado Builders' Exchange

3430 Robin Lane, Suite 7
Cameron Park, CA 95682
(530) 672-2955
(530) 672-2985

Fresno B.I.D.S Office

1303 North Rabe, Suite 102
Fresno, CA 95727
(559) 252-5367
(559) 252-1155 **Fax**

Kern County Builders' Exchange, Inc.

1121 Baker Street
Bakersfield, CA 93305
(661) 324-4921
(661) 324-5364 **Fax**

Placer County Builder's Exchange

271 Auburn Ravine Road
Auburn, CA 95603
(530) 889-3953
(530) 889-3956 **Fax**

BUILDERS' EXCHANGE LIST

8/7/00

Solano-Napa Builders' Exchange

135 Camino Dorado
Napa, CA 94558-6213
(707) 255-2515
(707) 255-2749 Fax

NOTICES ONLY TO FOLLOWING:

**** R. Com ****

P. O. Box 361736
Milpitas, CA 95036
(408) 936-9022
(408) 946-9023 Fax

**(Send Only "Invitation to Bidders" or
"Notice to Contractors" and Itemized Bid Results)**

**** Construction Data ****

Attn: Tennyson Long
1791 Tribute Road, Suite D
(916) 920-2240
(916) 920-9368 Fax

**(Send only "Invitation to Bidders or
"Notice to Contractors")**

Part C

Bid Form

BID FORM

BID OPENING DATE: APRIL 4, 2001
DEADLINE OF BID SUBMISSION: 2:30 PM

STANISLAUS COUNTY JUVENILE HALL SPECIAL NEEDS HOUSING UNIT

Honorable Board of Supervisors
County of Stanislaus "OWNER"
c/o Chief Executive Office
1010 10th Street, 6th Floor, Suite 6700
Modesto, California 95354

Dear Board Members:

Pursuant to the Invitation to Bid, and in compliance with the Instruction to Bidders, having reviewed the Contract Documents and the site(s) of work, the undersigned hereby proposes to furnish all work, labor, materials, transportation, equipment, and services necessary, including State of California and local sales or use taxes, license, and permit fees, for the Stanislaus County Juvenile Hall Special Needs Housing Unit Project, all in accordance with the Specifications and Drawings, and other Contract Documents, together with Addenda issued prior to or at the time of bidding, if any, now on file with the Chief Executive Office of Stanislaus County, for the sum of

_____ Dollars, (\$ _____) for the base bid.

See Specifications for scope of Bid Alternates

IMPORTANT: Circle Additive or Deductive Alternate

Alternate 1. DELETE two (2) Light Monitors, one (1) from each day room as indicated on the drawings _____
\$ _____ Add/Deduct

Alternate 2. DELETE four (4) Light Monitors, two (2) from each day room as indicated on the drawings _____
\$ _____ Add / Deduct

Alternate 3. DELETE specified Plumbing Fixtures C-1 and C-2, twenty (2) fixtures total and replace with detention grade porcelain WC-2 and L-2 as indicated in Section 15400. Include all associated plumbing changes required. LRS Architects will furnish the Specification Section _____
\$ _____ Add / Deduct

Alternate 4. DELETE Ceramic Tile Floor and base at Showers 118, 119, 120, 121, 143, 144, 145 and 146 (approximately 250 sq. ft.) Replace with epoxy coating to floor as specified in Section 09000 and Specification Section 09900. LRS will furnish the Specification Section

_____ \$ _____ Add / Deduct

Alternate 5. DELETE new AC Paving as indicated on drawings. We will delete the paving west of the new fence gate. We will delete only the asphalt surface and no additional engineering will be required _____

_____ \$ _____ Add / Deduct

Alternate 6. ADD approximately 150 sq. yd. of Carpet Type C-1 and associated accessories in day rooms as indicated on drawings and as specified in Section 09860. The Schools will provide the carpet in the classrooms _____

_____ \$ _____ Add/Deduct

Alternate 7. Add twelve (12) detention grade tables with integral stools as indicated on drawings and as specified in Accessory Schedule 11000 and Specification Section 11191 _____

_____ \$ _____ Add/Deduct

Alternate 8. ADD four (4) 4 ft x 8 ft whiteboards as indicated on drawings and as specified in Accessory Schedule 11000 and Section 10115 _____

_____ \$ _____ Add/Deduct

Alternate 9. ADD 8-inch fire line as indicated on Drawing C-3. The note on Drawing C-3 should be changed to read 8" WF Line _____

_____ \$ _____ Add/Deduct

All bid entries must be filled in. The Base Bid must be filled out and each alternate must reflect clearly whether it is an "add" or "deduct." Any bid where all elements are not filed in will be considered to be **non-responsive**.

The Owner, for cost and/or need considerations, may select the Base Bid as submitted and additive and/or deductive alternates submitted to determine the lowest bidder.

If awarded the Contract, work will commence on the first working day following receipt from the Owner of the Notice to Proceed.

By submission of a bid, a bidder certifies possession of duly issued and valid Contractor's license issued by the State of California, which license authorized bidder to contract to perform the type of work required by the specifications. Should the bidder fail to provide below the number and classification of bidder's State of California Contractor's License, the Owner may reject this bid.

Contractor _____

By: _____

Title: _____

Mailing Address: _____

Telephone No. _____

Facsimile No. _____

State of California License No. _____

State of California License
Classification: _____

Dated this _____ Day of _____, _____.

(NOTE TO BIDDERS: No bid shall be valid unless signed by the person making the bid. If the party is an individual, the same shall be signed by the individual; if the party is a partnership, the name of the partnership shall be given and signed by one of the partners; if the party is a corporation, the bid should be signed by the corporation by its properly authorized officer or officers.)

Pursuant to Business and Professions Code 7028.15, I further certify, under penalty of perjury under the laws of the State of California, that the representations made herein are true and correct.

Part D

Noncollusion
Affidavit

Nondiscrimination
Affidavit

NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER
AND SUBMITTED WITH BID

State of California
County of Stanislaus

_____ (name), being first duly sworn, deposes and says that
he or she is the _____ (title) of _____

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

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

Dated: _____

Signature

Title

NON-DISCRIMINATION OF THE HANDICAPPED

POLICY STATEMENT

In compliance with Section 51.55, Office of Revenue Sharing, Department of the Treasury, it is the policy of the County of Stanislaus that it will not aid or perpetuate discrimination against a qualified handicapped individual by funding an agency, organization or person that discriminates on the basis of handicap in providing any aid, benefit or service to beneficiaries of the program or activity.

The County of Stanislaus is committed to provide access to all County services, programs and meetings open to the public to people with disabilities.

In this regard, the Contractor and subcontractors will take all reasonable steps in accordance with ORS Section 51.55 to ensure that handicapped individuals have the maximum opportunity for the same level of aid, benefit or service as any other individual.

CERTIFICATION

Each agency, organization or person seeking a bid, contract or agreement with the County of Stanislaus shall sign a Certification of Compliance with Section 504 of the Rehabilitation Act of 1973 as incorporated in the Revenue Sharing Act.

CERTIFICATION OF BIDDER REGARDING NON-DISCRIMINATION OF THE HANDICAPPED

The bidder hereby certifies that he/she is in compliance with Section 504 of the Rehabilitation Act of 1973 as incorporated in the Revenue Sharing Act, the applicable administrative requirements promulgated in response thereto, and any other applicable Federal laws and regulations relating to handicap discrimination and participation.

Name of Bidder: _____

Business Address: _____

City, State, Zip Code: _____

Telephone: _____

By: _____ Title: _____
(Signature)

Date: _____

Part E

General
Construction
Contract

This Contract entered into as of the date first written above.

CONTRACTOR

Contractor's License No.

STANISLAUS COUNTY

Reagan M. Wilson
Chief Executive Officer

APPROVED AS TO FORM

Michael H. Krausnick
Stanislaus County Counsel

Part F

**Performance and
Payment Bonds**

PERFORMANCE BOND TO ACCOMPANY CONTRACT

Know All Men by These Presents:

THAT WHEREAS, a Construction Contract, which contract and any alterations are incorporated herein in full by this reference, has been awarded to _____

_____ as principal, hereinafter designated as the "Contractor," for the work described as follows:

Stanislaus County _____ Project, Bid Package _____

AND WHEREAS, the Contractor is required to furnish a bond in connection with said Contract guaranteeing the faithful performance thereof;

NOW, THEREFORE, we the undersigned Contractor and Surety, are held and firmly bound unto the County of Stanislaus in the sum of _____

Dollars (\$ _____), to be paid to the said County of Stanislaus, its successors or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if the above Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to, abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof made as therein provided on his or their 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 shall indemnify and save harmless the County of Stanislaus, its officers, employees and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this ____ day of _____, _____.

Contractor

(Seal)

Name of Surety

By _____
Attorney-in -Fact

PAYMENT BOND TO ACCOMPANY CONTRACT

Know All Men by These Presents:

THAT WHEREAS, a Construction Contract, which contract and any alterations thereto are incorporated herein in full by this reference, has been awarded to _____ hereinafter designated as the "Contractor," for the work described as follows:

Stanislaus County Juvenile Hall Special Needs Housing Unit Project

AND WHEREAS, said Contractor is required by the provisions of Chapter 7, Title 15, Part 4, Division 3, Section 3247 et seq., Civil Code, to furnish a bond in connection with said Contract, as hereinafter set forth.

NOW THEREFORE, we the undersigned Contractor and Surety, are held and firmly bound unto the County of Stanislaus in the sum of _____

DOLLARS (\$ _____), said sum being determined in accordance with the provisions of Section 3248 of the Civil Code, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if said Contractors, his or its heirs, executors, administrators, successors or assigns, or subcontractors, shall fail to pay any materials, provisions, provender or other supplies or teams, implements or machinery, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, as required by the provisions of Chapter 7, Title 15, Part 4, Division 3 of the Civil Code, and provided that the claimant shall have complied with the provisions of said Code, the surety or sureties hereon will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said surety or sureties will pay a reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any and all persons, companies or corporations entitled to file claims under Section 3181 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

IN WITNESS WHEREOF, we have hereto set our hand and seals on this ____ day of _____, _____.

Contractor

(Seal)

Name of Surety

By _____
Attorney-in-Fact

Part G

DIVISION 1

GENERAL CONDITIONS INDEX

A.	GENERAL	1
	Clause 1, Definitions	1
	Clause 2, Specialist/Preferences	3
	Clause 3, Authorities and Limitations	3
	Clause 4, Legal Requirements	4
	Clause 5, Standard References	5
	Clause 6, Permits, Licenses & Fees	5
	Clause 7, Separate Contracts	5
	Clause 8, Representative & Architect/Engineer	5
B.	BONDS & INSURANCE	6
	Clause 9, Bid Bond (Guarantee)	6
	Clause 10, Performance and Payment Bonds	6
	Clause 11, Insurance	6
C.	SITE CONDITIONS	8
	Clause 12, Differing Site Conditions	8
	Clause 13, Site Investigations & Conditions Affecting Work	8
	Clause 14, Dimensions & Measurements	8
	Clause 15, Notice of Conflicting Conditions	8
D.	SPECIFICATIONS AND DRAWINGS	8
	Clause 16, Specifications and Drawings, General	8
	Clause 17, Summary of the Order of Precedence	9
	Clause 18, Clarifications/Request for Information and Additional Instructions	9
E.	SHOP DRAWINGS AND SUBMITTALS	10
	Clause 19, Shop Drawings, Product Data, Coordination Drawings and Schedules	10
	Clause 20, Samples	11
	Clause 21, Substitutions	11
F.	SCHEDULES	12
	Clause 22, Construction Schedule	12
G.	TIME AND LIQUIDATED DAMAGES	12
	Clause 23, Time of Work, Liquidated Damages and Extensions	12

H.	PERFORMANCE	14
	Clause 24, Supervision & Construction Procedures	14
	Clause 25, Supervision	14
	Clause 26, Conduct of Work	15
	Clause 27, Protection of Work & Property	15
	Clause 28, Overloading	15
	Clause 29, Contractor's Responsibility for Work	15
	Clause 30, Utilities	15
	Clause 31, Working Hours	16
	Clause 32, Material & Workmanship	16
	Clause 33, Layout of Work	16
	Clause 34, Use of Premises	16
	Clause 35, Operations & Storage	17
	Clause 36, Heat	17
	Clause 37, Cleaning Up	17
I.	SAFETY & HEALTH	17
	Clause 38, Accident Prevention	17
	Clause 39, Sanitary Facilities	18
	Clause 40, Responsibility for Compliance with OSHA	18
	Clause 41, Toxic and Hazardous Materials & Waste	18
J.	OWNER-FURNISHED PROPERTY	18
	Clause 42, Owner-Furnished Property	18
K.	BENEFICIAL OCCUPANCY	19
	Clause 43, Beneficial Occupancy	19
L.	INSPECTION AND TESTING	19
	Clause 44, Inspection and Testing	19
	Clause 45, Condemned Materials and Labor	20
	Clause 46, Inspection by Other Jurisdictions	20
	Clause 47, Final Inspection and Tests	20
M.	ACCEPTANCE	21
	Clause 48, Acceptance of the Work	21
N.	WARRANTY AND GUARANTEES	21
	Clause 49, Contractor's Warranty and Guarantee	21
O.	ENVIRONMENTAL PROTECTION	22
	Clause 50, Dust Control	22
	Clause 51, Excessive Noise	22
	Clause 52, Pollution Control, Cleaning	22

P.	EMPLOYMENT PRACTICES	22
	Clause 53, Qualifications for Employment and Apprenticeship Standards	22
	Clause 54, Hours of Work	23
	Clause 55, Wages & Records	23
	Clause 56, Notice of Labor Disputes	24
	Clause 57, Nondiscrimination	24
Q.	SUBCONTRACTING	25
	Clause 58, Subcontractors	25
	Clause 59, Relations of Contractor and Subcontractor	25
	Clause 60, Subcontracts	25
R.	TAXES	26
	Clause 61, Sales and Payroll Taxes	26

S.	CHANGES	26
	Clause 62, Change Order Work Notification	26
	Clause 63, Change Order Process	26
	Clause 64, Audit	29
T.	PAYMENT	30
	Clause 65, Payment	30
	Clause 66, Final Payment	31
	Clause 67, Assignment	32
U.	SUSPENSION OF WORK, TERMINATION	32
	Clause 68, Suspension of Work	32
	Clause 69, Non-Compliance with Contract Requirements	32
	Clause 70, Termination	33
V.	DISPUTES/CLAIMS	35
	Clause 71, Disputes/Claims	35

CONSTRUCTION CONTRACT GENERAL CONDITIONS

A. GENERAL

Clause 1 - Definitions

Whenever the following terms, pronouns in place of them, or initials of organizations appear in the Contract Documents, they shall have the following meaning:

Acceptance - "Acceptance" is when the Owner determines all of the Contract requirements have been completed (based on the closeout procedures set forth herein). A copy of the acceptance by the Board of Supervisors will be sent to the Contractor. Upon receipt of the acceptance, the Contractor will be relieved of the duty of maintaining and protecting the work. After acceptance of the work, the Owner will initiate final settlement and payment in accordance with the Contract Documents and state statutes.

Act of God - "Act of God" means an earthquake with a magnitude of 4.5 or greater on the Richter scale, flood, tornado, or other cataclysmic phenomenon of nature or rain, snowstorm, windstorm, high water, or other natural phenomenon in excess of the norm as established by NOAA weather data.

Addendum - A document issued by the Owner during the bidding period which modifies, supersedes, or supplements the original Contract Documents.

AED - Association Equipment Distributors. Organization providing a listing of equipment rental charges.

