

Project Manual

GENERAL BUILDING JOB ORDER CONTRACT

Contract #'s 21-J-02, Class B
21-J-03
21-J-04

The County of Fresno
Department of Public Works and Planning
2220 Tulare St., 6th Floor
Fresno, California 93721

Bid Documents

Pre-bid Conference: Wednesday, March 16, 2022, 10:00 a.m.

Bid Date: Friday, April 1, 2022, 1400 hours and 00 seconds

Budget / Account – Various Funding Orgs



Development Services & Capital Projects Division

Department of Public Works & Planning

Contract: 21-J-02
21-J-03
21-J-04

Cover Sheet
00 00 10-1

**The County of Fresno
Department of Public Works and Planning**

GENERAL BUILDING JOB ORDER CONTRACT

Contract #21-J-02, Class B
Contract #21-J-03, Class B
Contract #21-J-03, Class B

Brian Pacheco, Chairman	1 st District
Sal Quintero, Vice Chairman	3 rd District
Steve Brandau	2 th District
Buddy Mendes	4 th District
Nathan Magsig	5 th District

Paul Nerland, County Administrative Officer

Steven E White

Steven E White (Mar 24, 2022 11:41 PDT)

Steven White, Director
Department of Public Works and Planning



3.24.22
Date Signed

Capital Projects: _____

Noel Roger Davidson, #C27818
License Renewal 10/31/23

Fresno County Department of Public Works and Planning – Capital Projects
2220 Tulare Street, 8th Floor
Fresno, CA 93721-2104

Consultant:

The Gordian Group
30 Patewood Dr., Suite 350
Greenville, SC 29615

Contract No.: #21-J-02
21-J-03
21-J-04

Signature Page
00 01 07-1

JOB ORDER CONTRACTS

The County of Fresno
Department of Public Works & Planning
2220 Tulare St., 6th FL
Fresno, CA 93721

GENERAL BUILDING JOB ORDER CONTRACT

Contract #21-J-02, Class B
21-J-03
21-J-04

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***Sections 00 21 13 through 00 45 46 included in Bid Book**

Refer to the JOB ORDER CONTRACT CONSTRUCTION TASK CATALOG® and JOB ORDER CONTRACT TECHNICAL SPECIFICATIONS, DIVISION 01 – DIVISION 41 provided in electronic format.

END OF SECTION

1 BOARD OF SUPERVISORS COUNTY OF FRESNO STATE OF CALIFORNIA

2
3 NOTICE TO BIDDERS

4
5 Sealed proposals will be received at
6 <https://www.bidexpress.com/businesses/36473/home>, and at the Fresno County
7 Department of Public Works and Planning, Office of the Design Engineer, Seventh
8 Floor, Fresno County Plaza Building, 2220 Tulare Street, Fresno, CA 93721 until

9
10 **2:00 P.M., (1400 hours and 00 seconds)**
11 **Friday, April 1, 2022**

12
13 at which time the bidding will be closed.

14
15
16 **If you have any questions about bid submission, please contact us at**
17 **DesignServices@fresnocountyca.gov or call (559) 600-4241.**

18
19 Promptly following the closing of the bidding all timely submitted bids will be publicly
20 opened and viewable via a livestream (the link for which will be posted at
21 <http://www.co.fresno.ca.us/planholders>), for construction in accordance with the
22 specifications therefor, to which special reference is made as follows:

23
24 **GENERAL BUILDING JOB ORDER CONTRACT**

25
26 **Contract Nos.: 21-J-02, Class B**
27 **21-J-03, Class B**
28 **21-J-04, Class B**

29
30 A Job Order Contract is an indefinite quantity contract pursuant to which the Contractor
31 will perform an ongoing series of individual projects at different locations throughout
32 the County of Fresno. The bid documents include a Construction Task Catalog[®]
33 containing construction tasks with preset Unit Prices. All Unit Prices are based on local
34 labor prevailing wages, material and equipment prices and are for the direct cost of
35 construction.

36
37 **A MANDATORY pre-bid conference will be held at 10:00 a.m., on Wednesday,**
38 **March 16, 2022 for the purpose of discussing the Job Order Contract concept,**
39 **documents, bid considerations and to discuss Job Order Contracting from a**
40 **contractor's viewpoint. The MANDATORY pre-bid conference will be held online**
41 **(the link for which will be posted at <http://www.co.fresno.ca.us/planholders>).**

42
43 **Prospective bidders whose representative(s) attend the MANDATORY pre-bid**
44 **conference will receive the electronic link to the official specification books, the**
45 **Construction Task Catalog[®] and Technical Specifications.**

46
47 Bidders will bid three sets of Adjustment Factors to be applied to the Unit Prices. One
48 set of Adjustment Factors for County/State-funded projects, one set of Adjustment
49 Factors for Federally-funded projects and one set of Adjustment Factors for
50 County/State-funded projects in a Secure Facility. Each set of Adjustment Factors will

Contract No.: 21-J-02
21-J-03
21-J-04

Notice to Bidders
00 11 13-1

JOB ORDER CONTRACTS

1 include one Adjustment Factor for performing work during Normal Working Hours and
2 a second Adjustment Factor for performing work during Other Than Normal Working
3 Hours. All Adjustment Factors apply to every task in the Construction Task Catalog®.
4

5 Upon award of contract and as projects are identified, the Contractor will jointly scope
6 the work with the County Project Manager. The County Project Manager will prepare
7 a Detailed Scope of Work and issue a Request for Proposal to the Contractor. The
8 Contractor will then prepare a Work Order Proposal for the project including a Work
9 Order Price Proposal, Schedule, Sketches or Drawings, a list of subcontractors, and
10 other requested documentation. The value of the Work Order Price Proposal shall be
11 calculated by summing the total of the calculation for each Pre-priced Task (Unit Price
12 x quantity x Adjustment Factor) plus the value of all Non-Pre-priced Tasks.
13

14 If the Work Order Price Proposal is found to be reasonable, a Work Order may be
15 issued. The Contractor is required to complete each Detailed Scope of Work for the
16 Work Order Price within the Job Order Completion Time.
17

18 A Work Order will reference the Detailed Scope of Work and set forth the Work Order
19 Completion Time, and the Work Order Price. The Work Order Price is determined by
20 multiplying the preset Unit Prices by the appropriate quantities and by the appropriate
21 Adjustment Factor. The Work Order Price shall be a lump sum, fixed price for the
22 completion of the Detailed Scope of Work.
23

24 A separate Work Order will be issued for each project. Extra work, credits, and
25 deletions will be contained in a Supplemental Work Order.
26

27 Minimum and Maximum Contract Values:

- 28 A. There is no Minimum Contract Value for this Contract. If a contract is awarded,
29 the Contractor is not guaranteed to receive a specified minimum amount of
30 work during the Contract Term.
31
- 32 B. The Maximum Contract Value is \$5,185,091.94. The Contractor is not
33 guaranteed to receive this volume of Work Orders. It is merely an estimate. The
34 Owner has no obligation to issue Work Orders in excess of the Minimum
35 Contract Value.
36
- 37 C. The successful bidder shall furnish a payment bond and a performance bond
38 in the amount of \$2,000,000 each as security for the payment of all persons
39 performing and furnishing materials in connection with this Contract. If the
40 aggregate outstanding Job Orders issued under the contract exceeds
41 \$2,000,000, increases in the Payment and Performance Bonds in increments
42 of \$500,000 will be required such that the amount of the Payment and
43 Performance Bonds are not less than one hundred percent (100%) of the
44 outstanding aggregate Job Orders issued. Bonds shall remain in force for the
45 duration and until completion of any outstanding Job Order. At no time may the
46 sum of outstanding Job Orders exceed the amount of the Payment and
47 Performance Bonds.
48

49 Contract Term:

- 50 A. The Contract Term commences on the date the contract is executed by the
51 County of Fresno Board of Supervisors (i.e.: the effective date of the Contract).