Agreement - The written document of Agreement, executed by the Owner and the Contractor commonly known as the .

Architect/Engineer - Shall mean the architect, engineer, individual, partnership, corporation, association, joint venture or any combination thereof, employed by the Owner and designated in the Contract Documents.

Beneficial Occupancy - The right of the Owner to occupy all or any portion of the project prior to final completion of the work. Such occupancy does not constitute acceptance or substantial completion by the Owner of the work or any portion thereof, nor will it relieve the Contractor of the responsibility for correcting defective work or defective materials found at any time before acceptance of the work.

Bid - The offer of the bidder to perform the work when made out and submitted on the prescribed bid form, properly executed and guaranteed.

Bid Form - The form upon which the Owner requires a formal bid be prepared and submitted for the work.

Bidder - Any individual, partnership, corporation, association, joint venture, or any combination thereof, which has submitted a proposal for the work, acting directly, or through a duly authorized representative.

Board or Board of Supervisors - The term "Owner", where used herein, shall mean the Board of Supervisors of the County of Stanislaus, the duly elected officials which have the ultimate legal authority in all matters pertaining to the .

Bulletin - A "bulletin" is a document consisting of supplemental details, instruction or information, issued by the Architect/Engineer through the Owner after the Award of Contract, which clarifies or corrects the Contract Documents.

Change or Change Order - A document issued by the Owner which authorizes any change or equitable adjustment to the Contract Documents in accordance with the Changes Clause of this Contract.

Construction Manager - "Construction manager" as used under this , shall be as designated in the Contract Documents. The Construction Manager is the Owner's duly authorized agent and representative with respect to this project.

Contract or Contract Documents - The "Contract" or "Contract Documents" shall mean the written Agreement covering the performance of the work and the furnishing of labor, materials, tools, and equipment in the construction of the work. The Contract Documents include:

Invitation to Bid
Instructions to Bidders
Construction Contract
Addenda, if Any
Accepted Bid
Bonds and Insurance
General Conditions
Special Conditions
Division 1; Division 2 through 16
Plans, Drawings and Specifications
Any and all supplemental Agreements or written

Agreements covering alterations, amendments, bulletins or extensions to the and include Contract Change Orders.

Contract Drawings - "Contract Drawings" or "Drawings" means and includes (a) all Drawings which have been prepared on behalf of the Owner and are included in the Contract Documents and all modifying drawings issued by Addenda thereto; (b) all Drawings submitted pursuant to the terms of the Contract by the Contractor with his/her proposal to the Owner during the progress of the work which are accepted by the Owner; and (c) all Drawings submitted by the Owner to the Contractor during the progress of the work.

Contractor; Subcontractors - "Contractor" means the prime or principal Contractor, including all joint ventures, subcontractors, equipment, or material suppliers, and their employees. References to subcontractor or others are only for convenience and all such references shall be considered to refer to the Contractor. The prime or principal Contractor shall be responsible for all subcontractors, and all subcontractors shall require their subcontractors to comply with the relevant provisions of the prime or principal contract.

County or Owner - Shall mean the County of Stanislaus.

Critical Path Method (CPM) - "Critical path method" is a schedule technique.

Day - "Day" or "working day" means a calendar day and shall include every day including Saturdays, Sundays, and legal holidays.

Directed - "Directed," "designated," "permitted," "required," "accepted," and words of like import, wherever and in whatever manner used, with or without reference to the Owner, means as directed, designated, permitted, required, and accepted by the Owner.

Field Instruction - Is an instruction given during the course of the work.

Final Completion - "Final Completion" is that point in the Contract as determined by the Owner through a final inspection that the Contractor has completed all physical work and is ready to prepare for final closeout and acceptance as prescribed herein. All work is complete, accessible, operable, and usable by the Owner; all parts, systems and site work are 100% complete and cleaned for the

Owner's use. The Owner will issue a certificate of final completion.

General Notes - The written instructions, provisions conditions, or other requirements appearing on the drawings, and so identified thereon, which pertain to the performance of the work.

Herein - "Herein," "hereinafter," and words of similar import shall refer to the Contract Documents.

Inspector - "Inspectors" are the agents of the Owner who are responsible for monitoring the Contractor's performance and quality of work on the project.

Install - "Install," wherever and in whatever manner used, shall mean the installation complete in place of any item of equipment or material.

Liquidated Damages - The amount prescribed in the Contract to be paid to the Owner or to be deducted from any payment due or to become due the Contractor for each day's delay in completing the whole or any specified portion of the work beyond the time allowed in the Contract, plus approved time extensions.

Material or Materials - "Materials(s)" shall be construed to include machinery, equipment, manufactured articles, materials, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract, except where a more limited meaning is indicated by the context.

May - "May," wherever and in whatever manner used, is permissive.

Modification to the Contract - See change orders above.

NOAA - National Oceanic and Atmospheric Administration (U.S. Government Agency).

Notice to Bidders/Invitation to Bidders - The public advertisement inviting sealed bids for the work.

Notice to Proceed - The "Notice to Proceed" is the written notification issued by the Owner giving the Contractor notice that he shall commence with the prosecution of his work as defined in the Contract Documents. The day following receipt of the Notice to Proceed will constitute the first calendar day of the specified duration to bring the work to Substantial

Completion as determined by the Owner (unless specified otherwise).

Owner - County of Stanislaus.

Plans - The official drawings including plans, elevations, sections, detail drawings, diagrams, general notes, information and schedules thereon, or exact reproductions thereof, adopted and approved by the Owner showing the location, character, dimension, and details of the work. The term "Plans and Specifications", where used herein, shall mean and include all specifications and provisions of any kind, whether general, detailed or otherwise, relating to the labor, equipment, material or work in the installation thereof, and the plans and drawings, if any, accompanying same which are made a part thereof.

Provide - "Provide," wherever and in whatever manner used, shall be understood to mean provide complete in place, that is, furnish and install.

Request for Change - Shall mean any detailed written request for a monetary change or equitable adjustment.

Request for Information - The written form and procedure established for communication between the Contractor and Owner/ Architect/Engineer to clarify or interpret the Contract Documents or discover conflicts, omissions, or errors in the Contract Documents. In addition, the Request for Information may be a precursor to Potential Change Orders and the document to transmit bulletins as prepared by the Architect to the Contractor.

Shall or Will - "Shall" or "will," whenever used to stipulate anything is mandatory, means shall or will be done or be performed by either the Contractor or the Owner and means that the Contractor or the Owner has thereby entered into a covenant with the other party to do or perform the same.

Shown - "Shown," "indicated," "detailed," and words of like import, wherever and in whatever manner used, with or without reference to the drawings, means shown, indicated, or detailed on the drawings (or other documents).

Singular - "Singular" words include the plural and vice versa.

Specifications - "Specifications" means and includes:

- a. All specifications which have been prepared on behalf of the Owner and are included in the Contract Documents and all modifications issued by addenda thereto;

- b. All specifications or descriptive literature submitted pursuant to the terms of the Contract by the Contractor with his/her proposal of the work which are accepted by the Owner and;

- c. All specifications submitted by the Owner to the Contractor during the progress of the work.

Specified - "Specified," "described," or "noted," wherever and in whatever manner used, means as specified, described, shown or noted in the Contract Documents.

Subcontractor - An individual, partnership, corporation, association, joint venture, or any combination thereof, who contracts at any tier with the Contractor (or subcontractor) to perform work or labor, render service in or about the work or improvement, 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. The term "subcontractor" shall not include those who supply materials only.

Submittals - The term "Submittals" shall include shop drawings, calculations, samples, schedules, procedures, manufacturer's brochures, pamphlets catalog cuts, color charts, or other descriptive data, clearly defining the article, material, equipment, or device proposed for use in the work. The Shop Drawings are the drawings and diagrams showing details of fabrication and erection which the Contractor is required to submit to the Architect/Engineer through the Construction Manager.

Submitted - "Submitted," wherever and in whatever manner used, means submitted to the Owner for review or acceptance.

Substantial Completion - "Substantial Completion" is when the Owner determines the contract work can be used for its intended purpose as prescribed by the closeout procedures contained herein. The Contractor will be so notified when the work is substantially complete and it is the point at which guarantees or warranties begin and liquidated damages end. Substantial completion does not constitute acceptance or final completion of the work. Remaining omissions and defects must be completed prior to final completion and acceptance

Sufficient - "Sufficient," "necessary," "proper," "acceptable," "satisfactory," "desirable," and words of like import wherever and in whatever manner used, with or without reference to the

Owner, means sufficient, necessary, proper, acceptable, satisfactory, and desirable in the judgment of the Owner.

Superintendent - The representative of the Contractor as approved by the Owner who shall be present at the work site at all times during performance of the work. Such Superintendent shall at all times be fully authorized to receive and act upon instructions from the Owner's authorized agents and to execute and direct the work on behalf of the Contractor.

Supplier - "Supplier" shall mean an individual, partnership, firm, or corporation, or legally constituted joint venture entering into an Agreement with the Owner, Contractor or subcontractor for furnishing a portion of the work which requires no labor at the job site, other than common carriers.

Work - The furnishing and installing of all labor materials, articles, supplies, and equipment as specified, designated, or required by the Contract Documents.

Clause 2 - Specialist/Preferences

- a. The term "Specialist" as used in the Contract Specification shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular work force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the Contract, installing items required by the Contract, or otherwise performing work required by the Contract. Where the Contract Specifications require installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision.

Clause 3 - Authorities and Limitations

The Board of Supervisors alone shall have the power to bind the Owner and to exercise the rights, responsibilities, authorities, and functions vested herein by the Contract Documents, except that it shall have the right to designate authorized representatives to act for the Board.

The Owner has designated the Assistant Chief Executive Officer as the Project Manger. All work shall be performed under the general direction of the Project Manager.

The Owner has also designated the Construction Manager to serve as the Owner's agent in connection with the work.

The Owner may, at any time during the performance of this Contract, vest in any such authorized representatives additional power and authority to act for him or designate additional representatives.

The Contractor shall perform the Contract in accordance with any order (including, but not limited to, instruction, direction, interpretation, or determination) issued by an authorized representative (either the Project Manager or the Construction Manager) in accordance with his/her authority to act for the Owner.

Clause 4 - Legal Requirements

- a. Contractor shall keep informed of, and comply with, all federal, state, regional, county, and city laws, ordinances, rules, and regulations applicable to the work or to those engaged or employed in the work of this Contract, especially (but not limited to) those laws relating to hours of employment, minimum wages, payment of wages, sanitary and safety conditions for workers, worker's compensation insurance, type and kind of materials that can be used, non-discrimination in employment and affirmative action programs. Contractor shall indemnify and save harmless the Owner, its officers, agents (such as Construction Manager and Architect) and employees from all claims, suits, or actions arising from or based on the violation of any such law, rule, or regulation, whether violation is committed by Contractor, or his/her subcontractors, suppliers, agents, or employees. The existence of these provisions does not excuse the Contractor from complying with other statutory requirements or provisions which are not set forth in these Contract Documents.

If conflict arises between provisions of the plans and specifications and any such laws, rules, or regulations, Contractor shall notify Owner at once in writing. If, before receiving clarification, Contractor performs any portion of the work affected by such apparent conflict, such performance shall be at Contractor's own risk; and it shall not be entitled to any additional compensation or time by reason of the conflict or its later correction.

Contractor shall be responsible for liability imposed by law on Contractor for damage to any persons or property

resulting from defects or obstructions or from any cause whatsoever during progress of the work or at any time before acceptance or thereafter.

- b. All work and materials shall be in full accordance with the latest (or otherwise noted) codes, rules, and regulations including, but not limited to, the following:

Uniform Building, Electrical & Plumbing Ordinances adopted by Stanislaus County

Uniform Fire Code

State Fire Marshal

State Codes and Ordinances

State Industrial Accident Commission's Safety Orders

Rules of Local Utilities

Local City and/or County Ordinances

Nothing in the specifications is to be construed to permit work not conforming to the above, and all expense related to complying with the above rules and regulations shall be borne by the Contractor. Whenever the specifications and working details require higher standards than those required by the ordinances, codes and statutes, the specifications and working details shall take priority over the ordinances, codes and statutes. The Contractor will keep copies of codes on the job site at all times during construction.

- c. Royalties and Patents. The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner, its agents and employees free and harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has information that the process or articles specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information in writing to the Construction Manager.
- d. Assignment of Contract. The Contractor shall not assign the Contract or sublet it in whole or part without written consent of the owner, nor shall the Contractor

assign any monies due or to become due to him hereunder without the written consent of the Owner.

- e. Taxes. Any federal, state or city tax payable on articles furnished by the Contractor under the Contract shall be included in the Contract price paid by the Contractor.
- f. Assignment of Anti-Trust Actions. In entering into a Public Works Contract or a subcontract to supply goods, services, or materials pursuant to a Public Works Contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Public Works Contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

Clause 5 - Standard References

- a. All documents and publications (such as, but not limited to, manuals, handbooks, codes, standards, and specifications) which are cited in this Contract for the purpose of establishing technical (non-administrative) requirements applicable to equipment, materials, or workmanship under this contract, shall be deemed to be incorporated herein as fully as if printed and bound with the specifications of this Contract, in accordance with the following:
- b. Wherever reference is made to any such document, the Contractor shall comply with the requirements set out in the edition specified in this Contract or, if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the solicitation on this project, except as modified by, as otherwise provided in, or as limited to type, class, or grade, by the specifications of this Contract.
- c. All work herein specified shall be performed in accordance with applicable sections of the following Standard Specifications or Codes which are herein named and hereby made a portion of these Specifications.

In a case of conflict between these Specifications and said Standards, these Specifications shall be paramount.

Stanislaus County Ordinance Code Title 16
(Uniform Building Code)

Stanislaus County Ordinance Code Title 16
(Uniform Plumbing Code)

Stanislaus County Ordinance Code Title 16
(National Electric Code)

Stanislaus County Ordinance Code title 16
(Uniform Mechanical Code)

Standard Specifications of the California Business
and Transportation Agency, Department of
Transportation

Stanislaus County Improvements Standards

Title 24 Cal State Building Code

Clause 6 - Permits, Licenses & Fees

The Contractor shall, at his expense, obtain all necessary permits and licenses, easements, etc., for the construction of the project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules, and regulations relating to the work and to the preservation of the public health and safety.

Clause 7 - Separate Contracts

The Owner reserves the right to let other contracts in connection with the work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

To insure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report in writing to the Construction Manager and to the Architect/Engineer any discrepancy between the executed work and the drawings. If the Contractor proceeds, he will have accepted the preceding work.

Clause 8 - Project Manager and Architect/Engineer

a. Project Manager. The Owner has designated the Assistant Chief Executive Office as its Project Manager during the work who may be known as "Project

Manager." The Owner has also selected a Construction Manager to serve as the Owner's agent in connection with the work. The Project Manager and the Construction Manager shall have the right to be at the job site during construction and shall supervise any Construction Managers, job inspectors, agents or representatives appointed by the Owner.

Project Manager's and Construction Manager's Right to Observe. The Project Manager and Construction Manager will have the right to observe the installation of all materials and equipment to be incorporated into the work and the placing of such material and equipment to determine in general if the work is proceeding in accordance with the Contract Documents. The Project Manager and/or the Construction Manager will keep the Owner informed as to the progress of the work. The Project Manager and the Construction Manager shall not be responsible for means, methods, techniques sequences, or procedures of construction nor for safety precautions and programs in connection with the work, nor will they be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents.

b. Architect/Engineer: The Owner has retained an Architect/Engineer for this project. The Architect/Engineer will advise and consult with the Owner, and the Owner will issue instructions to the Contractor as directed. The Architect/Engineer will be requested to interpret the requirements of the Contract Documents and judge the performance of the Contractor's work. As requested by the Owner, the Architect/Engineer will, within reasonable time, render such interpretations as he may deem necessary for the proper execution of the work (see clarifications clause)

As requested by the Owner, Architect/Engineer will make periodic visits to the job site to familiarize itself generally with the progress and quality of the work and to determine in general whether such work is proceeding in accordance with the Contract Documents. Based on such observations he may be requested to recommend approval of applications for progress payments made by Contractor.

B. BONDS & INSURANCE

Clause 9 - Bid Bond (Guarantee)

- a. Failure to furnish a bid guarantee, in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.
- b. The offeror (bidder) shall furnish a bid guarantee in the form of a firm commitment, such as a bid bond, certified check, cashier's check, or irrevocable letter of credit of not less than ten percent (10%) of the amount of the bid payable to the County of Stanislaus. "The amount of the bid" is defined to include all additive alternates and no deductive alternates. The check, bonds or letter of credit shall be given as a guarantee that the successful bidder will enter into a written Contract within ten (10) days after award and will be considered as the stipulated amount of liquidated damages in the event the bidder is unable to or refuses to execute a Contract for the work. The Owner will return bid guarantees, other than bid bonds, to (1) unsuccessful bidders as soon as practicable after the opening of bids and (2) the successful bidder upon execution of Contractual Documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.
- c. If the successful bidder, upon acceptance of its bid by the Owner within the period specified for acceptance, fails to execute all Contractual Documents or provide the performance and/or payment bond(s) as required by the solicitation within the time specified, the Owner may terminate the Contract for default.
- d. The bidder shall allow ninety (90) days for acceptance of its bid.
- e. In the event the Contractor is terminated for default, the Contractor is liable for differences in the re-bid costs and County costs of bidding the work that exceeds the amount of its bid, and the bid guarantee shall be available to offset the difference.

Clause 10 - Performance and Payment Bonds

- a. The Contractor shall furnish the Owner, within ten (10) days (or as otherwise specified) of the execution of a Contract for the work called for in the specifications and prior to beginning of work, with the following separate surety bonds:

- (1) **Faithful Performance Bond**. Said bond shall be in an amount equal to one hundred percent (100%) of the Contract price, shall be for the faithful performance of the Contract, shall be approved by the Owner, and shall be secured from a surety or sureties satisfactory to said Owner.
- (2) **Payment Bond for Public Works**. The Contractor shall furnish a separate surety bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the payment of all persons for furnishing materials, provisions, or other supplies, or items, used in, upon, for, or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond.

Each of said bonds shall be substantially in the form attached to and located at the end of these General Conditions.

- b. The Contractor shall promptly furnish additional security required to protect the Owner and persons supplying labor or material under this Contract if:
 - (1) Any surety upon any bond furnished with this Contract becomes unacceptable to the Owner;
 - (2) Any surety fails to furnish reports on its financial condition as required by the Owner; or
 - (3) The Contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Owner.

Clause 11 - Insurance and Indemnification

The Contractor shall not commence work under this Contract until he has obtained all insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained.

a. Worker's Compensation Insurance and Employer's Liability Insurance. The Contractor shall take out and maintain during the life of this Contract Worker's Compensation Insurance and Employer's Liability Insurance for all of his employees employed at the site of the project and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless employees are covered by the protection afforded by the Contractor, as follows:

- (1) Worker' Compensation insurance with limits which are in compliance with the laws of the State of California.
- (2) Employers liability insurance of no less than Five Hundred Thousand Dollars (\$500,000) per occurrence.

In signing this Contract, the Contractor makes the following certification, required by Section 1861 of the Labor Law:

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

b. Automobile and General Liability. The Contractor shall maintain throughout the term of this Contract policy(ies) of (a) automobile insurance and (b) general liability insurance as follows:

- (1) Owned/non-owner automobile liability insurance providing combined single limits covering bodily injury and property damage liability with limits no less than One Million Dollars (\$1,000,000) per accident.

Comprehensive general liability insurance providing combined single limits (CSL) covering bodily injury and property damage liability (including death resulting therefrom) with limits of no less than Two Million Dollars (\$2,000,000) per occurrence.

The CGL policy shall contain a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract including the indemnification and the hold harmless requirements.

- c. Builder's Risk/Fire Insurance. The Contractor shall at his expense maintain Builder's Risk and Fire Insurance, which includes Extended Coverage, Vandalism and Malicious Mischief endorsements, jointly in the names of the Owner and Contractor, payable as their respective interest may appear, such insurance at all times to be of sufficient amount to cover fully all loss or damage to the work under this Agreement, resulting from fire or the perils covered by such insurance in an amount not less than 100% of Contract price.
- d. Rating. All of the above insurance policies shall be underwritten by a California admitted insurance carrier with Best's Rating of B+:VII or better or a U.S. domestic insurance carrier with a Best's Rating of A-:XV.
- h. "Occurrence" policies. All policies shall provide coverage on "an occurrence" basis, and shall be in place before the commencement of any work under the Contract.
- i. Waiver of Subrogation. All policies of insurance shall include, by separate endorsement, a waiver of the insurance carrier's rights of subrogation against the County, its officers, employees and agents.
- j. Contractor's Insurance is Primary. Any insurance as required to be carried by the Contractor shall be primary to any other insurance carried by the County of Stanislaus, its officers, agents or employees.
- k. Additional Insured Endorsement. The County, its officers, employees and agents, shall be named as additional insured by separate endorsement.
- l. Certificate of Insurance. The Contractor shall require of the insurance carriers (or producing agency(ies)) certificates of insurance and separate endorsements verifying the extent of coverages, limits of liability, and all requirements as set forth herein.

The certificate shall provide that the insurer or its agent shall give thirty (30) days written notice to the County of Stanislaus prior to the cancellation, non-renewable, or reduction in coverage(s).

All certificate of insurance sheets shall be on an original form (not photo copy). Authorized representative signatures on the certificate must be originals.

- m. **Indemnification.** Contractor shall indemnify, defend and hold harmless the Owner and its officers, employees and agents (such as the Construction Manager and Architect) from all claims, demands, damages, suits, liability or legal action of any kind or nature, including personal injury or property damage (“Claims”) arising out of or encountered in connection with this Contract or the prosecution of work under it which are directly or indirectly caused, occasioned or contributed to in whole or in part by reason of any act, omission, active or passive negligence, or wrongful act of the Contractor, or of anyone acting under his direction and control, including Claims caused, in whole or part, by Contractor or its agents, employees, or subcontractors employed on the project, their agents or employees, or products installed on the project by Contractor or his subcontractors, excepting only such injury or harm as may be caused solely and exclusively by Owner's fault or active negligence. Such indemnification shall extend to Claims occurring after completion of the project as well as during the work's progress.
- n. **Hold Harmless.** The Contractor will save, keep, and hold harmless the Owner and all officers, employees, and agents (such as the Architect and Construction Manager) thereof from all Claims relating to any infringement or alleged infringement of the patent rights of any person or persons, firm or corporation in consequence of the use in, on or about said work, of any article or material supplied or installed under this Contract.
- o. **Subcontractor's Responsibility.** The Contractor shall insert the insurance, indemnification and hold harmless requirements set forth in this clause in all subcontracts under this Contract and shall require subcontractors to provide and maintain the insurance required herein.

C. **SITE CONDITIONS**

Clause 12 - Differing Site Conditions

- a. The Contractor shall promptly (no more than one day), and before the conditions are disturbed, give a written notice to the Owner as to (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site of an unusual nature, which differ materially from those normally encountered and generally recognized as inherent in the work of the character provided for in the Contract, or (3) conflicting utilities identified by Government Code Section 4215.
- b. The Owner shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, a change order shall be made under this clause and the Contract modified in writing in accordance with the changes clause and the Contract modified in writing accordingly.
- c. No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed unless the Contractor has given the written notice required.
- d. No request by the Contractor for a change to the Contract for differing site conditions shall be allowed if made within 7 days of discovering the condition.

Clause 13 - Site Investigation and Conditions Affecting the Work

- a. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to: (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, water table, river stages, tides, or similar physical conditions at the site; (4) the conformation and condition of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and

quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Owner, as well as from the drawings and specifications made a part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Owner.

- b. Except as provided below, the Owner assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Owner. Nor does the Owner assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in these Contract Documents.
- c. In the event the work involves digging trenches or excavations that extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the Owner, in writing, of any:
 - 1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with the provisions of existing law.
 - 2. Subsurface or latent physical conditions at the site differing from those indicated.
 - 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
 - 4. Upon receipt of the written notice from the Contractor identifying the hazardous waste; subsurface or latent physical conditions or unknown

physical conditions, the Owner will investigate the conditions.

5. In the event the Owner determines 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, the Owner will issue a change order pursuant to the procedures set forth in the Contract Documents.

6. In the event of a dispute between the Owner and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain all rights provided either by Contract or by law which pertain to the resolution of disputes and protests herein. (Public Contract Code Section 7104).

Clause 14 - Dimensions and Measurements

All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place, shall be verified and calculated by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to the Construction Manager before any work affected thereby has been performed. Failure to notify the Owner before starting work will be considered acceptance by the Contractor. Where doubts as to dimensions exists, Owner shall determine the correct dimensions.

Clause 15 - Notice of Conflicting Conditions

Where the Contractor's work is associated with that of another Contractor retained by Owner, the Contractor shall examine the preceding or adjacent work and report in writing to the Construction Manager any visible defect or condition preventing the proper execution of his Contract. If he proceeds without giving notice, the Contractor shall be held to have accepted the work or material, and the existing conditions, and shall be responsible for any defects in his own work consequent thereon, and shall be relieved of any

obligation or any guarantee because of any such condition or imperfection. This provision shall be included in any and all other contracts or subcontracts for work to be performed where such a conflict could exist.

D. SPECIFICATIONS AND DRAWINGS

Clause 16 - Specifications and Drawings, General

- a. Coordination of Work. For convenience, specifications, plans and drawings are arranged into several sections, but such separation shall not be considered as the limits of the work required of any separate trade. The terms and conditions of such limitations are wholly between the Contractor and his subcontractors. Requirements contained in any section are required as if contained in all sections and are the responsibility of the Contractor. The Contractor prior to awarding subcontracts will assure the work required as a whole has been coordinated among the subcontracts.
- b. As-Built Drawings. The Contractor shall keep on the work site a current copy of the drawings and specifications and shall at all times give the Owner access thereto.

The Contractor will be given one extra set of drawings and specifications which shall be kept at the site of the work at all times and updated weekly. Payment may be withheld if drawings are not kept current. Exact locations of all pipes and conduits and all changes in construction and details shall be indicated and dimensions provided upon these drawings, and all changes in materials and equipment installed shall be indicated in these specifications. Upon completion of the work, the "as-built" drawings and specifications shall be returned to the Owner prior to the final payment.

In general, the working details will indicate dimensions, position, and kind of construction, and the specifications, qualities, and methods. Any work indicated on the working details and not mentioned in the specifications, or vice versa, shall be furnished as though fully set forth in both. Work not particularly detailed, marked, or specified shall be the same as similar parts that are detailed, marked, or specified.

In case of discrepancy in the documents, the matter shall be promptly submitted in writing to the Construction Manager, who shall refer the matter to the Project

Manager. The Project Manager shall make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Owner shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided. (See Clause 18).

- c. Similar Drawings. Where the word "similar" occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.
- d. Standard Details. Standard details or specification drawings are applicable when listed, bound with specifications, noted on the drawings or referenced elsewhere in the specifications. Where the notes on the drawings indicate modifications, such modifications shall govern.
- e. Document Clarity. The Contractor is required to produce documents that are clear and legible.

Clause 17 - Summary of the Order of Precedence

In case of conflicts between the Contract Documents the order of precedence shall be as follows:

- a. Modifications or changes last in time are first in precedence.
 - b. Addenda.
 - c. Owner-Contractor Agreement.
 - *d. General Conditions except for specific modifications thereto stated in the Supplementary Conditions or Division One Specification.
 - *e. Supplementary Conditions.
 - *f. Division 1 Specifications.
 - *g. Division 2 thru 16 Specifications.
- *Note: Should there be conflict among the general Conditions, Supplementary Conditions and Division One Specifications the more restrictive will apply.
- h. Drawings; as between figures given on drawings and the scaled measurements, the figures shall govern; as

between large-scale drawings and small-scale drawings, the larger scale shall govern. Structural drawings will take precedence over architectural drawings.

- i. As between detailed drawings and standard plates bound within the specifications, the detailed drawings govern.
- j. In the event where provisions of codes, safety orders, Contract Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive and higher quality shall govern.
- k. Schedules on the drawings take precedence over conflicting information given on other drawings.
- l. Structural/architectural drawings.
- m. Mechanical/electrical drawings.

Clause 18 - Clarifications/Request for Information and Additional Instructions

- a. Notification by Contractor. Should Contractor discover conflicts, omissions, or errors in the Contract Documents or have any question concerning interpretation or clarification of the Contract Documents, or if it appears to Contractor that the work to be done or any matters relative thereto are not sufficiently detailed or explained in the Contract Documents, then, before proceeding with work affected, Contractor shall immediately notify the Construction Manager in writing, and request interpretation, clarification, or additional detailed information concerning the work. The Project Manager, whose decision shall be final and conclusive, shall resolve such questions and issue instructions to Contractor within a reasonable amount of time but in no less than 14 calendar days. Should Contractor proceed with work affected before receipt of instructions from Owner, Contractor shall remove and replace or adjust work which is not in accordance therewith and it shall be responsible for resultant damage, defect or added cost. In event of failure to agree as to scope of Contract Requirements, Contractor shall follow procedure set forth in the disputes clause. The Contractor shall ask for any clarification (request for information) immediately upon discovery but no less than 7 working days prior to the start date of the activities related to the clarification, based on the latest updated version of the Official Contract Schedule. The Contractor shall submit all

requests for clarification and/or additional information to the Construction Manager.

- b. Additional Detailed Instructions: The Owner may furnish additional detailed written instructions on the Request for Information to further explain the work, and such instructions shall be a part of the Contract requirements. Should additional detailed instructions, in the opinion of Contractor, constitute work in excess of scope of the Contract, it must submit written notice thereof immediately to the Owner but not more than seven (7) calendar days following receipt of such instruction, and in any event prior to commencement of work thereon. Owner will then consider such notice and, if in its judgment it is justified, the Owner's instructions will be revised or the extra work authorized. Contractor shall have no claim for additional compensation because of such additional instructions unless Contractor gives the Owner written notice thereof within the seven days specified above. For procedure concerning protests in case of dispute as to contract requirements, attention is directed to the disputes clause

E. SHOP DRAWINGS AND SUBMITTALS

Clause 19 - Shop Drawings, Product Data, Coordination Drawings and Schedules

- a. Shop drawings means drawings, submitted to the Owner by the Contractor, subcontractor, or any lower tier subcontractor manufacturer, supplier or distributor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, fabrication, erection and setting drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, and performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the Contract. The Owner may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Contract.
- b. The Contractor shall coordinate all such drawings and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval

thereon as evidence of such coordination and review. Shop Drawings submitted to the Owner without evidence of the Contractor's approval may be returned for resubmission. The Architect/Engineer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval or disapproval by the Architect/Engineer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with paragraph c. below.