1
2 B. The term of the Job Order Contract will be either for one year or when issued
3 Work Orders totaling the Maximum Contract Value have been completed,
4 whichever occurs first. All Work Orders must be issued but not necessarily
5 completed within one calendar year of the effective date of the Contract. All
6 Work Orders for which a Notice to Proceed is issued by the County Contract
7 Manager during the term of this Contract shall be valid and in effect
8 notwithstanding that the Detailed Scope of Work may be performed, payments
9 may be made, and the guarantee period may continue, after the Contract Term
10 has expired. All terms and conditions of the Contract apply to each Work Order.
11 No notices to proceed will be issued after 5:00, P.M. on the final day of the
12 Contract Term.
13

14 Bidders may fill out a Request to be Added to Planholders list:

15
16 <https://www.co.fresno.ca.us/departments/public-works-planning/divisions-of-public-works-and-planning/design-division/planholders-list-request-to-be-added>
17
18

19 Requesters will then be listed as a planholder for the project on the website and
20 receive email notifications and addenda regarding the project.
21

22 Prospective bidders may also select the project on www.BidExpress.com. Those that
23 demonstrate interest in the project will also be added to the planholders list, and will
24 receive notifications and addenda regarding this project.
25

26 Planholder and exchange/publication names may be obtained from the Fresno County
27 website at <http://www.co.fresno.ca.us/planholders>. Electronic copies in “.pdf” file
28 format of the official project plans and specifications and such additional supplemental
29 project information as may be provided at the mandatory pre-bid conference.
30

31 The bid documents are available online at:
32 <https://www.bidexpress.com/businesses/36473/home> and bids may be submitted
33 electronically through that website.
34

35 If a bidder is unable to submit a bid via Bid Express, Bid books, which contain bid
36 proposal sheets necessary to submit a bid, may be obtained at
37 <http://www.co.fresno.ca.us/planholders>. Paper bids shall be submitted in a sealed,
38 opaque envelope addressed to the Department and labeled with the name of the
39 bidder, the name of the project, the contract number, and the statement 'Do Not Open
40 Until The Time Of Bid Opening.'
41

42 A Summary of Bids for the apparent low bidder will be posted at the above listed
43 website, generally within 24 hours of the Bid Opening.
44

45 All questions regarding this contract shall be in writing and shall be received by the
46 Department of Public Works and Planning, Design Division, no later than 2:00 P.M.
47 on the seventh (7th) calendar day before bid opening. Any questions received after
48 this deadline will not receive a response unless the Department of Public Works and
49 Planning elects to issue an addendum to revise the bid opening date. In the event that
50 the bid opening date is revised, the deadline for questions will be extended to no later
51 than 2:00 P.M. on the seventh (7th) calendar day before the revised bid opening date.

1 Questions shall be submitted on the Request for For Clarification form provided on the
2 contract website at:

3
4 [https://www.co.fresno.ca.us/departments/public-works-and-planning/construction-](https://www.co.fresno.ca.us/departments/public-works-and-planning/construction-bidding-opportunities/21-j-02-21-j-03-21-j-04-class-b-general-building-job-order-contract/request-for-clarification-form)
5 [bidding-opportunities/21-j-02-21-j-03-21-j-04-class-b-general-building-job-order-](https://www.co.fresno.ca.us/departments/public-works-and-planning/construction-bidding-opportunities/21-j-02-21-j-03-21-j-04-class-b-general-building-job-order-contract/request-for-clarification-form)
6 [contract/request-for-clarification-form](https://www.co.fresno.ca.us/departments/public-works-and-planning/construction-bidding-opportunities/21-j-02-21-j-03-21-j-04-class-b-general-building-job-order-contract/request-for-clarification-form)
7

8 Any changes to, or clarification of, the Contract documents and specifications shall be
9 in the form of a written addendum issued to planholders of record. Questions that
10 prompt a change or clarification shall be included in the addendum with the
11 subsequent answer.

12
13 Any oral explanation or interpretations given to this project are not binding.

14
15 Bidders will submit one (1) bid that will be considered for three potential Contracts
16 being offered.

17
18 Bidders will bid three (3) sets of Adjustment Factors to be applied to the Unit Prices:

- 19 • One set of Adjustment Factors for County/State-funded projects.
- 20 • One set of Adjustment Factors for Federally-funded projects.
- 21 • One set of Adjustment Factors for County/State-funded projects in a Secure
22 Facility.

23
24 Each set of Adjustment Factors will include one Adjustment Factor for performing work
25 during Normal Working Hours and a second Adjustment Factor for performing work
26 during Other Than Normal Working Hours. All Adjustment Factors apply to every task
27 in the Construction Task Catalog®.

28
29 The County intends to award a contract to each of the three (3) lowest responsible
30 bidders. One proposal must be submitted by each bidder wishing to bid for one of the
31 three contracts in the Class B license category. Bids will be compared, for purposes
32 of identifying the apparent low bidder for proposed award of the contract, on the basis
33 of the Award Criteria Figure. The Award Criteria Figure is the sum of the weighted
34 Adjustment Factors.

35
36 The Construction Task Catalog® is priced at a net value of 1.0000. The bid shall be an
37 increase to (e.g., 1.1000) or decrease to (e.g., 0.9500) the Unit Prices listed in the
38 Construction Task Catalog®. Bidders who submit separate Adjustment Factors for
39 separate Unit Prices will be considered non-responsive and their bid will be rejected.

40
41 The Owner selected The Gordian Group's (Gordian) Job Order Contracting (JOC)
42 Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's
43 proprietary JOC Software and JOC Applications, construction cost data, and
44 Construction Task Catalog® which shall be used by the Contractor solely for the
45 purpose of fulfilling its obligations under this Contract, including the preparation and
46 submission of Job Order Proposals, Price Proposals, subcontractor lists, and other
47 requirements specified by the Owner. The Contractor shall be required to execute
48 Gordian's JOC System License and Fee Agreement and pay a 1% JOC System
49 License Fee to obtain access to the Gordian JOC Solution™. The JOC System
50 License Fee applies to all Job Orders issued to the Contractor under the terms this

1 Contract. The Contractor shall include the JOC System License Fee in the Adjustment
2 Factors.

3
4 Each bid shall be submitted in a sealed envelope addressed to the Department and
5 labeled with the name of the bidder, the name of the project, the contract number, and
6 the statement 'Do Not Open Until The Time Of Bid Opening.'

7
8 Bid security in the amount \$25,000, and in the form of a bid bond issued by an admitted
9 surety insurer licensed by the California Department of Insurance, cash, cashier's
10 check or certified check shall accompany the bid. Bid security shall be made in favor
11 of the County of Fresno. You must either attach an electronic bid bond or provide an
12 original bid bond (or other form of bid security authorized by Public Contract Code
13 Section 20129(a)), prior to the bid opening, in accordance with the detailed directions
14 set forth in Section 1.04 ("PREPARATION OF PROPOSALS") of the Instructions to
15 Bidders. Each paper bid bond shall be submitted in a sealed envelope addressed to
16 the Department and labeled with the name of the bidder, the name of the project, the
17 contract number, and the statement 'Bid Bond - Do Not Open Until The Time Of Bid
18 Opening.'