- c. If shop drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect/Engineer approves any such variation, no change in time or price will be allowed for Contractor changes. Should the Architect/Engineer make changes on the shop drawings which affect time and/or cost, the Contractor will immediately notify the Owner with a request for information. If the Contractor fails to issue the request for information he will waive his right to potential change order. If the Contractor fails to issue the Request for Information he will waive his right to a potential Change Order. If the Owner approves the change, it shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- d. Clause 19 shall be included in all subcontracts at any tier.
- e. The Contractor shall submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Owner as follows. The Contractor will provide a submittal schedule listing all shop drawings and submittals, the submission dates by the Contractor and return dates from the architect, this schedule will be provided two weeks after Notice to Proceed.
- f. Shop drawings and schedules, other than catalogs, pamphlets, and similar printed material, shall be

submitted with one reproducible plus six copies. The reproducible will be returned to the Contractor who shall submit as many additional copies as the Contractor may desire or need for his use or use by subcontractors.

- g. Before submitting shop drawings on the mechanical and electrical work, the Contractor shall submit and obtain the Owner's approval of such lists of mechanical and electrical equipment and materials as may be required by the specifications, and shall submit a submittal schedule.
- h. Each shop drawing or coordination drawing shall have a blank area 5 by 5 inches located adjacent to the title block. The title block shall display the following:
 - Number and title of drawing
 - Date of drawing or revision
 - Name of project building or facility
 - Name of Contractor and (if appropriate) name of subcontractor submitting drawings
 - Clear identity of contents and location on the work
 - Project title and Contract number
 - Submittal number
- i. Unless otherwise provided in this Contract, or otherwise directed by Owner, shop drawings, coordination drawings, and schedules shall be submitted to the Architect/Engineer with a letter in triplicate, sufficiently in advance of construction requirements to permit no less than twenty-one (21) working days for checking and appropriate action. More complex submittals will take in excess of 21 (up to 30) working days for architect action.
- j. Approval of drawings and schedules will be general and shall not be construed as permitting any departure from the Contract requirements, or as approving departures from full-size details furnished by the Owner.

Clause 20 - Samples

- a. After the award of the Contract, the Contractor shall furnish for the approval of the Owner samples required by the specifications or by the Owner. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the

work will be judged. Samples shall be delivered to the Owner or to the Architect/Engineer as specified or as directed. The Contractor shall prepay all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work until approved in writing by the Owner.

b. Each sample shall have a label indicating:

- (1) Name of project building or facility, project title, and Contract number.
- (2) Name of Contractor and, if appropriate, name of subcontractor.
- (3) Identification of material or equipment with specification requirement.
- (4) Place of origin.
- (5) Name of producer and brand (if any).

Samples of finished materials shall have additional markings that will identify them under the finish schedules.

c. The Contractor shall mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in paragraph b. above. He shall enclose a copy of this letter with the shipment and send a copy to the Construction Manager on the project. Approval of a sample shall be only for the characteristics or use named in such approval and shall not be construed to change or modify any Contract requirement. Substitutions will not be permitted unless they are approved in writing by the Owner.

d. Approved samples not destroyed in testing will be sent to the Construction Manager. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at time of submission.

e. Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this Contract, any further samples of the same brand or make

of that material or equipment which previously has proven unsatisfactory in service.

f. Samples of various materials or equipment delivered on the site or in place may be taken by the Construction Manager for testing. Samples failing to meet Contract requirements will automatically void previous approval of the items tested. The Contractor shall replace such materials or equipment found not to have met contract requirements, or there shall be a proper adjustment of the Contract price as determined by the Owner.

g. Unless otherwise specified, when tests or required only one test of each sample proposed for use will be made at the expense of the Owner. Samples which do not meet specification requirements will be rejected. Testing of additional samples will be made by the Owner at the expense of the Contractor.

Clause 21 - Substitutions

a. Wherever the name or brand of manufacturer or an article is specified herein, it is used as a measure of quality and utility or a standard. If the Contractor desires to use any other brand or manufacturer of equal quality and utility to that specified, he shall make application to the Owner in writing and submit samples if requested. The successful bidder shall have 15 days after bid opening and before award of the Contract for submission of data substantiating a request for substitution of "an equal" item, pursuant of Section 3400 of the Public Contract Code. The Owner will then determine whether or not the name brand or article is equal in quality and utility to that specified, and its decision shall be final.

Except in those instances in which the product is designated to match others presently in use, specifications herein calling for a designated material, product, thing or service by specific brand or trade name shall be deemed to be followed by the words "or equal" so that bidders may furnish any equal material, product, thing or service.

b. For convenience in designation on the plans or in the specifications, certain materials, articles, or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name." At

alternative material, article, or equipment which is of equal or superior quality and of the required characteristics for the purpose intended may be proposed for use provided the Contractor complies with the following requirements:

- c. The Contractor shall submit all his proposals and documentation supporting the substitution in writing within 15 days of opening bids and before award of the Contract. No substitution will be considered after award.
- d. No such proposal will be considered unless accompanied by complete information and descriptive data necessary to determine the equality of the offered materials, articles, or equipment. Samples shall be provided when requested by the Owner.
- e. The burden of proof as to the comparative quality or suitability of the offered materials, articles, or equipment shall be upon the Contractor. The Owner shall be the sole judge as to such matters. In the event that the Owner rejects the use of such alternative materials, articles, or equipment, then one of the particular products designated by brand name shall be furnished.
- f. The Owner will examine, with reasonable promptness, such submittals, and return of submittals to the Contractor shall not relieve the Contractor from responsibility for deviations and alternatives from the Contract Plans and Specifications, nor shall it relieve him from responsibility for errors in the submittals. A failure by the Contractor to identify, in his letter of transmittal, material deviations from the plans and specifications shall void the submittal and any action taken thereon by the Owner. When specifically requested by the Owner, the Contractor shall resubmit such shop drawings, descriptive data, and samples as may be required.
- g. If any mechanical, electrical, structural, or other changes are required for the proper installation and fit of alternative materials, articles, or equipment, or because of deviations from the Contract Plans and Specifications, such changes shall not be made without the consent of the Owner and shall be made without additional cost to the Owner.

F. SCHEDULES

Clause 22 - Construction Schedule

- a. The Contractor shall, within thirty (30) calendar days after the award of the construction Contract, prepare and submit to the Owner for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials and equipment). The schedule shall be in the form of a CPM (critical path method) schedule (as selected and approved by the Owner) of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period (CPM activities will not exceed 14 days). If the Contractor fails to submit a schedule within the time prescribed, the Owner may withhold approval of progress payments until the Contractor submits the required schedule.
- b. The Contractor shall enter the actual progress on the chart/schedule at least monthly with the payment request or as directed by the Owner, and upon doing so shall immediately deliver three copies of the annotated schedule to the Construction Manager. If, in the opinion of the Owner or its Project Manager, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Owner, without additional cost to the Owner. In this circumstance, the Owner may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction activity, and to submit for approval any supplementary schedule or schedules in CPM or chart form as the Owner deems necessary to demonstrate how the approved rate of progress will be regained.
- c. Failure of the Contractor to comply with the requirements of the Owner under this clause shall be grounds for a determination by the Owner that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Owner may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the termination clause of this Contract.

G. TIME AND LIQUIDATED DAMAGES

Clause 23 - Time of Work, Liquidated Damages and Extensions

a. Time of Work

The Contractor shall commence work on this project immediately upon receipt of the written Notice to Proceed. Upon receipt of such notice the Contractor shall begin work and shall prosecute the work diligently to completion within the number of calendar days specified in the Contract. No work shall be commenced before the Contract is fully executed and insurance and bonds are received and approved.

b. Liquidated Damages

If the work is not completed within the time required, damage will be sustained by the Owner. It is and will be impracticable and extremely difficult to ascertain and determine actual damage which Owner will sustain by reason of such delay; and it is therefore agreed that Contractor will pay to Owner the sum of money stipulated per day in the Contract for each and every day's delay in finishing the work beyond the time prescribed. If the Contractor fails to pay such liquidated damages, the Owner may deduct the amount thereof from any money due or that may become due the Contractor under the Contract.

c. Unavoidable Delays

(1) Time Extension

- (a) The Contractor will be granted an extension of time for completion of the work beyond that named in the Contract Documents, for delays which may result through causes beyond the control of the Contractor and which he could not have been avoided by the exercise of care, prudence, foresight and diligence.
- (b) The Contractor shall be allowed extensions of time in which to complete the work equal to the sum of all unavoidable delays, plus any adjustments of contract time due to Contract Change Orders. During such extension of time liquidated damages shall not be charged to the Contractor.

- (c) Unavoidable delays within the meaning of this section shall be those caused by acts or neglect of the Owner, its employees, or those under it by contract or otherwise; by Acts of God, unusual weather, public enemy, fire, epidemics, or strikes. Unforeseeable material shortages and delays in utility company connections may be classified as an unavoidable delay if the Contractor can produce satisfactory evidence that the shortage was unavoidable and that he acted in a timely manner. Delays in the prosecution of parts of the work which may in themselves be unavoidable, but do not necessarily prevent or delay the prosecution of other parts of the work, nor the completion of the work within the time specified, will not be considered as unavoidable delays within the meaning of the Contract.

(2) Weather

The Contractor will not be allowed a day for day weather delay when the Contract is bid to be constructed during a period that will normally include inclement weather. The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of the year in question as established by NOAA weather data. A day for day extension will only be allowed for those days in excess of the norm.

The Contractor is expected to work seven (7) days per week (if necessary, irrespective of inclement weather), to maintain access, and weather protect the work under construction. During wet periods, the Contractor shall provide site/soil stabilization to allow access for his construction equipment. Stabilization of the site shall be achieved by lime stabilization, placement of aggregate base and fabric on roadways and work/staging areas or other suitable means as approved by the Owner. The Contractor shall seal all excavated areas each night to promote drainage and to decrease saturation.

If the weather is unusually severe (or conditions resulting therefrom) in excess of the NOAA data,

norm and prevents the Contractor from beginning at the usual starting time, or prevents the Contractor from proceeding with seventy-five percent (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, the Owner will designate such time as unavoidable delay and grant one (1) calendar-day extension.

(3) Notice

Whenever the Contractor foresees any delay in the prosecution of the controlling (critical path) work activity, and in any event immediately upon the occurrence of any delay which he regards as an unavoidable delay, the Contractor shall notify the Owner in writing of such delay and its cause, in order that the Owner may take immediate steps to prevent, if possible, the occurrence or continuance of the delay, and may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the work are to be delayed thereby.

After the completion of any part or the whole of the work, the Owner, in calculating the amount due the Contractor, will assume that any and all delays which have occurred have been avoidable delays, except such delays as shall have been called to the attention of the Owner at the time of their occurrence and found by the Owner to have been unavoidable as substantiated by a change order. The Contractor shall make no claim for delay if such delay was not called to the attention of the Owner at the time of its occurrence.

d. Request for Time Extension

In the event the Contractor requests an extension of Contract time for unavoidable delay (or for changes, see Change Order Process Clause), such justification shall be submitted no later than seven days after the initial occurrence of any such delay. When requesting time for proposed change orders such request must be submitted with the proposed change order with full justification. If the Contractor fails to submit justification with the proposed change order the Contractor will waive his

right to a time extension at a later date. Such justification must be based on the official Contract Schedule as updated at the time of occurrence of delay or execution of work related to any changes to the scope of work. The justification must include, but is not limited to, the following information:

- (1) The duration to perform the activity relating to the changes in the work and the resources (manpower, equipment, material, etc.) required to perform these activities within the stated duration.
- (2) Logical ties to the official Contract Schedule for the proposed changes and/or delay showing the activity/activities in the schedule whose start or completion dates are affected by the change and/or delay.

The Owner, after receipt of such justification and supporting evidence, shall make its finding of fact. The Owner's decision shall be final and conclusive and the Owner will advise the Contractor in writing of such decision. If the Owner finds that the Contractor is entitled to any extension of Contract time, the Owner's determination as to the total number of days of extension shall be based upon the latest updated version of the official Contract Schedule. Such data will be included in the next monthly updating of the schedule.

H. PERFORMANCE

Clause 24 - Supervision & Construction Procedures

The Contractor shall supervise and direct the work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and shall coordinate all portions of the work under the Contract, including the relations of the various trades to the progress of the work, in accordance with the provisions of the Contract Documents.

The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, subcontractors, and their agents and employees, and any other persons performing any of the work under a Contract with the Contractor.

The Contractor is an independent contractor and nothing in the Contract Documents shall be interpreted to make the Contractor an agent of the Owner.

Clause 25 - Supervision

- a. Within seven (7) days after Notice to Proceed, the Contractor shall provide to the Owner his/her organization chart outlining key job personnel. The Contractor will also provide a Letter of Authority for those personnel who are authorized to sign Contract Documents on his/her behalf, i.e., payment requests, change orders, inspection reports, etc.
- b. The Contractor shall employ, during the progress of the work, a competent Manager and Superintendent as approved by the Owner, and any necessary assistants. The Superintendent shall not be changed except with the consent of the Owner's Project Manager, unless the Superintendent proves to be unsatisfactory to the Contractor or ceases to be in his employ. The Owner's Project Manager shall be notified immediately of any new Superintendent appointed to the work and the Contractor shall submit qualifications for approval. The Superintendent shall represent the Contractor and all directions given to him shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing by the Contractor. Other directions shall be so confirmed on written request in each case.

The Contractor shall give efficient supervision to the work, using his best skill and attention. He shall carefully study and compare all drawings, specifications, and other instructions and shall at once report to the Representative any error, inconsistency, or omission which he may discover but he shall not be held responsible for their existence or discovery.

- c. The Superintendent shall be present at the site of the work at all times, both while work is actually in progress on the Contract and during periods when work is suspended. The Superintendent shall not be employed on any other project during the course of this work unless approved by the Owner.
- d. The Owner shall be supplied at all times with the names and telephone numbers of at least two (2) persons in charge of or responsible for the work, who can be reached for emergency work twenty-four (24) hours a day, seven (7) days a week.
- e. The Superintendent will be provided a copy of all Contract Documents by the Contractor.

- f. The Superintendent (and others as requested) shall attend all meetings called by the owner.

Clause 26 - Conduct of Work

- a. The Owner reserves the right to do other work in connection with the project by contract or otherwise, and the Contractor shall at all times conduct his work so as to impose no hardship on the Owner or others engaged in the work. He shall adjust, correct, and coordinate his work with the work of others so that no discrepancies shall result in the whole work.
- b. In engaging one kind of work with another, marring, or damaging same will not be permitted and, in the event such occurs, shall be corrected by the Contractor at his cost prior to acceptance by the Owner. Should improper work of any trade be covered by another which results in damage or defects, the whole work affected shall be made good by the Contractor without expense to Owner.

Clause 27 - Protection of Work & Property

- a. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property as provided by law and the Contract Documents.
- b. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this Contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with tree-pruning compound as directed by the Owner.
- c. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be

known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Owner may have the necessary work performed and charge the cost to the Contractor.

Clause 28 - Overloading

- a. If the Contractor shall cause, permit, or allow any part of the building or buildings to be overloaded by storing, piling, or setting thereon any material or equipment, or by performing thereon any of his work, he shall do so at his sole risk, and he shall be solely responsible for any and all loss, damage, and/or injury arising or resulting therefrom.
- b. All materials brought onto the site shall be protected and stacked up in an orderly manner in a designated area not in conflict with the area where work is being performed.
- c. Contractor shall provide and maintain all scaffolding for use of subcontractors unless otherwise specified.

Clause 29 - Contractor's Responsibility For Work

Until formal acceptance of the work by the Owner, Contractor shall have the charge and care thereof and shall bear risk of injury of damage to any part of the work by action of the elements, or from any other cause except for such damages as are directly and proximately occasioned by acts of the Federal or State Government and the public enemy.