19
20 No contract will be awarded to a contractor who has not been licensed in accordance
21 with the provisions of the Contractors State License Law, California Business and
22 Professions Code, Division 3, Chapter 9, as amended, or whose bid is not on the
23 proposal form included in the contract document. A valid California Contractor's
24 License, **Class B, (General Building)** is required for this project.

25
26 Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the
27 county, or counties, in which the work is to be done have been determined by the
28 Director of the California Department of Industrial Relations. These wages are set
29 forth in the General Prevailing Wage Rates for this contract available from the
30 California Department of Industrial Relations' Internet web site at
31 <http://www.dir.ca.gov/DLSR/PWD>. Future effective general prevailing wage rates,
32 which have been predetermined and are on file with the California Department of
33 Industrial Relations are referenced but not printed in the general prevailing wage rates.

34
35 **This project is subject to compliance monitoring and enforcement by the**
36 **Department of Industrial Relations.**

37
38 No contractor or subcontractor may be listed on a bid proposal for a public works
39 project unless registered with the Department of Industrial Relations pursuant to Labor
40 Code section 1725.5 [with limited exceptions from this requirement for bid purposes
41 only under Labor Code section 1771.1(a)].

42
43 No contractor or subcontractor may be awarded a contract for public work on a public
44 works project unless registered with the Department of Industrial Relations pursuant
45 to Labor Code section 1725.5.

46
47 This contract is subject to state contract nondiscrimination and compliance
48 requirements pursuant to Government Code, Section 12990.

49
50 The Federal minimum wage rates for this project as predetermined by the United
51 States Secretary of Labor are set forth in General Decision Number CA20220018,
52 Dated 02/24/2022, which is incorporated in these special provisions by this reference

1 as if fully set forth herein and which can be viewed at www.SAM.gov, under
2 CA20220018. Said Federal wage rates, as well as project plans, special provisions,
3 and bid forms, may also be examined at the County of Fresno office described in the
4 preceding paragraph. Addenda to modify the reference to Federal minimum wage
5 rates to reflect revisions thereto, if necessary, will be issued to planholders of record.
6

7 Attention is directed to the provisions in the "Federal Requirements" section of these
8 specifications. If there is a difference between the minimum wage rates predetermined
9 by the Secretary of Labor and the general prevailing wage rates determined by the
10 Director of the California Department of Industrial Relations for similar classifications
11 of labor, the Contractor and subcontractors shall pay not less than the higher wage
12 rate. The Department will not accept lower State wage rates not specifically included
13 in the Federal minimum wage determinations. This includes "helper" (or other
14 classifications based on hours of experience) or any other classification not appearing
15 in the Federal wage determinations. Where Federal wage determinations do not
16 contain the State wage rate determination otherwise available for use by the
17 Contractor and subcontractors, the Contractor and subcontractors shall pay not less
18 than the Federal minimum wage rate, which most closely approximates the duties of
19 the employees in question.
20

21 The successful bidder shall furnish a faithful performance bond in the amount of 100
22 percent of the Maximum Contract Value, a payment bond in the amount of 100
23 percent of the Maximum Contract Value, and One Year Warranty Bond in the
24 amount of 10 percent of the Maximum Contract Value. Each bond specified in this
25 Notice (bid bond, faithful performance bond and payment bond) shall meet the
26 requirements of all applicable statutes, including but not limited to those specified in
27 Public Contract Code section 20129 and Civil Code section 3248.
28

29 Each bond specified in this Notice shall be issued by a surety company designated as
30 an admitted surety insurer in good standing with and authorized to transact business
31 in this state by the California Department of Insurance, and acceptable to the County
32 of Fresno. Bidders are cautioned that representations made by surety companies will
33 be verified with the California Department of Insurance. Additionally, the County of
34 Fresno, in its discretion, when determining the sufficiency of a proposed surety
35 company, may require the surety company to provide additional information supported
36 by documentation. The County generally requires such information and
37 documentation whenever the proposed surety company has either a Best's Key Rating
38 Guide of less than **A** and a financial size designation of less than **VIII**. Provided,
39 however, that the County expressly reserves its right to require all information and
40 documentation to which the County is legally entitled from any proposed surety
41 company.
42

43 Pursuant to Public Contract Code Section 22300, substitution of securities for any
44 moneys withheld by the County of Fresno to ensure performance under the contract
45 shall be permitted.
46
47
48
49
50

1 The Board of Supervisors reserves the right to reject any or all bids.
2
3 Board of Supervisors, County of Fresno
4
5 Paul Nerland, County Administrative Officer
6
7 Bernice E. Seidel, Clerk to the Board
8
9 Issue Date: March 1, 2022
10
11

END OF SECTION

1 INSTRUCTIONS TO BIDDERS

2
3 1.01 EXPLANATION TO BIDDERS

4
5 An explanation desired by bidders regarding the meaning or interpretation of the bid
6 documents must be requested in writing no later than 10 days prior to the bid opening.
7 Oral explanations given before the award of the contract will not be binding. Any
8 interpretation made will be in the form of an addendum to the bid documents, said
9 addendum will only be issued by the County’s Director of Public Works and Planning
10 (“Director”). A copy of the addendum will be furnished to each registered holder of a
11 set of the bid documents and its receipt shall be acknowledged on the Bid Proposal.
12 Each addendum will also be posted on the Public Works and Planning website at
13 <http://www.co.fresno.ca.us/planholders>.

14
15
16 1.02 EXAMINATION OF CONSTRUCTION TASK CATALOG®, TECHNICAL
17 SPECIFICATIONS AND CONTRACTING REQUIREMENTS

18
19 The bidder is required to examine carefully the Construction Task Catalog®, Technical
20 Specifications, Contracting Requirements, and contract forms for submitting a
21 proposal. It is mutually agreed that the submission of a proposal shall be considered
22 prima facie evidence that the bidder has made such examination and is satisfied with
23 the requirements of the Construction Task Catalog®, Technical Specifications and the
24 Contracting Requirements, Division 00.

25
26
27 1.03 PROPOSAL GUARANTEE

28
29 The bidder shall furnish bid security, also referred to herein as a proposal guarantee,
30 consisting of a bid bond, cash, certified check, or cashier's check for \$25,000.00
31 (“Proposal Guarantee”).

32
33 In case security is in the form of a certified check or cashier's check, the County
34 (referred to hereinafter as “Owner”) may make such disposition of same as will
35 accomplish the purpose of which submitted. Checks deposited by unsuccessful
36 bidders will be returned as soon as practicable after the bid opening.

37
38
39 1.04 PREPARATION OF PROPOSALS

40
41 The County intends to award a contract to each of the three (3) lowest responsive and
42 responsible bidders. One bid proposal is required by each bidder wishing to bid for
43 one of the contracts.

44
45 The bidder shall prepare a proposal on the blank proposal form furnished by the
46 County (Owner). The bidder shall specify Adjustment Factors in both words and
47 figures for all six (6) types of Adjustment Factors.

48
49
50 Alternate or conditional bids will not be accepted.

1
2 The bidder's proposal shall be executed by the individual, by one or more partners of
3 the partnership, or by one or more of the officers of the corporation submitting it. If the
4 proposal is made by an individual, a name and post office address must be shown. If
5 made by a partnership, the name of each member of the partnership must be shown.
6 If made by a corporation, the proposal must show the name of the state under which
7 the corporation was chartered and the name of the president, vice president, secretary
8 and treasurer.

9
10 The required proposal guarantee must accompany the proposal.

11 12 13 1.05 SUBCONTRACTORS

14
15 No subcontractors shall be listed with the bid. Each individual Work Order Proposal
16 under the Contract shall include the subcontractor listing.

17 18 19 1.06 SUBMISSION OF PROPOSAL

20 21 A. Electronic Bid Submittal

22
23 The bidder has the option to submit the bid for this Project
24 electronically. The bidder must either attach an electronic bid bond or
25 provide an original bid bond (or other form of bid security authorized by
26 Public Contract Code Section 20129(a)), prior to the bid opening.

27
28 Bidders submitting online may use one of the accepted electronic
29 sureties (SurePath or Surety 2000) to submit their bid bond; or may
30 submit cash, cashier's check, certified check, or a bidder bond to
31 Design Services at 2220 Tulare St., Seventh Floor, Fresno, CA 93721.
32 Those submitting bid bonds directly to Design Services must submit
33 their bid bond:

- 34
- 35 1. Under sealed cover
- 36 2. Marked as a bid-bond
- 37 3. Identifying the contract number and the bid opening date on the
- 38 cover
- 39

40 B. Bid Submittal by Personal Delivery or by Mail

41
42 The bidder has the option to submit the bid by personal delivery or by
43 mail. If the bid is not submitted electronically, then all words and
44 figures shall be written on the Proposal form in ink. In the case of a
45 discrepancy between the factors written in words and those written in
46 figures, the written words shall govern. The bidder's proposal shall be
47 signed in ink by the individual executing the bid on behalf of the bidder.

48
49 The required proposal guarantee must accompany the proposal.

1 Each proposal shall be submitted in a sealed envelope labeled to
2 clearly indicate the contract and contents.
3

4 When sent by mail, a sealed proposal must be addressed to the
5 Fresno County Department of Public Works and Planning, Office of the
6 Design Engineer, Seventh Floor, Fresno County Plaza Building, 2220
7 Tulare Street, Fresno, CA 93721. All proposals shall be filed prior to
8 the time and at the place specified in the NOTICE TO BIDDERS.
9 Proposals received after the time for opening of the proposals will be
10 returned to the bidder unopened.
11

12 13 1.07 IRREGULAR PROPOSALS

14
15 Proposals shall be considered irregular and may be rejected for the following reasons:

- 16
17 A. The proposal forms furnished by the Owner are not used or are altered.
- 18
19 B. There are unauthorized additions, conditional or alternate proposals or
20 irregularities of any kind which tend to make the proposal incomplete or
21 indefinite.
- 22
23 C. The bidder adds any provision reserving the right to accept or reject an award,
24 or to enter into a contract pursuant to an award.
- 25
26 D. The bid fails to contain the specified six (6) Adjustment Factors.
27

28 29 1.08 DISQUALIFICATION OF BIDDERS

30
31 Any one or more of the following causes may be considered as sufficient for
32 disqualification of a bidder and rejection of that bidder's proposal:

- 33
34 A. More than one proposal for the same work from an individual, partnership or
35 corporation.
- 36
37 B. Evidence of collusion among bidders. Participants in such collusion will receive
38 no recognition as bidders for any future work of the Owner until such participant
39 shall have been reinstated as a qualified bidder.
- 40
41 C. Lack of competency and adequate machinery, plant or other equipment, as
42 may be revealed by financial statement if required.
- 43
44 D. Unsatisfactory performance record as shown by past work for the Owner,
45 judged from the standpoint of workmanship and progress.
- 46
47 E. Prior commitments or obligations which in the judgment of the Owner might
48 hinder or prevent the prompt completion of the work.
49

- 1 F. Failure to pay, or satisfactorily settle, all bills due for labor or materials on former
2 contracts in force at the time of letting the bid.
- 3
- 4 G. Failure to comply with any qualification regulation of the Owner.
- 5
- 6 H. Failure to furnish full amount of Proposal Guarantee with bid or failure to sign
7 bid bond.
- 8
- 9

10 1.09 WITHDRAWAL OR REVISION OF PROPOSALS

11
12 A bidder may, without prejudice, withdraw a proposal after it has been deposited,
13 provided the request for such withdrawal is received in writing before the time set for
14 opening proposals. The bidder may then submit a revised proposal provided it is
15 received prior to the time set for opening proposals.

16 17 18 1.10 PUBLIC OPENING OF PROPOSALS

19
20 Proposals will be opened and read publicly at the time and place indicated in the
21 Notice to Contractors. Bidders or their authorized agents are invited to be present.

22 23 24 1.11 BID PROTEST PROCEDURE / RELIEF OF BIDDER

25 26 A. BID PROTEST PROCEDURE

27
28 Any bid protest must be submitted in writing and delivered by the
29 Bidder by either of the following means: (1) via e-mail to
30 DesignServices@fresnocountyca.gov; or (2) via certified mail, return
31 receipt requested to the following address: Design Division,
32 Department of Public Works and Planning, 2220 Tulare Street, Sixth
33 Floor, Fresno, CA 93721.

34
35 The bid protest must be received no later than 5:00 p.m. of the seventh
36 (7th) calendar day following the deadline for submittal of the specific
37 bid document(s) placed at issue by the protest. Any Bidder filing a
38 protest is encouraged to submit the bid protest via e-mail, because the
39 deadline is based on the Department's receipt of the bid protest. A bid
40 protest accordingly may be rejected as untimely if it is not received by
41 the deadline, regardless of the date on which it was postmarked. The
42 Bidder's compliance with the following additional procedures also is
43 mandatory:

44
45 The initial protest document shall contain a complete statement of the
46 grounds for the protest, including a detailed statement of the factual
47 basis and any supporting legal authority.

48
49 The protest shall identify and address the specific portion of the
50 document(s) forming the basis for the protest.

1
2 The protest shall include the name, address and telephone number of
3 the person representing the protesting party.
4

5 The Department will provide a copy of the initial protest document and
6 any attached documentation to all other Bidders or proposers who
7 appear to have a reasonable prospect of receiving an award
8 depending upon the outcome of the protest.
9

10 The Board of Supervisors will issue a decision on the protest. If the
11 Board of Supervisors determines that a protest is frivolous, the party
12 originating the protest may be determined to be irresponsible and that
13 party may be determined to be ineligible for future contract awards.
14

15 The procedure and time limits set forth herein are mandatory and are
16 the Bidder's sole and exclusive remedy in the event of a bid protest.
17 Failure by the Bidder to comply with these procedures shall constitute
18 a waiver of any right to further pursue the bid protest, including the
19 subsequent filing of a Government Code Claim or legal proceedings.
20

21 B. RELIEF OF BIDDER

22

23 A bidder who claims a mistake in their bid must follow the procedures
24 in Public Contract Code Section 5100 et seq in seeking relief of their
25 bid.
26

27 28 1.12 AWARD OF CONTRACT

29

30 The award of the contracts, if one or all are awarded, will be to the lowest responsible
31 bidders whose proposals comply with all the prescribed requirements. A successful
32 bidder will be awarded only one (1) contract from this Bid Solicitation. The awards if
33 made, will be within 54 calendar days after the opening of proposals. If the Owner
34 finds that it will be unable to award the contract within 54 calendar days after the
35 opening of proposals, the Director may request any or all bidders to extend all terms
36 of their proposal(s) to a specified date. Additional such extensions may possibly be
37 requested. If a bidder does not elect to extend the terms of his or her proposal beyond
38 the 54 calendar days following opening of proposals, or does not respond within 10
39 days to a request for an extension, that bidder's proposal will be deemed as having
40 expired 54 calendar days following opening of the proposals, and that bidder's
41 proposal will not be considered for award of the contract.
42