Contractor, at its cost, shall rebuild, repair, restore and make good all such damages to any portion of the work occasioned by such causes before its acceptance.

No advertising of any description will be permitted in or about the work, except by order of the Owner.

Contractor shall not create or permit the continued existence of any nuisance in or about the work.

Clause 30 - Utilities

- a. Furnish Utilities. Unless otherwise provided for under separate sections hereinafter described, Contractor will arrange for and provide continuously until acceptance of

the work, all water, gas, and electricity required. Contractor shall pay for such services unless specifically otherwise noted.

- b. Interruption of Utilities. Utilities shall not be interrupted except with the approval of the Owner. Forty-eight-hour written notice is required prior to all interruptions. Interruptions shall be scheduled so as to minimize duration and disruption to existing operation.
- c. Public Utilities.
 - (1) The Contractor shall send proper notices, make all necessary arrangements, and perform all other services required in the care and maintenance of all public utilities. The Contractor shall assume all responsibility concerning same for which the Owner may be liable.
 - (2) To the satisfaction of the Owner, enclosing or boxing in, for protection of any public utility equipment, shall be done by the Contractor. Upon completion of the work, the Contractor shall remove all enclosures, fill in all openings in masonry, grouting the same watertight, and leave in a finished condition.
 - (3) All connections to public utilities shall be made and maintained in such manner as not to interfere with the continuing use of same by the Owner during the entire progress of the work.

Clause 31 - Working Hours

- a. It is contemplated that all work will be performed on a calendar day basis during the customary working hours of the trades involved unless otherwise specified in this Contract. Work performed by the Contractor of his own volition outside such customary working hours shall be at no additional expense to the Owner and with Owner approval.
- b. The time of service of any laborer, workman, or mechanic employed upon any of the work herein specified is limited and restricted to eight (8) hours during any one calendar day, and forty (40) hours during any one calendar week, except that work performed by employees of contractors in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon public work upon compensation for all

hours worked in excess of eight (8) hours per day and not less than one and one-half times the basic rate of pay.

Clause 32 - Material & Workmanship

a. Materials & Equipment:

- (1) Materials, equipment, and articles incorporated into the work shall be new and of quality equal or superior to that specified. When not particularly specified, materials shall be the best of their class or kind. The Contractor shall, if required, submit satisfactory evidence as to the kind and quality of material.
- (2) See substitution clause concerning "or equal" requirements and procedure for submitting alternative material, articles, or equipment.
- (3) All materials shall be delivered so as to insure a speedy and uninterrupted progress of the work. Same shall be stored so as to cause no obstruction and so as to prevent overloading of any portion of the structure on work site, and the Contractor shall be entirely responsible for damage or loss by weather, theft, vandalism, or other cause.
- (4) Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials shall be reasonably accessible for inspection. When considered necessary by the Owner, stored materials shall be placed on wooden platforms or on other hard, clean surfaces and not directly on the ground, and shall be placed under cover when so directed.
- (5) No materials manufactured or produced in a penal or correctional institution shall be incorporated in the project under this Contract, except as permitted by California law.

Clause 33 - Layout of Work

The Contractor shall lay out its work from Owner-established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, material, and labor required to lay out any part of the work. The

Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Owner. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Owner until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Owner may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

Clause 34 - Use of Premises

- a. If the premises are occupied, the Contractor, his subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the premises and shall perform the work required under this Contract in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner business.
- b. Any request received by the Contractor from occupants of existing buildings to change the sequence of work shall be referred to the Construction Manager.
- c. If the premises are occupied, the Contractor, his subcontractors and their employees shall not have access to or be admitted into any building outside the scope of this Contract except with official permission of the Owner's Project Manager.

Clause 35 - Operations & Storage

- a. The Contractor shall confine all operations (including storage of materials) on Owner premises to area authorized or approved by the Owner.
- b. Temporary buildings (e.g., storage sheds, shops, offices and utilities) may be erected by the Contractor only with the approval of the Owner and shall be built with labor and materials furnished by the Contractor without expense to the Owner. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Owner, the buildings and utilities may be abandoned and need not be removed.
- c. The Contractor shall, under regulations prescribed by the Owner, use only established roadways, or use temporary roadways constructed by the Contractor when and as

authorized by the Owner. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or Owner regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

Clause 36 - Heat

Unless otherwise specified or unless already provided by the Owner, the Contractor shall:

- a. Provide heat, as necessary to protect all work, materials, and equipment against injury from dampness and cold;
- b. Protect, cover and/or heat as may be necessary, to produce and maintain a temperature of not less than 50 degrees Fahrenheit (1) for the concrete during the placing, setting, and curing, and (2) for the plaster during the application, setting, and curing of plaster; and
- c. Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material, but in no case less than 50 degrees Fahrenheit, for a period beginning 10 days before placing of interior finishes and finish materials and continuing until substantial completion or beneficial occupancy of the area, whichever is earlier.

Clause 37 - Cleaning Up

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any weeds, rubbish, tools, scaffolding, equipment, and materials that are not the property of the Owner. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Owner.

I. SAFETY & HEALTH

Clause 38 - Accident Prevention

- a. In performing this Contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials,

supplies, and equipment; and avoiding work interruptions. For these purposes, the Contractor shall:

- (1) Designate a safety officer and provide a copy of its safety program;
- (2) Provide appropriate safety barricades, signs, and signal lights;
- (3) Comply with applicable safety standards issued by the U.S. Government, State, Regional, County and City; and
- (4) Ensure that any additional measures the Owner determines to be reasonably necessary for this purpose are taken.

- b. The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by the Owner.
- c. Where conditions of the work present unreasonable risk of injury or death to persons, or property damage, in the judgement of the Owner it may direct Contractor at the Contractor's sole expense, to take corrective action.
- d. Before beginning excavation for a trench 5 feet or more in depth, Contractor shall submit to the Construction Manager and the Architect detailed plans showing design of shoring, bracing, sloping, or other provisions to be made for worker protection from hazard of caving ground. Such plans shall be submitted at least 14 days before Contractor intends to begin trench work. If such plans vary from shoring system standards established by the State of California Construction Safety Orders, the plans shall be prepared by a registered civil or structural engineer employed by Contractor.

Nothing herein shall be deemed to allow use of shoring, sloping, or protective systems less effective than those required by the Construction Safety Orders of the California Division of Industrial Safety.

Clause 39 - Sanitary Facilities

Contractor shall supply and maintain at its expense such toilets and other sanitary facilities as are necessary for use by

workers employed at the job site. Such facilities shall be approved by the Owner.

Clause 40 - Responsibility for Compliance With (OSHA)

All work, materials, work safety procedures and equipment shall be in full accordance with the latest OSHA rules and regulations.

Contractor warrants that he and each of his subcontractors shall, in performance of this Contract, comply with each and every compliance order issued pursuant to OSHA. The Contractor assumes full and total responsibility for compliance with OSHA standards by his subcontractors as well as himself. The cost of complying with any compliance order and/or payment of any penalty assessed pursuant to OSHA shall be borne by the Contractor. Contractor shall save, keep, and hold harmless the Owner, and all officers, employees, and agents thereof, from all liabilities, costs, or expenses, in law or in equity, that may at any time arise or be set up because of Contractor's or a subcontractor's non-compliance or alleged non-compliance with OSHA requirements. Nothing contained therein shall be deemed to prevent the Contractor and his subcontractors from otherwise allocating between themselves responsibility for compliance with OSHA requirements; provided, however, that the Contractor shall not thereby be, in any manner whatsoever, relieved of his responsibility to the Owner as herein above set forth.

Clause 41 - Toxic and Hazardous Materials and Waste

a. Asbestos. Operations which may cause release of asbestos fibers into the atmosphere shall meet the requirements of the California Code of Regulations, Title 8, General Industrial Safety Orders, Section 5208 and California law. Some operations which may cause such concentrations include sanding, grinding, abrasive blasting, sawing, drilling, shoveling, or otherwise handling materials containing asbestos so that dust will be raised.

Such materials can include resilient flooring, existing gypsum wallboard, asbestos-cement board, spray-on fiber-proofing for steel, asbestos-cement board, spray-on fiber-proofing for steel, cement plaster, asbestos pipe insulation and acoustical sprays, tiles, and boards.

In accordance with paragraph e., below, asbestos in building materials is prohibited. This section only

applies to existing materials on the site that may be discovered during construction or demolition.

- b. Toxic Materials. Operations which release toxic materials into the atmosphere shall meet the requirements of California Code of Regulations, including Title 8, Title 8, General Industrial Safety Orders. Some operations which may release such materials include use of adhesives, sealants, paint, and other coatings.
- c. Lead-Based Paint. Lead-based paint is prohibited. Lead-based paint is defined as:
 - (1) Any paint containing more than five-tenths of one percentum lead by weight (calculated as lead metal in the total non- volatile content of the paint) or the equivalent measure of lead in the dried film of pain applied or both; or
 - (2) For paint manufactured after June 22, 1977, any paint containing more than six one- hundredths of one percentum lead by weight (calculated as lead metal) in the total content of the paint or the equivalent measure of lead in the dried film or pain already applied.
- d. Hauling and Disposal. In the event the Contractor transports hazardous waste in connection with the work, the Contractor shall meet the requirements of the California Code of Regulations for the management hauling and disposal of hazardous waste.
- e. Asbestos Prohibited. No products or material containing asbestos shall be incorporated into the work without the prior written approval of the Owner.

J. COUNTY-FURNISHED PROPERTY

Clause 42 - Owner-Furnished Property

- a. The Owner will furnish to the Contractor the property as identified in the specification(s) to be incorporated or installed into the work or used in performing the contract. The listed property will be furnished f.o.b. railroad cars at the place specified in the contract or f.o.b. truck at the project site. The Contractor is required to accept delivery, pay any demurrage or detention charges, and unload and transport the property to the job site at its own expense. When the property is delivered, the Contractor shall verify its quantity and condition and

acknowledge receipt in writing to the Owner. The Contractor shall also report in writing to the Owner within twenty-four (24) hours of delivery any damage to or shortage of the property as received. All such property shall be installed or incorporated into the work at the expense of the Contractor, unless otherwise indicated in this Contract.

- b. Each item of property to be furnished under this clause shall be identified by the Contractor in a schedule by quantity, item, and description.
- c. The Contractor shall be held responsible for all material delivered to him and deductions will be made from any moneys due him to make good any shortages and deficiencies, from any clause whatsoever, which may occur after such delivery.
- d. The Contractor shall set up accounting records and establish an inspection procedure as approved by the Owner.
- e. The Contractor shall provide a schedule to the Owner indicating when Owner-furnished items are required.

K. BENEFICIAL OCCUPANCY

Clause 43 - Beneficial Occupancy

a. Use and Possession

- (1) The Owner shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Owner shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Owner intends to take possession of or use. However, failure of the Owner to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the Contract. The Owner's possession or use shall not be deemed substantial completion nor an acceptance of any work under the Contract. The Contractor will continue to pay for any portion of the utilities which it is using.
- (2) While the Owner has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the

Owner's possession or use. If prior possession or use by the Owner delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract price or the time of completion, and the Contract shall be modified in writing accordingly.

b. Use of Equipment

- (1) The Owner may take over and operate, with Owner employees, such equipment as is necessary for heating or cooling such areas of the building as require the service, as soon as the installation is sufficiently complete.
- (2) The Owner will advise the Contractor by letter, prior to the use of equipment, which items of equipment will be operated, and the date and time such operation will begin.
- (3) Owner operation of equipment will not relieve the Contractor of the guarantee on materials and workmanship elsewhere provided for in this Contract.
- (4) The guarantee period, elsewhere provided for in this Contract, for each piece of equipment shall be in accordance with the "Guarantees" clause of this Contract.

L. INSPECTION AND TESTING

Clause 44 - Inspection and Testing

- a. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by this Contract conforms to Contract Requirements. The Contractor shall maintain complete inspection records and make them available to the Owner. A representative of the Owner shall, at all times, have access to the work and the Contractor shall provide proper facilities for such access and for inspection. The County's representative is prohibited from accepting from the Contractor, his employees, and subcontractors any gratuity, gift, service or material of any value or use of equipment or facilities.
- b. Owner inspections and tests are for the sole benefit of the Owner and do not:

- (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
 - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - (3) Constitute or imply acceptance; or
 - (4) Affect the continuing rights of the Owner after acceptance of the completed work latent defects, gross mistakes, fraud or the Owner's rights under any warranty or guarantee.
- c. The presence or absence of an Owner inspector does not relieve the Contractor from any Contract Requirement, nor is the inspector authorized to change any term or condition of the specifications without the Owner's written authorization.
 - d. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Owner. The Owner may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. Special, full size, and performance tests shall be performed as described in the Contract Documents.
 - e. The Contractor shall, without charge, replace or correct work found by the Owner not to conform to Contract Requirements, unless in the public interest the Owner consents to accept the work with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
 - f. If the Contractor does not promptly replace or correct rejected work, the Owner may (1) by Contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.
 - g. If, before acceptance of the entire work, the Owner decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or

nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet Contract Requirements, the Owner shall issue a Change Order.

- h. The Contractor shall at all times maintain proper facilities and provide safe access for inspection by the Owner to all parts of the work, and to the shops wherein the work is in preparation. Where the specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the Owner of its readiness for inspection and without the approval thereof or consent thereto by the latter. Should any such work be covered up without such notice, approval, or consent, it must, if required by Owner, be uncovered for examination at the Contractor's expense.
- i. The Contractor shall notify the Owner at least twenty-four (24) hours in advance of the time required for the inspection. Should the Contractor fail to notify the Owner and proceed with work requiring inspection, all such work is rejected, and no further work shall be done on the Project until the rejected work is accepted by the Owner. Should the Contractor request acceptance of such rejected work the Owner shall, at the Contractor's expense, secure the services of: private material testing laboratories, consulting engineers or licensed land surveyors, who shall certify that said work does in fact conform to the requirements of the Plans and these specifications. The work previously rejected shall be accepted by the Owner after receipt of such certification, if the Owner approves of such certification.
- j. Whenever the Contractor intends to perform work on Saturday, Sunday, a legal holiday, or after normal working hours, he shall give notice to the Construction Manager of such intention at least two (2) working days prior to performing such work, or such other period as may be specified, so that the Owner may make necessary arrangements.
- k. Construction review of the Contractor's performance by the Owner is not intended to include the review of the adequacy of the Contractor's safety measures, in, on, or near the construction site.

1. The Owner will pay for initial testing services specified to be performed by the Owner. When initial tests indicate non-compliance with the Contract Documents, subsequent retesting occasioned by the non-compliance shall be performed by the same testing agency, and costs thereof will be paid by the Contractor or deducted by the Owner from the Contract balance.

Clause 45 - Condemned Materials and Labor

- a. No deviation shall be made from the plans and specifications. If the Contractor shall vary from the plans and specifications in the form of quality or in the work or amount or value of the materials herein provided for, the Owner shall have the right to order such improper work or materials removed, remade or replaced. In the event that the work is ordered changed, and any other work disturbed or damaged by such alteration shall be made good at the Contractor's expense.
- b. The Contractor shall promptly remove from the premises all work condemned by the Owner as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute his own in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.
- c. If the Contractor does not remove such condemned work within a reasonable time, fixed by written notice, the Owner may remove it and may store the material at the expense of the Contractor. If the Contractor does not pay the expenses of such removal within ten (10) days' of the written notice, the Owner may sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.
- d. Neither the final certificate nor payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or defective workmanship, and, unless otherwise specified, he shall remedy any defects due thereto and pay for any damages to other work, resulting therefrom which may appear within a period of two years from the date of substantial completion.