43 Successful bidders will be notified in writing, by letter mailed to the address shown on
44 the proposal, that his/her bid has been accepted and that he or she has been awarded
45 the contract.
46

47 The right is reserved to reject any or all proposals, to waive technicalities, to advertise
48 for new proposals, or to proceed to do this work otherwise, if in the judgment of the
49 awarding authorities the best interests of the Owner will be promoted thereby.
50

1
2 1.13 CANCELLATION OF AWARD
3

4 The awarding authority reserves the right to cancel the award of any contract at any
5 time before the execution of said contract by all parties without any liability against the
6 Owner.
7

8
9 1.14 CONTRACT BONDS
10

11 The bidder to whom the award is made shall, within ten days, enter into a written
12 contract with the Owner. The bidder shall forfeit the proposal guarantee in case he or
13 she does not follow through with the contract within ten days after the contract is
14 awarded.
15

16 The successful bidder shall furnish a faithful performance and payment bond in the
17 amount of \$2,000,000 each as security for the payment of all persons performing and
18 furnishing materials in connection with this Contract. If the aggregate outstanding Job
19 Orders issued under the contract exceeds \$2,000,000, increases in the Payment and
20 Performance Bonds in increments of \$500,000 will be required such that the amount
21 of the Payment and Performance Bonds are not less than one hundred percent
22 (100%) of the outstanding aggregate Job Orders issued. Bonds shall remain in force
23 for the duration and until completion of any outstanding Job Order. At no time may the
24 sum of outstanding Job Orders exceed the amount of the Payment and Performance
25 Bonds. The successful bidder shall furnish a one year Warranty Bond in the amount
26 of 10 percent (10%) of the Maximum Contract Value. Said bonds shall be submitted
27 in triplicate.
28

29 The payment bond shall contain provisions such that if the Contractor or his/her
30 subcontractors shall fail to pay (a) amounts due under the Unemployment Insurance
31 Code with respect to work performed under the contract, or (b) any amounts required
32 to be deducted, withheld and paid over to the Employment Development Department
33 and to the Franchise Tax Board from the wages of the employees of the Contractor
34 and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code
35 with respect to such work and labor, then the surety will pay these amounts. In case
36 suit is brought upon the payment bond, the surety will pay a reasonable attorney's fee
37 to be fixed by the court.
38

39 The contract form is attached hereto for the Contractor's information only. Execution
40 of the contract by bidders will not be required until after the bid award is made. Liability
41 and Workers Compensation Insurance requirements shall be as set forth in the
42 Agreement.
43
44

45 1.15 BUILDERS RISK INSURANCE
46

47 The Contractor shall not be required to obtain Builder's Risk insurance for the overall
48 contract. Builder's Risk insurance may be required on an individual Work Order. This
49 requirement will be identified in the Detailed Scope of Work and the cost will be
50 handled with a reimbursable line item in the Work Order Price Proposal.

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1.16 POST-BID / PRE-AWARD INFORMATION AND REQUIREMENTS

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

END OF SECTION

1 **BIDDERS' CHECKLIST (CAPITAL IMPROVEMENT CONTRACTS)**

2
3 Because of numerous technical irregularities resulting in rejected proposals for
4 projects, the following checklist is offered for the bidders' information and use in
5 preparing the paper proposal. This checklist is not to be considered as part of the
6 contract documents. Bidders are cautioned that deleting or not submitting a form
7 supplied in the bid documents (even if the form does not require signature) may
8 result in an irregular bid.

9
10 **P-2, PROPOSAL SHEET (Section 00 42 13)**

11
12 Bidder name on each sheet. Adjustment Factor for each type listed. Make no
13 additions such as "plus tax", "plus freight", or conditions such as "less 2% if paid
14 by 15th". Use ink or typewriter. Acknowledge addenda.

15
16 **P-3, SUBCONTRACTOR LIST**

17
18 Not Applicable for Job Order Contract bids. Subcontractor Listings shall be
19 required as part of a Work Order Proposal for each individual Work Order.

20
21 **P-4.1, BID SECURITY FORM - Read the Notices and Notes (Section 00 43 13)**

22
23 Indicate type of bid security provided.
24 Provide contract license information.

25
26 **State business name and if business is a:**

27 Corporation - list officers

28 Partnership - list partners

29 Joint Venture - list members

30 If Joint Venture members are corporations or partnerships, list their
31 officers or partners.

32 Individual - list Owner's name and firm name style

33
34 **Signature of Bidder –BID MUST BE SIGNED!**

35 Corporation - by an officer

36 Partnership - by a partner

37 Joint Venture - by a member

38 Individual - by the Owner

39 If signature is by a Branch Manager, Estimator, Agent, etc., the bid must be
40 accompanied by a power of attorney authorizing the individual to sign bids,
41 otherwise the bid may be rejected.

42
43 **Business Address - Firm's Street Address**

44
45 **Mailing Address - P.O. Box or Street Address**

1 **BID SECURITY (PROPOSAL GUARANTEE)**

2
3 \$25,000.00

4
5 Type of Bid Security:

6
7 Cash - Not recommended; cash is deposited in a clearing account and is
8 returned to bidders by County warrant. This process may take several
9 weeks.

10
11 Cashier's or Certified Checks - Will be held until the bid is no longer under
12 consideration. If submitted by a potential awardee, they will be returned
13 when the contract bonds are submitted and approved.

14
15 Bid Bonds - Must be signed by the bidder and by the attorney-in-fact for the
16 bonding company. Signature of attorney-in-fact should be notarized and the
17 bond should be accompanied by bonding company's affidavit authorizing
18 attorney-in-fact to execute bonds. An unsigned bid bond will be cause for
19 rejection.

20
21 **P-4.2, NON COLLUSION DECLARATION (Section 00 45 19)**

22
23 Must be completed, signed, and returned with bid.

24
25 **P-5, MINORITY BUSINESS ENTERPRISE (Section 00 43 39)**

26
27 (N/A).

28
29 **P-6.1, Certification With Regard To The Performance Of Previous Contracts**
30 **Or Subcontracts Subject To The Equal Opportunity Clause And The Filing**
31 **Of Required Reports (Section 00 45 36)**

32
33 Must be completed, signed, and returned with bid. Certification of subcontractors
34 is the responsibility of the Bidder and must be provided to the County upon
35 request.

36
37 **P-6.2, TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29 DEBARMENT**
38 **AND SUSPENSION CERTIFICATION (Section 00 45 46)**

39
40 Must be completed, signed, and returned with bid. Certification of subcontractors
41 is the responsibility of the Bidder and must be provided to the County upon
42 request.

1 **P-7, GUARANTY OF WORK (Section 00 65 36)**

2
3 Bidder to complete and return with bid.

4
5 **OTHER**

6
7 If the bid forms have been removed from the specifications booklet, staple the
8 pages together.

9 Make sure the bid envelope is sealed and shows the contract name, bid package
10 and contract number.

11
12 If the bid is mailed, allow sufficient time for postal delivery prior to the bid closing
13 time. Bids received after the scheduled time will be returned unopened. Be sure
14 the statement "**DO NOT OPEN UNTIL TIME OF BID OPENING**", is on the
15 envelope.

16
17
18 END OF SECTION
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1 **PROPOSAL TO THE BOARD OF SUPERVISORS**
2
3 **COUNTY OF FRESNO**

4
5
6 Contract: **General Building Job Order Contract**

7
8 Contract No.: **#21-J-02**
9 **21-J-03**
10 **21-J-04**

11
12 Various Funding Orgs.

13
14
15 If this

16
17 proposal shall be accepted and the undersigned shall fail to contract, as aforesaid, and
18 to give the two bonds in the sums to be determined as aforesaid, with surety satisfactory
19 to the Awarding Authority, within ten (10) days after the award of the contract, the
20 Awarding Authority, at its option, may determine that the bidder has abandoned the
21 contract, and thereupon this proposal and the acceptance thereof shall be null and void,
22 and the forfeiture of such security accompanying this proposal shall operate and the
23 same shall be the property of the Owner.

24
25 The undersigned, as bidder, declares that all addenda issued with respect to this bid
26 have been received and incorporated into this Proposal. The bidder's signature on this
27 Proposal also constitutes acknowledgement of all addenda.

28
29 The undersigned, as bidder, declares that the only persons, or parties interested in this
30 proposal as principals are those named herein; that this proposal is made without
31 collusion with any other person, firm or corporation; that they have carefully examined
32 the Construction Task Catalog[®], Technical Specifications and Contracting
33 Requirements and they propose and agree if this proposal is accepted, that they will
34 contract with the County of Fresno to provide all necessary machinery, tools, apparatus
35 and other means of construction, and to do all the work and furnish all the materials
36 specified in the contract in the manner and time therein prescribed, and according to the
37 requirements of the Owner as therein set forth.

38
39 The Contractor shall perform all Work required called for in the Detailed Scope of Work
40 of each individual Work Order issued under this Contract using the Construction Task
41 Catalog[®] and Technical Specifications incorporated herein. Contractor shall perform any
42 or all functions called for in the Contract Documents as specified in individual Work
43 Orders against this Contract for the Unit Prices specified in the Construction Task
44 Catalog[®] (CTC) and Non Pre-priced work multiplied by the following Adjustment Factors.

45
46 The Bidder shall set forth Adjustment Factors in the respective space provided below.
47 **See example below.** Failure to submit Adjustment Factors for all categories will result
48 in the Proposal being deemed non-responsive.

49
50 **The Other Than Normal Working Hours Adjustment Factors SHALL be EQUAL to**
51 **or GREATER THAN the corresponding Normal Working Hours Adjustment**
52 **Factors.**

53
Contract No. #21-J-02
 21-J-03
 21-J-04

Proposal
00 42 13-1

GENERAL BUILDING
JOB ORDER CONTRACTS

1 The Contractor shall perform the Tasks required by each individual Job Order
2 using the following Adjustment Factors. When submitting Work Order Price
3 Proposals related to specific Work Orders, the Contractor shall utilize one or
4 more of the Adjustment Factors applicable to the Work being performed
5 provided on the Schedule of Adjustment Factors below, as applicable.
6

7
8 **Example**

9
10
11
12
13 One Point Two One Zero Two

14 (Written in words)

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(Specify to four (4) decimal places)

1 **BIDDER:** _____

2
3 **Schedule of Adjustment Factors**

4
5 In case of a discrepancy between words and figures the words shall prevail. Use clearly
6 legible words and figures

7
8
9 1. **County/State-funded Projects – Normal Working Hours** (7:00am to 5:00pm
10 Monday through Friday)

11 _____
12
13 (Written in words)

14 .

(Specify to four (4) decimal places)

15 2. **County/State-funded Projects – Other Than Normal Working Hours** (5:00pm to
16 7:00am Monday through Friday, and all day
17 Saturday, Sunday, and Holidays)

18 _____
19
20 (Written in words)

21 .

(Specify to four (4) decimal places)

22 3. **Federally-funded Projects – Normal Working Hours** (7:00am to 5:00pm Monday
23 through Friday)

24 _____
25
26 (Written in words)

27 .

(Specify to four (4) decimal places)

28
29 4. **Federally-funded Projects – Other Than Normal Working Hours** (5:00pm to
30 7:00am Monday through Friday, and all day
31 Saturday, Sunday, and Holidays)

32 _____
33
34 (Written in words)

35 .

(Specify to four (4) decimal places)

36 5. **County/State-funded Projects in Secure Facilities – Normal Working Hours**
37 (7:00am to 5:00pm Monday through Friday)

38 _____
39
40 (Written in words)

41 .

(Specify to four (4) decimal places)

42
43 6. **County/State-funded Projects in Secure Facilities – Other Than Normal**
44 **Working Hours** (5:00pm to 7:00am Monday through Friday, and all day
45 Saturday, Sunday, and Holidays)

46 _____
47
48 (Written in words)

49 .

(Specify to four (4) decimal places)

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BIDDER: _____

Acknowledgement of Addendum:

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____
Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

Award Criteria Figure

Transfer the number on Line 13 from the Award Criteria Figure Calculation below to the space provided below constituting the Bidder's Award Criteria Figure. Transfer the number and write the words.

_____ .

(Written in clearly legible words) (Specify to four (4) decimal places in legible figures)

Award Criteria Figure Calculation

The weighted multipliers in lines 2, 4, 6, 8, 10, and 12 below are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the Owner that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Award Criteria Figure is only used for the purpose of determining the lowest Bidder.

The Owner Reserves The Right To Revise All Arithmetic Errors In the Calculation of the Award Criteria Figure For Correctness.

Instructions To Bidder: Specify lines 1 through 13 to four (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5th decimal place is 0-4, the number in the 4th decimal remains unchanged; if the number in the 5th decimal place is 5-9, the number in the 4th decimal is rounded upward).

Line 1.	County/State-funded Projects – Normal Working Hours	1.	
Line 2.	Multiply Line 1 by 50%		2.
Line 3.	County/State-funded Projects – Other Than Normal Working Hours	3.	
Line 4.	Multiply Line 3 by 15%		4.
Line 5.	Federally-funded Projects – Normal Working Hours	5.	
Line 6.	Multiply Line 5 by 5%		6.
Line 7.	Federally-funded Projects – Other Than Normal Working Hours	7.	
Line 8.	Multiply Line 7 by 5%		8.
Line 9.	County/State-funded Projects in Secure Facilities – Normal Working Hours	9.	
Line 10.	Multiply Line 9 by 15%		10.
Line 11.	County/State-funded Projects in Secure Facilities – Other Than Normal Working Hours	11.	
Line 12.	Multiply Line 11 by 10%		12.
Line 13.	Add Lines 2, 4, 6, 8, 10 and 12. This is the Award Criteria Figure:		

END OF PROPOSAL FORM

END OF SECTION

BID SECURITY FORM

CONTRACT: GENERAL BUILDING JOB ORDER CONTRACTS

CONTRACT: #21-J-02, 21-J-03, 21-J-04, Class B

Accompanying this proposal is security (check one only) in amount equal to \$25,000.00:

Bid Bond (); Certified Check (); Cashier's Check (); Cash (\$_____)

The names of all persons interested in the foregoing proposal as principals are as follows:

IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer and manager thereof; if a co-partnership, state true name of firm, also names of all individual co-partners composing firm; if bidder or other interested person is an individual, state first and last name in full.