Clause 46 - Inspection by Other Jurisdictions

Whenever any part of the work to be performed is under the jurisdiction or control or is to be paid for, in whole or in part, by another public entity or jurisdiction, including but not limited to: the United States Government, State of California, or other regional or local agencies, such work shall be subject to inspection by the proper officials of such entities or jurisdictions and it must pass inspection, in addition to Owner inspection and such other inspections as may be otherwise provided for in the Contract Documents.

Clause 47 - Final Inspection and Tests

The Contractor shall give the Owner at least ten (10) calendar days' advance written notice of the date the work will be fully completed and ready for final inspection and tests. Final inspection and tests will be started within 10 calendar days from the date specified in the aforesaid notice unless the Owner determines that the work is not ready for final inspection and so informs the Contractor.

M. ACCEPTANCE

Clause 48 - Acceptance of the Work

- a. If, from the final inspection and after all Contract Documentation has been received, the Owner determines that the Contract has been completed, the Project Manager will certify to the Board of Supervisors and a copy of a letter of acceptance will be sent to Contractor. (See final payment clause.) Upon receipt of the copy of the acceptance, Contractor will be relieved of the duty of maintaining and protecting the work. If the Owner determines that work is not complete after receipt of certification by Contractor, Contractor shall be notified in writing of deficiencies, and procedures for final inspection, as set forth above, shall again be initiated by Contractor. Neither determination by the Owner that the work is complete nor acceptance thereof shall operate as a bar to an Owner claim against Contractor pursuant to Contractor's warranty and guarantees.
- b. Partial payments shall not be construed as acceptance of any part of the work.
- c. In judging the work no allowance for deviations from the drawings and specifications will be made, unless already approved in writing at the time and in the manner as called for here fore.

- d. Owner shall be given adequate opportunity to make any necessary arrangements for property insurance, fire insurance and extended coverage.
- e. Acceptance of the Contract will not be given until all requirements of the Contract Documents are complete and approved by the Owner. This shall include, but is not limited to, all construction, guarantee forms, parts lists, schedules, tests, operating instructions, and as-built drawings - all as required by the Contract Documents.

N. WARRANTY AND GUARANTEES

Clause 49 - Contractor's Warranty and Guarantee

- a. (1)General Warranty. The Owner shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to said building, work, or equipment or any part thereof, or in, on, or about the same during its construction and before acceptance. In addition to any other warranties in this Contract, the Contractor warrants that work performed under this Contract conforms to the Contract Requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- b. The warranty under paragraph a shall continue for a period of 2 years from the date of final acceptance of the work. If the Owner takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 2 years from the date the Owner takes possession. Bonds shall be in full force during the warranty period.

The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Owner-owned or controlled real or personal property, when that damage is the result of:

- (1) The Contractor's failure to conform to Contract Requirements or
- (2) Any defect of equipment, material, workmanship, or design furnished.
- d. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The

Contractor's warranty with respect to work repaired or replaced will run for 2 years from the date of repair or replacement.

- e. The Owner shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor further agrees that within ten (10) calendar days after being notified in writing by the Owner of any work not in accordance with the requirements of the Contract or any defects in the work, the Contractor will commence and prosecute with due diligence all work necessary to fulfill the terms of this guarantee, and to complete the work within a reasonable period of time.

Notwithstanding the foregoing paragraph, in the event of any emergency constituting an immediate hazard to health or safety of Owner employees, property, or licensees, the Owner may undertake at Contractor's expense, without prior notice, all work necessary to correct such hazardous conditions when it was caused by work of Contractor not being in accordance with requirements of this Contract.

- f. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract the Contractor shall:
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed, in writing, for the benefit of the Owner, unless directed otherwise by the Owner; and
 - (3) Enforce all warranties for the benefit of the Owner, unless otherwise directed by the Owner.
- h. In the event the Contractor's warranty has expired, the Owner may bring suit at the Contractor's expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

- i. Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Owner nor for the repair of any damage that results from a defect in Owner-furnished material or design.
- j. This warranty shall not limit the Owner's rights under the Inspection and Acceptance clause of this Contract with respect to latent defects, gross mistakes, or fraud.
- k. Defects in design or manufacture of equipment specified by the Owner on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Owner.
- L. Y2K Compliance. All products, equipment and materials provided under this Contract shall support a four-digit year format and is able to process date and time data from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, as well as leap year calculations. "Product" shall include, without limitation, any piece or component of equipment, hardware, middle ware, custom or commercial software, or internal components or subroutines therein. In the event of any decrease in Product functionality or accuracy related to time and/or date data related codes and/or internal subroutines that impede the Product from operating correctly using dates beyond December 31, 1999, Contractor shall restore or repair the Product to the same level of functionality as warranted, so as to minimize interruption to the ongoing business process of the Owner, time being of the essence. In the event that such warranty compliance requires the acquisition of additional programs, the expense for any such associated or additional acquisitions, which may be required, including, without limitation, data conversion tools, shall be borne exclusively by the Contractor. Nothing in this warranty shall be construed to limit any rights or remedies the Owner may otherwise have under this Agreement with respect to defects other than Year 2000 performance.

O. ENVIRONMENTAL PROTECTION

Clause 50 - Dust Control

- a. The Contractor shall provide such and so much water, dust palliative, or other authorized material, and the labor and devices necessary to spread such material, as the Owner deems necessary to control dust. The Contractor shall provide any and all dust control required by the Owner or any regional, state or federal governmental entity having jurisdiction over the Site or the Project. The payment for dust control shall be considered as included in other items of work and no additional compensation shall be made therefor.
- b. Whenever the Contractor fails or is negligent in providing adequate dust control, the Owner shall order the Contractor to provide such adequate dust control and, if the Contractor does not comply forthwith with such order, the Owner shall have the authority to suspend the work, wholly or in part, for such period as the Owner may deem necessary until the Contractor provides adequate dust control to the satisfaction of the Owner, or the Owner may provide such dust control and charge the Contractor therefor by deducting the cost thereof from periodic payments to the Contractor as such costs are incurred by the Owner.

Clause 51 - Excessive Noise

The Contractor shall use only such equipment on the work and in such state of repair, that the emission of sound therefrom is within the noise tolerance level of that equipment, as established by accepted standards of the industry.

Should the Owner determine that the muffling device on any equipment used on the work is ineffective or defective so that the noise tolerance of such equipment, as established by accepted standards of the industry is exceeded, such equipment shall not, after such determination by the Owner, be used on the work until its muffling device is repaired or replaced so as to bring the noise tolerance level of such equipment within such standards.

Clause 52 - Pollution Control, Cleaning

The Contractor shall not, in connection with the work, discharge any smoke, dust, or other contaminants into the atmosphere or discharge any fluids or materials into any lake, river, stream, or channel as will violate regulations of any legally constituted authority. The Contractor shall control accumulation of waste materials and rubbish and dispose waste materials and rubbish off-site at the least at weekly intervals. Burning of materials is not permitted.

P. EMPLOYMENT PRACTICES

Clause 53 - Qualifications for Employment and Apprenticeship Standards

According to Section 1735 of the California Labor Code, no person under the age of 16 years of age and no person currently serving sentence in a penal or correctional institution shall be employed to perform any work under this Contract. No person whose age or physical condition is such to make his employment dangerous to his health or safety or to the health or safety of others shall be employed to perform work under this Contract; provided that this sentence shall not operate against any physically handicapped persons otherwise employable where such persons may be safely assigned to work which they ably perform.

This Contract is subject to the provisions in Sections 1777.5 (Chapter 1411, Statutes of 1968) and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him. Section 1777.5 as amended, requires the Contractor or subcontractor employing tradesmen in any apprenticeable occupation to apply to the Joint apprenticeship Committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the Contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five, except:

- a. When unemployment in the areas of coverage by the Joint Apprenticeship committee has exceeded an average of fifteen percent (15) in the ninety (90) days prior to the request for certificate; or
- b. When the number of apprentices in training in the area exceeds a ratio of one to five; or

- c. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally; or
- d. When the Contractor provides evidence that he employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.

The Contractor is required to make contributors to fund established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contract and if other contractors on the public works site are making contributions.

The Contractor and any subcontractor under him shall comply with the requirements of 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 Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

All employees engaged in work on the project under this Contract shall have the right to organize and bargain collectively through representatives of their own choosing, and such employees shall be free from interference, restraint, and coercion of employers in the designation of such employees for the purpose of collective bargaining or other mutual aid or protection and no person seeking employment under this Contract shall be required as a condition of initial or continued employment to join any company, union, or to refrain from joining, organizing, or assisting a labor organization of such person's own choosing. No person in the employment of the Owner shall be employed by this Contractor do any work on this Contract.

Clause 54 - Hours of Work

Eight hours of labor during any one calendar day and forty hours of labor during any one calendar week shall constitute the maximum hours of service upon all work done hereunder and it is expressly stipulated that no laborer, workman, or mechanic employed at any time by the Contractor or by any subcontractor or subcontractors under this Contract, upon the work or upon any part of the work contemplated by this

Contract, shall be required or permitted to work thereon more than eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except, as provided by Section 1815 of the Labor Code of the State of California, work performed by employees of Contractors in excess of eight hours per day and forty hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein, said Contractor shall forfeit, as a penalty to Owner, twenty-five dollars (\$25.00) for each laborer, workman, or mechanic employed in the execution of this Contract by Contractor, or by any subcontractor under this Contract, for each calendar day during which said laborer, workman, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of said Sections of the Labor Code.

The Contractor, and each subcontractor, shall keep an accurate record showing the names of and actual hours worked each calendar day and each calendar week by all laborers, workmen, and mechanics employed by him in connection with the work contemplated by this Contract, which record shall be open at all reasonable hours to the inspection of the Owner or its officers or agents and to the Division of Labor Law Enforcement of the Department of Industrial Relations.

Clause 55 - Wages & Records

a. Wage Rates

- (1) Pursuant to Section 1770 and 1773 et seq. of the Labor Code of the State of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification, or type of workman needed to execute the Contract which will be awarded to the successful bidder, copies of which are on file and available upon request from the Department of Public Works.

- (2) It shall be mandatory upon the Contractor and upon any subcontractor under him, to pay not less than the said specified rates to all laborers, workmen, and mechanics employed in the execution of the Contract. It is further expressly stipulated that the Contractor shall, forfeit a penalty for each calendar day, or portion thereof, for each laborer, workman, or mechanic paid less than the stipulated prevailing rates for any work done under this Contract by him or by any subcontractor under him; and Contractor agrees to comply with all provisions of Section 1770 et. seq. of the Labor Code.
- (3) In case it becomes necessary for the Contractor or any subcontractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, the Contractor shall immediately notify the Owner who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish the Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.
- (4) Pursuant to Sections 1770 and 1773 of the Labor Code, the Board of Supervisors has ascertained the general prevailing rate of per diem wages applicable to the work to be done for straight time, overtime, Saturday, Sunday and holiday work. These wage rates, which are set forth by the Director of the Department of Industrial Relations, are now on file with the Construction Manager and are a part of the Contract. The Contractor is required to post a copy of these prevailing wages rates on the job site.
- (5) The Owner 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 as provided herein. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any

circumstances be considered as the basis of a claim against the County on the Contract.

b. Wage Records

The Contractor and each subcontractor shall keep or cause to be kept an accurate record (certified payroll) showing the names and occupations of all laborers, workers, and mechanics employed by him in connection with the execution of this Contract or any subcontract thereunder and showing also the actual per diem wages paid to each of said workers, which records shall be provided to the Owner, and to the Division of Labor Law Enforcement upon its request. Copies provided will include one which has the name and social security numbers marked out.

The Contractor shall meet the requirements of Section 7-1.01A(3). "Payroll Records", of the State of California Standard Specifications. The Contractor shall be responsible for compliance of all Labor Code requirements by his subcontractors.

Clause 56 - Notice of Labor Disputes

- a. If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice, including all relevant information, to the Owner.
- b. The Contractor agrees to insert the substance of this clause, including this paragraph b. in any subcontract to which a labor dispute may delay the timely performance of this Contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

Clause 57 - Nondiscrimination

- a. Equal Employment Opportunity. Contractor agrees for the duration of this Contract that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap. The Contractor will take affirmative action to insure that

employees are treated during employment or training, without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

The Contractor will in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

The Contractor will send to each labor union or other representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the workers' representative of the Contractor commitments under this Agreement.

The Contractor agrees that it will comply with the provisions of Titles VI and VII of the Civil Rights Act Revenue Sharing Act Title 31, U.S. Code Section 2716, and California Government Code Section 12990.

The Contractor agrees that it will assist and cooperate with the County, the State of California and the United States Government in obtaining compliance with the equal opportunity clause, rules, regulations, and relevant orders of the State of California and United States Government issued pursuant to the Acts.

In the event of the Contractor's non-compliance with the discrimination clause, the affirmative action plan 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 by the County.

- b. Handicapped Non-Discrimination. This project is subject to Section 504 of the Rehabilitation Act of 1973 as amended, (29 U.S.C. 794), and all requirements imposed by the guidelines and interpretations issued thereto. In this regard, the County and all of its contractors and subcontractors will take all reasonable steps to ensure that handicapped individuals have the maximum opportunity for the same level of aid, benefit or service as any other individual.

c. Fair Employment and Housing Act Addendum. In the performance of this Contract, the Contractor will not discriminate against any employee or applicant for employment because of race, sex, color, religion, ancestry, 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, sex, color, religion, ancestry, or national origin. Such action shall include, but not limited to, the following: employment, upgrading, promotion, 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 shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State or local agency setting forth the provisions of this Fair Employment and Housing Section.

The Contractor will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment and Housing section of this Contract.

Remedies for Willful Violation:

- a. The State or local agency may determine a willful violation of the Fair Employment and Housing provision to have occurred upon receipt of a final judgement having that effect from a court in an action to which Contractor was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Contractor has violated the Fair Employment and Housing Act and has issued an order or obtained an injunction under Government Code Sections 12900, et seq.
- b. For willful violation of this Fair Employment and Housing provision, the State or local agency shall have the right to terminate this Contract either in whole or in part, and any loss or damage sustained by the State or local agency in securing the goods or services hereunder shall be borne and paid for by the Contractor and by his

surety under the performance bond, if any, and the State or local agency may deduct from any moneys due or that thereafter may become due to the Contractor, the difference between the price named in the Contract and the actual cost thereof to the State or local agency.

Q. SUBCONTRACTING

Clause 58 - Subcontractors

A subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the work at the site. Subcontractors shall be listed in the bid proposal according to the instructions contained therein.

The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the Owner.

Clause 59 - Relations of Contractor and Subcontractor

The Contractor agrees to bind every subcontractor and every subcontractor agrees to be bound by the terms of the Agreement, the General Conditions, Supplementary Conditions, the drawings and specifications as far as applicable to his work, including the following provisions of this article, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner. This does not apply to minor subcontracts under \$5,000.

The subcontractor agrees:

- a. To be bound to the Contractor by the terms of the Agreement, General Conditions, Special Conditions, drawings and specifications, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the Owner.
- b. To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under terms of the General Conditions.
- c. To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in

the manner provided in the General Conditions for claims by the Contractor upon the Owner.

The Contractor agrees:

- a. To be bound to the subcontractor by all the obligations that the Owner assumes to the Contractor under the Agreement, General Conditions, Special Conditions, drawings and specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.
- b. To pay the subcontractor, upon the payment of certificates, the amount allowed to the Contractor on account of the subcontractor's work to the extent of the subcontractor's interest therein.
- c. To pay the subcontractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.