FIRM NAME _____

Licensed in accordance with an act providing for the registration of Contractors,

Class _____ License No. _____ Expires _____

Department of Industrial Relations Registration No: _____

Signature of Bidder

Dated

NOTE: If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation; if bidder is a co-partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the co-partnership; and if bidder is an individual, their signature shall be placed above. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a Power of Attorney must be on file with the Owner prior to opening bids or submitted with the bid; otherwise, the bid will be disregarded as irregular and unauthorized.

BUSINESS ADDRESS: _____
Zip Code

MAILING ADDRESS: _____
Zip Code

BUSINESS PHONE: (_____) _____ **FAX NUMBER:** (_____) _____

EMAIL: _____

END OF SECTION

1 **CONTRACT:** GENERAL BUILDING JOB ORDER CONTRACTS

2 **CONTRACT:** 21-J-02, 21-J-03, 21-J-04, Class B

3
4 To the Board of Supervisors, County of Fresno:

5
6 **NON-COLLUSION DECLARATION**

7
8 **TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID***

9
10 The undersigned declares:

11
12 I am the _____ of
13 (Owner, Partner, Corporate Officer (list title), Co-Venturer)

14
15 _____, the party
16 making the foregoing bid.

17
18 The bid is not made in the interest of, or on behalf of, any undisclosed person,
19 partnership, company, association, organization, or corporation. The bid is
20 genuine and not collusive or sham. The bidder has not directly or indirectly induced
21 or solicited any other bidder to put in a false or sham bid. The bidder has not
22 directly or indirectly colluded, conspired, connived, or agreed with any bidder or
23 anyone else to put in a sham bid, or refrain from bidding. The bidder has not in any
24 manner, directly or indirectly, sought by agreement, communication, or conference
25 with anyone to fix the bid price of the bidder or any other bidder, or to fix any
26 overhead, profit, or cost element of the bid price, or of that of any other bidder. All
27 statements contained in the bid are true. The bidder has not, directly or indirectly,
28 submitted his or her bid price or any breakdown thereof, or the contents thereof,
29 or divulged information or data relative thereto, to any corporation, partnership,
30 company, association, organization, bid depository, or to any member or agent
31 thereof, and has not paid, and will not pay, any person or entity for that purpose.

32
33 Any person executing this declaration on behalf of a bidder that is a corporation,
34 partnership, joint venture, limited liability company, limited liability partnership, or
35 any other entity, hereby represents that he or she has full power to execute, and
36 does execute, this declaration on behalf of the bidder.

37
38 I declare under penalty of perjury under the laws of the State of California that the
39 foregoing is true and correct and that this declaration is executed on _____,
40 2022,

41
42 at _____.”
43 [city] [state]

44
45 (Signature)

46
47 (See Title 23 United States Code Section 112; Calif Public Contract Code Section
48 7106)

49
50 *NOTE: Completing, signing, and returning the Non-Collusion Declaration is a
51 required part of the Proposal. Bidders are cautioned that making a false
52 certification may subject the certifier to criminal prosecution.

53
54 **END OF SECTION**

Contract No.: #21-J-02
21-J-03
21-J-04

Non-Collusion Declaration
00 45 19-1

GENERAL BUILDING
JOB ORDER CONTRACTS

1 **CONTRACT:** GENERAL BUILDING JOB ORDER CONTRACT

2 **CONTRACT:** 21-J-02, 21-J-03, 21-J-04, Class B

3
4 **CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS**
5 **CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY**
6 **CLAUSE AND THE FILING OF REQUIRED REPORTS.**

7
8
9
10 The bidder or proposed subcontractor hereby certifies that they have __, have not __,
11 participated in a previous contract or subcontract subject to the equal opportunity clause,
12 as required by Executive Orders 10925, 11114, or 11246, and that they have __, have
13 not __, filed with the Joint Reporting Committee, the Director of the Office of Federal
14 Contract Compliance, a Federal Government contracting or administering agency, or the
15 former President's Committee on Equal Employment Opportunity, all reports due under
16 the applicable filing requirements.

17
18
19
20 _____
(Company)

21
22 By: _____

23
24 _____
(Title)

25
26
27 Date: _____

28
29
30 **NOTE:** The above certification is required by the Equal Employment Opportunity
31 Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1), and must be submitted by
32 bidders and proposed subcontractors only in connection with contracts and subcontracts
33 which are subject to the equal opportunity clause. Contracts and subcontracts which are
34 exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only
35 contracts or subcontracts of \$10,000 or under are exempt.)

36
37 Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders
38 or their implementing regulations.

39
40 Proposed prime contractors and subcontractors who have participated in a previous
41 contract or subcontract subject to the Executive Orders and have not filed the required
42 reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and
43 subcontracts unless such contractor submits a report covering the delinquent period or
44 such other period specified by the Director, Office of Federal Contract Compliance, U. S.
45 Department of Labor.

1 **CONTRACT:** GENERAL BUILDING JOB ORDER CONTRACT

2
3 **CONTRACT:** 21-J-02, 21-J-03, 21-J-04, Class B

4
5 **TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29**
6 **DEBARMENT AND SUSPENSION CERTIFICATION**
7

8 The bidder or proposed subcontractor under penalty of perjury, certifies that, except as
9 noted below, he/she or any person associated therewith in the capacity of owner, partner,
10 director, officer, manager:

11
12 is not currently under suspension, debarment, voluntary exclusion, or determination
13 of ineligibility by any federal agency;

14
15 has not been suspended, debarred, voluntarily excluded or determined ineligible by
16 any federal agency within the past 3 years; does not have a proposed debarment
17 pending; and has not been indicted, convicted, or had a civil judgment rendered
18 against it by a court of competent jurisdiction in any matter involving fraud or official
19 misconduct within the past 3 years.

20
21 If there are any exceptions to this certification, insert the exceptions in the following space:

22
23 () No Exceptions

24 _____
25 _____
26 _____
27 _____

28 Exceptions will not necessarily result in denial of award, but will be considered in
29 determining bidder responsibility. For any exception noted above, indicate below to whom
30 it applies, initiating agency, and dates of action:

31 _____
32 _____
33 _____

34 Note: Providing false information may result in criminal prosecution or administrative
35 sanctions.

36
37 The above certification is part of the Proposal. Signing the Proposal on the
38 signature portion thereof shall also constitute signature of this Certification.
39

40 By my signature on this proposal, I certify, under penalty of perjury under the laws of the
41 State of California and the United States of America, that the Title 23 United States Code,
42 Section 112 Non-Collusion Declaration and the Title 49 Code of Federal Regulations, Part
43 29 Debarment and Suspension Certification are true and correct.

44
45 Company: _____

46
47 By: _____

48
49 Date: _____

50
51 Title: _____
52
53
54

Proposal - 6.2A

NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

The prospective participant certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Bidder: _____

By: _____

Date: _____

Title: _____

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial <input type="checkbox"/> b. material change</p> <p>For Material Change Only: year ____ quarter ____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known</p> <p>Congressional District, if known _____</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known _____</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p>	
<p>10. Name and Address of Lobby Entity (If individual, last name, first name, MI)</p> <p style="text-align: center;">(attach Continuation Sheet(s) if necessary)</p>	<p>11. Individuals Performing Services (including address if different from No. 10) (last name, first name, MI)</p>	
<p>12. Amount of Payment (check all that apply)</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>14. Type of Payment (check all that apply)</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____</p>	
<p>13. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____</p>		
<p>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</p> <p style="text-align: center;">(attach Continuation Sheet(s) if necessary)</p>		
<p>16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/></p>		
<p>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		
		<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>
<p>Authorized for Local Reproduction Standard Form - LLL</p>		
<p>Federal Use Only:</p>		

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

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AGREEMENT

THIS AGREEMENT made at Fresno, in Fresno County, California, by and between _____, hereinafter "Contractor", and the County of Fresno, hereinafter "Owner".