Clause 60 - Subcontracts

Pursuant to the provisions of Sections 4100 to 4114 of the California Public Contract Code, inclusive, the Contractor shall not without the consent of the Owner, either:

- a. Substitute any persons as subcontractors in place of the subcontractors designated in his original bid. (The Owner's consent can only be given in cases permitted by Public Contract Code Section 4107.)
- b. Permit any subcontractor to be assigned or transferred or allow any work to be performed by anyone other than the original subcontractor listed in his bid.
- c. Other than in the performance of change orders, sublet or subcontract any portion of the work in excess of one-half of one percent of his bid to which his original bid did not designate a subcontractor. Should the Contractor violate any of the provisions of said Sections 4100 to 4114, inclusive, of the Public Contract Code, his so doing shall be deemed a violation of this Contract, and the Owner may cancel the Contract, or may assess the Contractor a penalty in the amount not more than ten (10) percent of the amount of the subcontract involved, or may both cancel the Contract and assess the penalty.

R. TAXES

Clause 61 - Sales and Payroll Taxes

Each Contractor, subcontractor, and material dealer shall include all sales tax and payroll taxes required by law.

S. CHANGES

Clause 62 - Change Order Work Notification

- a. Should the Owner at any time during the progress without notice to sureties of said work request any alterations, deviations, additions, or omissions from said specifications or Plans or other Contract Documents it shall be at liberty to do so, and the same shall in no way affect or make void the Contract, but will be added to or deducted from the amount of said Contract price, as the case may be, by a fair and reasonable valuation, agreed to in writing between the parties hereto. No extra work shall be performed or a change be made unless in pursuance of a written order from the Owner, duly authorized by resolution of its governing body, and by all agencies whose approval is required by law, stating that the extra work or change is authorized and no claim for an addition to the Contract sum shall be valid unless so ordered. Changes may include but not be limited to:
 - (1) The specifications (including drawings and designs);
 - (2) The method or manner of performance of the work
 - (3) The Owner-furnished facilities, equipment, materials, services, or site;
 - (4) Directing acceleration in the performance of the work; or
 - (5) Extra terms or time.
- b. Any other written or oral order (which, as used in this paragraph b., includes direction, instruction interpretation, or determination) from the Owner that causes a change shall be treated as a change order under this clause; provided, that the Contractor immediately gives the Owner written notice stating (1) that date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

- c. Except as provided in this clause, no order, statement, or conduct of the Owner shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- d. If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not changed by any such order, the Owner shall make an equitable adjustment and modify the Contract in writing as a Change Order. However, except for a "proposal for adjustment or request for a change (hereafter referred to as proposal) based on defective specifications, no proposal for any change under paragraph b. above shall be allowed for any costs incurred more than seven (7) days before the Contractor gives written notice as required. In the case of defective specifications for which the Owner is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- e. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.
- f. Changes will be performed in accordance with the original Contract requirements.

Clause 63 - Change Order Process

a. Notice

The Contractor will give notice of a change on his letterhead within seven days from discovery and, if the Owner agrees, a proposed change order will be issued on the Owner's standard proposed change order form.

b. Proposal

Upon receipt of the proposed Change Order, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in the "Change Orders" clause, for work involving contemplated changes covered by the proposed change.

The Contractor's written statement of the monetary extent of a request for a change shall be submitted in the following form:

- (1) Cost proposals totaling \$500 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Owner, or its Construction Manager.
- (2) For cost proposals in excess of \$500, the cost proposal shall be submitted in the form of a lump sum proposal supported with a detailed itemized breakdown of all increases and decreases in the Contract, including all labor, equipment and materials, as required by the following paragraphs. The Contractor will use the prescribed Owner furnished proposed change order form. The Contractor shall upon request by the Owner permit inspection of the original unaltered Contract bid estimate, subcontract agreements, or purchase orders relating to the change; and documents substantiating all costs associated with the cost proposal.

c. Disagreement

If the Owner disagrees with the request for change it will notify the Contractor in writing and the Contractor may elect to issue a dispute notification according to the disputes clause.

d. Pricing Time

The Contractor must submit a cost proposal within fifteen (15) days upon receipt of the proposed change order or the furnishing of the Contractor's written notice. The Contractor must submit cost proposals in less than 15 days if requested by the Owner or if required by schedule limitations.

e. Failure to Price

If the Contractor fails to submit the cost proposal within the 15-day period (or as requested), the Owner has the right to order the Contractor in writing to commence the work immediately on a force account basis and/or issue a lump sum change to the Contract price in accordance with the Owner's estimate of cost. If the change is issued based on the Owner estimate, the Contractor will waive his right to dispute the action unless within 15 days following completion of the added/deleted work, the

Contractor presents proof that the Owner's estimate was in error.

f. Failure to Agree

If the Owner and the Contractor fail to agree as to the cost proposal for the proposed change order, the Contractor upon written order from the Owner shall proceed immediately with the changed work. The Contractor shall be directed to proceed on a time and materials (T&M) (force account) basis. When there has been failure to agree as to the cost, no payment will be made to the Contractor until completion of the work called for in the change order or in the written order authorizing performance of the work.

g. Time & Material (T&M) Changes

The Owner will establish a budget not-to-exceed (NTE) price for the T&M change order which may be increased with the approval of the Owner. The Contractor will notify the Owner when he has reached 80% of the not-to-exceed budget. The Contractor shall proceed and shall maintain a daily job force account record containing detailed cost summary of labor, materials, and equipment required for the changed work. Upon being signed and agreed to by the Construction Manager on a daily basis, the force account record will become the basis for payment of the changed work, but such Agreement shall not preclude subsequent adjustment based upon later audit by the Owner. The Contractor will provide a weekly accounting of cost compared to the NTE budget.

Upon completion of the work under the change order, the Contractor shall submit its invoice therefor containing only the items of labor, materials, and equipment which are in addition to the requirements of the Contract and as approved by both parties, together with the allowable markups.

h. Time

The Contractor shall identify any adjustment in time of the final completion of the work as a whole which is directly attributable to the changed work within fifteen (15) days upon the receipt of the proposed change order. The Contractor's request for a change in time will be supported by a detailed schedule analysis indicating the

activities which have been affected and the additional time being requested.

For a change in time for the work, the Contractor shall be entitled only to such adjustments in time by which completion of the entire work is delayed due to the performance of the changed work. Each estimate for change in the work submitted by the Contractor shall state amount of the extra time the Contractor considers should be allowed for making the requested change. Failure to request extra time when submitting such estimate shall constitute waiver of the right to subsequently claim adjustment in time for final completion based upon such changed work.

i. Type of Change

A change order may adjust the Contract price either upward or downward in accordance with one or a combination of the following bases as the Owner may elect:

- (1) On a lump sum basis as supported by the breakdown of estimated costs.
- (2) On a unit price basis.
- (3) On a time and material (force account) basis.

j. Change Order Costs

(1) Markups

- (a) For work performed by the General Contractor, in the amount equal to the direct cost (as defined herein) for the work plus 15% of the direct costs for overhead and profit.
- (b) For work performed by Subcontractor in the amount equal to the direct cost (as defined herein) for the work plus 20% of the direct cost for overhead and profit. (Suggested Breakdown: 15% to the Subcontractor, 5% to the General Contractor.)
- (c) For work performed by a Sub-subcontractor (any tier), in the amount equal to the direct cost (as defined herein) for the work plus 25% of the direct cost for overhead and profit. (Suggested Breakdown: 15% for Sub-subcontractor, 5%

to Subcontractor and 5% to General Contractor.)

- (d) In no case will the total markups be greater than 25% of the direct cost notwithstanding the number of contract tiers actually existing.
- (e) For deleted work the credit markup shall be 10% of the direct cost or the agreed upon estimate thereof.
- (f) The markup shall include profit, small tools, cleanup, bonds, engineering, supervision, warranties jobsite overhead and Home Office overhead. No markup will be allowed on taxes. (See the following paragraphs for more detailed exceptions.)
- (g) The markup for T&M work will be 5% less than noted above in paragraphs a through d.

(2) Direct Costs

(a) Labor

Cost for labor shall include any employer payments to or on behalf of the workmen for health, welfare, pension, vacation, and similar purposes. Labor rates will not be recognized when in excess of those prevailing in the locality and time the work is being performed. The costs for all supervision including General Superintendents/General Foremen will be included in the markups established by the Contract. The only exception to this will be working foremen who perform actual manual labor. No labor charges will be accepted for engineering or proposal preparation. These costs will be included in the markups established by the Contract. A breakdown of the payroll rates for each trade will be provided for all change orders 30 days after notice to proceed including the base rate, benefits, payroll taxes, and insurance.

Overtime and premium time pricing will only be allowed for labor which, based on mutual Agreement, shall be performed after normal working hours.

Mechanical and electrical changes will be negotiated using productivity factors no greater than those listed in the following manuals:

Electrical: NECA Column 1 (Normal), Latest Edition.

Plumbing and Piping: MCAA Discounted 30%.

HVAC: National Mechanical Estimator by Ottaviano, latest edition.

(b) Materials

The actual cost to the Contractor for the materials directly required for the performance of the changed work. Such cost of materials may include the cost of transportation and no delivery charges will be allowed unless the delivery is specifically for the changed work.

If a trade discount by an actual supplier is available to the Contractor, it shall be credited to the Owner. If the materials are obtained from a supplier or source owned wholly by or in part by the Contractor, payment thereof will not exceed the current wholesale price for the materials. The term "trade discount" includes the concept of cash discounting.

If in the opinion of the Owner, the cost of the materials is excessive or if the Contractor fails to furnish satisfactory evidence of a cost to him other from the actual supplier thereof, then, in either case, the cost of the materials shall be deemed to be the lowest current wholesale price at which similar materials are available in the quantities required. The Owner reserves the right to furnish such materials as it deems advisable and the Contractor shall have no claims for cost or profits on materials furnished by the Owner.

(c) Equipment

The actual cost to the Contractor for the use of equipment directly required in the performance of the changed work. In computing the hourly rental of equipment, any time less than 30

minutes shall be considered one-half hour. No payment will be made for time while equipment is inoperative due to breakdown or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to the work for rental of such equipment, and to return it to the source. No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the project in any other way than upon the changed work.

Individual pieces of equipment having a replacement value of \$1,000 or less shall be considered to be small tools or small equipment and no payment will be made therefor.

The rental rate for equipment will not exceed that as recommended by the lower of the rental rates established by Caltrans or as contained in the Association of Equipment Distributors (AED) book.

For equipment owned, furnished, or rented by the Contractor no cost thereof shall be recognized in excess of the rental rates established by Caltrans and/or the AED any tier book.

The amount to be paid to the Contractor for the use of equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel, power, oil, lubricants, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators) and any and all costs to the Contractor incidental to the use of the equipment.

k. Records

The Contractor shall maintain his records in such a manner as to provide a clear distinction between the direct costs of extra work and the cost of other operations. This requirement pertains to proposed change orders, change orders and work the Contractor considers to be potential change orders.

The Contractor will provide at the beginning of the project a certified statement and detailed calculation from its accountant establishing the job site and pro rata home office overhead rates for itself and its major subcontractors.

The Contractor at the beginning of the project shall provide a complete listing of all Contractor and subcontractor hourly labor rates.

l. Emergency Changes

Changes in the work made necessary due to unexpected or unforeseen site conditions, discovery of errors in plans or specifications requiring immediate clarifications in order to avoid serious work stoppage, or other changes where the extent cannot be determined until completed, or under any circumstances whatsoever deemed necessary by the Owner, are types of emergency changes which may be authorized by the Owner in writing to the Contractor. The Contractor shall commence performance of emergency changes immediately upon authorization. These changes will be performed on a time and material (force account) basis as aforementioned.

m. Surety

All alterations, extensions of time, extra and additional work and other changes authorized by these specifications or any part of the Contract may be made without securing consent of the surety or sureties on the Contract bonds.

n. Impact

The Contractor may not reserve a right to assess impact cost, extended job site costs, extended overhead, and/or constructive acceleration at some later date as related to

any and all changes. These costs or estimated costs must be supported with full schedule and cost documentation with each proposed change within the prescribed submission times. If a request for a change is denied and the Contractor disputes the denial, the Contractor must supply the aforementioned documentation to support his claim under the disputes clause of this Contract. The Contractor shall waive his right to impact, extended overhead costs and construction acceleration due to the multiplicity of changes and clarifications.

o. Schedule

Should the Contractor find that a change has not been processed which may effect the immediate controlling activity(s), they will request a directive (Field Instruction) to proceed on a T&M basis.

Clause 64 - Audit

- a. The Owner shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy, completeness, and currency of the cost or pricing data at no additional cost to the Owner.
- b. The Contractor shall make available at its office at all reasonable times the materials described in paragraph (a) above, for examination, audit, or reproduction, until 4 years after final payment under this Contract.
- c. The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph c., in all subcontracts over \$10,000 under this Contract.

T. PAYMENT

Clause 65 - Payment

- a. The Owner shall pay the Contractor the Contract price as provided in this Contract.
- b. The Owner shall make progress payments monthly as the work proceeds, on estimates approved by the Owner. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the work, in such detail as

requested, to provide a basis for determining progress payments.

- c. Contractor shall submit to the Owner and to the Project Manager vouchers, schedule activities, or other satisfactory proof of the value of any work for which he claims payment on such account, and receipts showing that progress payments have been duly made on such Contracts, and for materials furnished.
- d. In the preparation of estimates the Owner may authorize material delivered on the site and preparatory work done to be taken into consideration for major equipment if:
 - (1) Consideration is specifically authorized by this Contract; and
 - (2) The Contractor furnishes satisfactory evidence that it has acquired title and paid invoices for such material and that the material will be used to perform this Contract.
- e. On the 25th of each month the Contractor will submit his request for payment. Prior to that submittal the Owner will review the requested percentage of completion for each activity. The payment request will be in the format as prescribed by the Owner and will refer to the schedule (or cost loaded CPM where required).
- f. All estimates of work performed during the preceding calendar month and all requests for payment thereof or for partial payment on account of equipment delivered but not installed, as herein provided for, shall be certified by Contractor and countersigned by him before any certificate shall be given to Owner. If errors are found in a request for payment, the errors shall be corrected by the Contractor, and the request resubmitted to the Owner and to the Construction Manager for approval, bearing the date of same as corrected.
- g. Retainage and Withholds
 - (1) Retainage

In making these progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the Contract work. When the work is substantially complete, the Owner shall retain an amount that the Owner

considers adequate protection and may release to the Contractor all or a portion of any excess amount.

- (2) The Contractor may elect to substitute securities for funds withheld or enter into an Escrow Agreement for Security Deposits in Lieu of Retention pursuant to Public Contract Code Section 22300.

h. Payment of Employees

Contractor and each subcontractor shall pay each of his/her employees engaged in work under this Contract in full (less deductions made mandatory by law) in accordance with California law.

i. Withholds

The Owner may withhold (in excess of retainage) or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect the Owner from loss on account of:

- (1) Defective work not remedied.
- (2) Claims filed or reasonable evidence indicating probable filing of claims.
- (3) Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- (4) Damage to another Contractor.
- (5) Delays in progress toward completion of the work, with the stipulated amount of liquidated damages being withheld for each day of delay for which no extension is granted.

When the above grounds are removed, payment shall be made for the amount withheld because of them.

j. Liens and Stop Notices

- (1) Should stop notices be filed with the Owner or Owner Auditor, Owner shall withhold the amount claimed from certificates until such claims shall have been resolved pursuant to law, Civil Code Section 3179 et seq.
- (2) At the election of the Owner, Contractor shall provide, within ten (10) days of receipt of each

progress payment, unconditional waivers and release of lien rights, signed by Contractor and each of its subcontractors and materials suppliers, in the form established therefor by Section 3262 of the Civil Code of the State of California.

- (3) Subject to other conditions of these specifications within forty (40) days after receipt of Contractor's monthly request for payment on account, during the progress of the work, the Owner shall issue certificates of payment on account of the Contractor, for labor and materials actually incorporated in place in the building in a satisfactory manner approved by Project Manager or its Construction Manager.

k. Rights to Property

All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Owner, but this shall not be construed as:

- (1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
- (2) Waiving the right of the Owner to require the fulfillment of all of the terms of the Contract.

Clause 66 - Final Payment

a. General. The Owner shall pay the amount due the Contractor under this Contract after:

- (1) Final Completion and acceptance of all work per the acceptance clause of this Contract;
- (2) Presentation of a properly executed voucher;
- (3) Release of all liens; and
- (4) Presentation of release of all claims against the Owner arising by virtue of this Contract, other than claims, disputes in stated amounts, that the Contractor has specifically excepted from the operation of the release.

b. Liens. Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner complete release of all liens arising out of this Contract.

or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all labor and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, to indemnify him against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and reasonable attorney's fees.

- c. Final Certificates. When the work is ready for acceptance by the Owner, the Project Manager or its Construction Manager shall so certify in writing to the Board of Supervisors, and a certificate of acceptance will be issued to the Contractor which will bring his progress payment up to ninety percent of the Contract price, less sums withheld regarding liquidated damages, if any.

Notice of Completion will be recorded by the Owner upon completion and acceptance of the work. Providing no stop notices have been filed, thirty-five (35) days after filing of such Notice of Completion, payment due under the Contract will become due to the Contractor and the Project Manager or its Construction Manager shall so certify to the Owner authorizing the final payment. Such payment may withhold any reasonable sums payable to Contractor for any work which could not have been completed on said date or that the Owner may have found defective and ordered to be replaced. Final payment for withholdings will be made when the work is completed and/or defective work replaced.

- d. Final Payment and Claims Disputes. After acceptance of work, the Owner will submit to Contractor a statement of the sum due Contractor under this Contract, together with Owner payment in the amount thereof. Said statement shall take into account the Contract price, as adjusted by any change orders; amounts already paid; and sums to be withheld for incomplete work, liquidated damages, and for any other cause under the Contract. Within thirty (30) days after receipt thereof, Contractor shall approve such statement or file a claim with the Owner under the disputes clause. Approval of said statement or failure to file claim within said 30 day period shall constitute a waiver by Contractor of

additional right to compensation under or by reason of the Contract and the payment so made by Owner shall thereupon become a complete settlement between Owner and Contractor. To constitute filing of claim Contractor shall set forth in writing and in detail the basis for claim and amount of money for which demand is made and shall submit same to the Owner in accordance with the disputes clause of this Contract. No demand by Contractor shall be recognized as a claim by the Owner unless it is filed in accordance with this paragraph and the disputes clause.

The Owner shall examine the claim so filed and, if the claim is found to be proper, a Owner payment will be issued in the amount due upon such claim. If the Owner finds that such claim is without merit, Contractor will be so notified. The finding by the Owner on such claim shall be binding and conclusive upon Owner and Contractor as to questions relating to performance of the Contract and amount to be paid thereunder except in case of gross error. Decision of the Owner will be in writing and a copy furnished to Contractor.

The Contractor shall, from the effective date of acceptance until the expiration of four years after final settlement under this Contract, preserve and make available to the Owner, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract.

Clause 67 - Assignment

Neither the Contract, nor any part thereof, nor moneys due or to become due thereunder may be assigned by the Contractor without the prior written approval of the Owner which may not be unreasonably withheld.

U. SUSPENSION OF WORK, TERMINATION

Clause 68 - Suspension of Work

- a. The Owner may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that the Owner determines appropriate for the convenience of the Owner.
- b. If the performance of all or any part of the work is, for any unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Owner in the administration of this Contract, or (2) by the Owner's

failure to act within the time specified in this Contract (or within a reasonable time if not specified), the Contractor will provide notice according to this clause.

Any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, will result in the Contract being modified in writing accordingly by Change Order. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which a change order is provided for or excluded under any other term or condition of this Contract.

- c. A claim under this clause shall not be allowed (1) for any costs incurred more than seven (7) days before the Contractor notified the Owner in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing within 7 days after the termination of the suspension, delay, or interruption. Failure to provide a 7 day notice and/or a fully detailed claim including all facts and pricing within the 7 days after termination of suspension will result in the Contractor waiving his/her right to claim.
- d. The Owner may stop work in accordance with the safety and health clause and non-compliance clause of this Contract for no additional cost or time.

Clause 69 - Noncompliance with Contract Requirements

- a. Noncompliance. In the event the Contractor, after receiving written notice from the Owner of noncompliance with any requirement of this Contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the Owner shall have the right to order the Contractor to stop any or all work under the Contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of Contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

- b. Abandonment of Work. Should the Contractor abandon the work called for under the plans and specifications and Contract Documents, or assign his Contract, or if the Contractor unnecessarily and unreasonably delays the work, or if the Contractor willfully violates or performs the work in bad faith, the Owner shall have the power to notify the Contractor to discontinue all work or any part thereof under this Contract, and thereupon the Contractor shall cease to continue said work or such part thereof as the Owner may designate, and the Owner shall thereupon have the power to employ such persons as it may consider desirable, and to obtain by Contract, purchase, hire or otherwise, such implements, tools, material or materials as the Owner may deem advisable to work at and be used to complete the work herein described, or such part thereof as shall have not been completed, and to use such material as it may find upon the site of said work, and to charge the expense of such labor and material, implements and tools to the Contractor, and the expense so charged shall be deducted and paid by the Owner out of such monies as may either be due, or may at any time thereafter become due to the Contractor hereunder and by virtue of the Contract.

Clause 70 - Termination

- a. Termination for Breach

If the Contractor should be adjudged bankrupt or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his subcontractors should violate any of the provisions of the Contract, the Owner may serve written notice upon him and his surety of its intention to terminate the Contract, such notice to contain the reasons for such intention to terminate the Contract, and, unless within three (3) days after serving of such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, the Contract shall, upon the expiration of said three days, cease and terminate. In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided, however that, if the surety within seven (7) days after the serving upon it of notice of termination does not give the Owner written notice of its intention to take over and perform the Contract or does not

commence performance thereof within fourteen (14) days from the date of the serving of such notice, the Owner may take over the work and prosecute the same to completion by Contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may without liability for so doing take possession of and utilize in completing the work, such materials, appliances, plants, and other property belonging to the Contractor as may be on the site of the work and necessary therefor.

b. Termination for Convenience

(1) The Owner may terminate performance of work under this Contract in whole or, from time to time, in part if the Owner determines that a termination is in the Owner's interest. The Owner shall terminate by delivering to the Contractor a Notice to Terminate specifying the extent of termination and the effective date.

After receipt of a Notice of Termination, and except as directed by the Owner, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

Stop work as specified in the notice.

Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.

Terminate all subcontracts to the extent they relate to the work terminated.

As sign to the Owner, as directed, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Owner shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

With approval or ratification to the extent required by the Owner, settle all outstanding liabilities and termination settlement proposals arising from

termination of subcontracts; the approval or ratification will be final for purposes of this clause.

As directed by the Owner, transfer title and deliver to the Owner (1) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced or acquired for the work terminated, and (2) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Owner.

Complete performance of the work not terminated

Take any action that may be necessary, or that the Owner may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Owner has or may acquire an interest.

Use its best efforts to sell, as directed or authorized by the Owner, any property of the types referred to in subparagraphs above; provided, however, that the Contractor (1) is not required to extend credit to any purchaser and (2) may acquire the property under the conditions prescribed by, and at prices approved by, the Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Owner under this Contract, credited to the price or cost of the work, or paid in any other manner directed by the Owner.

(2) After termination, the Contractor shall submit a final termination settlement proposal to the Owner in the form and with the certification prescribed by the Owner. The Contractor shall submit the proposal promptly, but no later than 30 days from the effective date of termination. If the Contractor fails to submit the proposal within the time allowed, the Owner may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(3) Subject to paragraph (2) above, the Contractor and the Owner may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount,

whether under this paragraph (3) or paragraph (4) below, exclusive of costs shown in subparagraph (4) below, may not exceed the total Contract price as reduced by (1) the amount of payments previously made and (2) the Contract price of work not terminated. The Contract shall be amended with a Change Order, and the Contractor paid the agreed amount. Paragraph (4) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(4) If the Contractor and Owner fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Owner shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under the above paragraphs:

(a) For Contract work performed before the effective date of termination, the total (without duplication of any terms) of:

- (i) The cost of this work;
- (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (i) above; and
- (iii) A sum, as profit on (i) above, determined by the Owner to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Owner shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(b) The reasonable costs of settlement of the work terminated including:

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(5) Except for normal spoilage, the Owner shall exclude from the amounts payable to the Contractor under paragraph (4) above, the fair value, as determined by the Owner, of defective work, and of property that is destroyed, lost, stolen, or damaged so as to become undeliverable.

(6) The Contractor shall have the right of claim under the Disputes clause, from any determination made by the Owner under paragraph (2), (4), or (8), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (2) or (8), and failed to request a time extension, there is no right of appeal. If the Owner has made a determination of the amount due under paragraph (2), (4), or (8), the Owner shall pay the Contractor the amount determined by the Owner if there is no right of appeal or if no timely appeal has been taken, or the amount finally determined on legal determination.

(7) In arriving at the amount due the Contractor under this clause, there shall be deducted:

- (a) All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;
- (b) Any claim which the Owner has against the Contractor under this Contract; and
- (c) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Owner.

(8) If the termination is partial, the Contractor may file a proposal with the Owner for a Change Order of the price(s) of the continued portion of the Contract. The Owner shall make any Change Order agree

upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 30 days from the effective date of termination unless extended in writing by the Owner.

- (9) The Owner may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the Owner believes the total of these payments will not exceed the amount to which the Contractor will be entitled. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Owner upon demand, together with interest.
- (10) Unless otherwise provided in this Contract or by statute, the Contractor will maintain all records and documents relating to the terminated portion of this Contract for 4 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Owner, State and/or the U.S. Government or their representatives at all reasonable times, without any direct charge.

V. DISPUTES/CLAIMS

Clause 71. Disputes/Claims

- a. Definition of Claim: "Claim" as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or relating to this Contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim or dispute under the Contract. The voucher, invoice, or other request for payment may be converted to a claim under the Contract, by complying with the submission requirements of this clause, if it is disputed either as to liability or amount.
- b. Good Faith Attempt to Resolve: Contractor and Owner shall make good faith attempts to resolve any and all protests and claims that may from time to time arise

during the performance of the work covered by this Contract.

- c. Written Protest Required: If the Contractor considers any work demanded of him to be outside the requirements of the Contract, or if he considers any instruction, meaning, requirement ruling, or decision of the Owner or its Project Manager or its Construction Manager to be unauthorized, he shall, within seven (7) calendar days after such demand is made or instruction is given, file a written protest with the Owner stating clearly and in detail his objections and reasons therefor. If a written protest is not issued within seven (7) days after the demand is made, the Contractor shall waive any and all right to pursue any relief as to that protest or claim.
- d. Decision on Protest: The Owner's Project Manager will review the Contractor's written protest, and provide a written decision to the Contractor ("Decision").
- e. Written Claim Required: If, after receiving the Decision, the Contractor still believes he has a valid claim, he shall so notify the Owner through the Owner's Project Manager or its Construction Manager, in writing, within seven (7) days after receiving the Decision that a formal written claim will be issued. Within thirty (30) days of receiving the Decision, the Contractor shall submit his claim and all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting his position in accordance with the claim format set forth below. Failure to provide notification with seven (7) days of the Decision and all justifying documentation with thirty (30) days of the Decision will result in the Contractor waiving any and all right to pursue the subject claim.
- f. Claim Format: The Contractor shall submit the claim justification in the following format:
1. Cover letter containing summary of claim merit and amount, and clause or section under the Contract under which the claim is made.
 2. List of documents relating to claim:
 - a) Specifications
 - b) Drawings
 - c) Clarifications (RFI's)
 - d) Correspondence
 - e) Other Relevant Information

3. Chronology of Events
4. Detailed Analysis of Claim Merit
5. Detailed Analysis of Claim Cost
6. Certification
7. Attachments:
 - a) Specifications
 - b) Drawings
 - c) Clarifications (RFI's)
 - d) Correspondence
 - e) Other Relevant Information

g. Certification: The Contractor (and subcontractors) shall submit with the claim a certification that:

1. The claim is made in good faith;
2. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
3. The amount requested accurately reflects the Contract adjustment for which the Contractor believes the Owner is liable.
4. The certification shall contain the following statement: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." Said declaration shall be dated and signed by an authorized person. If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the Contractor's affairs.
5. If a false claim is submitted, it will be considered fraudulent and the Contractor may be subject to criminal prosecution.

Failure to provide the certification in accordance with the above requirements will result in the Contractor waiving any and all right to pursue the subject claim.

h. Claim Review and Determination: Upon receipt of the Contractor's formal claim, including all arguments, justification, cost or estimates, schedule analysis, and documentation supporting his position as outlined above, the County Administrator or his designee will review the

claim within thirty (30) days from receipt thereof will render a final determination (subject to Board of Supervisors' approval). If the Contractor disagrees with the final determination of the Owner, he may file an action in Stanislaus County Municipal or Superior court. It is expressly agreed that Stanislaus County shall be the forum for resolving any disputes concerning this Contract. All parties waive a right to a trial by jury. Claims shall not be submitted to arbitration, unless the Owner and Contractor mutually agree to submit the matter to arbitration.

i. Filing Protest or Claim Not Basis to Discontinue Work
The Contractor shall promptly comply with the work required under the Contract or work requested by the Owner even though a protest or claim has been submitted to the Owner.

j. Claims of 375,000 or less. Public Contract Code Section § 20104 applies to public works claims of \$375,000 or less. This section provides:

(a)(1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a Contractor and a local agency.

(2) This article shall not apply to any claims resulting from a Contract between a Contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b)(1) "Public work" has the same meaning as in Section 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the Contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

§ 20104.2. Claims; requirements; tort claims excluded

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

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

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

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

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

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

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

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

producing the additional information or requested documentation, whichever is greater.

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

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in 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 that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of 2001 Electronic Pocket Part Update
§ 20104.4. Civil action procedures; mediation and arbitration; trial de novo; witnesses

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

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

to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b)(1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act 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) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

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

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

§ 20104.6. Payment on undisputed portion of claim; interest on arbitration awards or judgments

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

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

VI. PROJECTS FUNDED BY GRANTS.

Clause 7. Projects funded by Grants

- a. The Contractor shall abide by all grant conditions in projects which are funded in whole, or in part, by grant funding or other funding agencies.
- b. The Contractor shall, in a timely manner, provide information to agencies who provide funding or issue grants, any information relating to the Contractor's or's schedule schedule of values, and the progress of the work.
- c. The Contractor shall retain, for a period of four years from the date of final payment, all written documents and writings relating to the work. The Contractor shall submit said information to granting or funding agencies upon their reasonable request.
- d. Funding agencies shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy, completeness, and currency of the cost or pricing data at no additional cost to the Owner.

VII. SECURITY CLEARANCE

Clause 7. Security Clearance.

- a. The following security clearance procedures are applicable to this project.