WHEREAS: This Agreement, together with other Contract Documents (as defined hereinbelow), shall establish an indefinite quantity Job Order Contract pursuant to which Contractor shall perform an ongoing series of individual projects at different locations throughout the County of Fresno. The construction work and services performed by Contractor under this Agreement shall be carried out pursuant to individual Work Orders. All capitalized terms not defined in this Agreement shall have the meanings set forth in the General Conditions referenced hereinbelow and incorporated herein by reference.

WITNESSETH, the Contractor and the Owner, for the consideration hereinafter named, agree as follows:

ARTICLE I. The Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all the work in a good and workmanlike manner, free from any and all liens and claims of mechanics, materialmen, subcontractors, artisans, machinists, teamsters, and laborers required for **Job Order Contract No. 21-J-02, also referred to herein as the "Contract"**.

21-J-03

21-J-04

All goods and services provided shall be in strict compliance with the Construction Task Catalog®, Technical Specifications and Contracting Requirements therefore prepared by the Director of the Fresno County Department of Public Works and Planning and his authorized representatives, hereinafter "Project Manager", and other contract documents relating thereto.

ARTICLE II. The Contractor and the Owner agree that the Advertisement (Notice to Bidders), the Wage Scale, the Proposal hereto attached, the Instructions to Bidders, the General Conditions of the contract, the Technical Specifications, the Construction Task Catalog® and the Addenda and Bulletins thereto, the Contract Bonds and Certificates of Liability and Workers Compensation Insurance, and the Work Orders, together with this Agreement, form the Contract Documents, and they are as fully a part of the contract as if hereto attached or herein repeated. But no part of said specifications that is in conflict with any portion of this Agreement, or that is not actually descriptive of the work to be done thereunder, or of the manner in which the said work is to be executed, shall be considered as any part of this Agreement, but shall be utterly null and void, and anything that is expressly stated, delineated or shown in or upon the specifications or Detailed Scope of Work shall govern and be followed, notwithstanding anything to the contrary in any other source of information or authority to which reference may be made.

ARTICLE III. The Contractor agrees that the work under the contract shall be completed as determined by the Owner as set forth in the individual Work Orders. Time of performance shall be deemed as of the essence hereof and it is agreed that actual damages to the Owner from any delay in completion beyond the date provided for herein,

1 or any extension thereof until the work is completed or accepted, shall be all provable
2 damages plus liquidated damages as identified in the individual Work Orders ranging
3 from **Two Hundred Fifty and 00/100 DOLLARS (\$250.00) to Five Thousand and**
4 **00/100 DOLLARS (\$5000.00)** per day; that said liquidated damage was arrived at by a
5 studied estimate of loss to the Owner in the event of a delay considering the following
6 damage items which are extremely difficult or impossible to determine: Additional
7 construction expense resulting from delay of completion including, but not limited to,
8 engineering, inspection, rental and utilities; provided, however, the Owner may
9 conditionally accept the work and occupy and use the same if there has been such a
10 degree of completion as shall in its opinion render the same safe, fit and convenient for
11 the use for which it is intended and in such cases the Contractor and Surety shall not be
12 charged for liquidated damages for any period subsequent to such conditional
13 acceptance and occupation by the Owner but Owner may assess actual damages
14 caused by failure of total completion during such period. The time during which the
15 Contractor is delayed in said work by the acts or neglects of the Owner or its employees
16 or those under it by contract or otherwise, or by the acts of God which the Contractor
17 could not have reasonably foreseen and provided for, or by storms and inclement
18 weather which delays the work, or by any strikes, boycotts, or like obstructive action by
19 employee or labor organizations, or by any general lockouts or other defensive action
20 by employers, whether general, or by organizations of employers, shall be added to the
21 time for completion as aforesaid.
22
23

24 **ARTICLE IV. COMPENSATION:** The Owner agrees to make payments on account
25 thereof as provided in the General Conditions.
26

27 The Contract is an indefinite-quantity contract for construction work and services. There
28 is no Minimum Contract Value for this Contract. If a contract is awarded, the Contractor
29 is not guaranteed to receive a specified minimum amount of work during the Contract
30 Term. The Maximum Contract Value is \$5,185,091.94. The Contractor is not guaranteed
31 to receive this volume of Work Orders. The Owner has no obligation to issue Work
32 Orders in excess of the Minimum Contract Value.
33

34 The Contractor shall perform all work required, necessary, proper for or incidental to
35 completing the Detailed Scope of Work called for in each individual Work Order issued
36 pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog®
37 and the following Adjustment Factors:
38

- 39 1. County / State-funded Projects – Normal Working Hours (7:00am to 5:00pm Monday
40 through Friday)
41
42
- 43 2. County / State-funded Projects – Other Than Normal Working Hours (5:00pm to
44 7:00am Monday through Friday, and all day Saturday, Sunday, and Holidays)
45
46
- 47 3. Federally-funded Projects – Normal Working Hours (7:00am to 5:00pm Monday
48 through Friday)
49
50
- 51 4. Federally-funded Projects – Other Than Normal Working Hours (5:00pm to 7:00am
52 Monday through Friday, and all day Saturday, Sunday, and Holidays)
53

1
2 5. County / State-funded Projects in Secure Facilities – Normal Working Hours (7:00am
3 to 5:00pm Monday through Friday)
4

5
6 6. County / State-funded Projects in Secure Facilities – Other Than Normal Working
7 Hours (5:00pm to 7:00am Monday through Friday, and all day Saturday, Sunday,
8 and Holidays)
9

10 **Material price spike adjustment:** For the purpose of this clause, a “major spike” is
11 defined as a spike in a specific material cost of more than 25% above what the cost of
12 that material was on the date the Construction Task Catalog® was issued.
13

- 14 1. In the event a major spike occurs in a specific material cost, the Contractor may
15 submit a request for a price modification to a Unit Price or individual Job Order.
16 In order to initiate such a request, the Contractor shall:
17 a. identify the specific material that has experienced a major spike,
18 b. identify Pre-priced Task(s) or Job Orders that require the material
19 experiencing a major spike, and
20 c. demonstrate that the spike exists by submitting a minimum of three quotes
21 on material supplier letterhead to show that the current price meets the
22 “major spike” definition above.
23
- 24 2. Fresno County, after review of a request, may elect to adjust the Unit Price or Job
25 Order by considering it a Non Pre-priced (NPP) item. The adjustment will be for
26 the difference between the material cost at the time the Construction Task
27 Catalog® was issued times the quantity stated in the Job Order. The adjustment
28 will not include any other markup, and the NPP adjustment factor will not apply.
29
30

31 **ARTICLE V. TERM:** The Term of the Job Order Contract shall be for one (1) year, or
32 when issued Work Orders totaling the Maximum Contract Value have been completed,
33 whichever occurs first. All Work Orders shall be issued, but not necessarily completed
34 within one calendar year after the commencement date of this Agreement.
35

36 All Work Orders for which a Notice to Proceed is issued by the County Contract Manager
37 during the term of this Contract shall be valid and in effect notwithstanding that the
38 Detailed Scope of Work may be performed, payments may be made, and the guarantee
39 period may continue, after the Contract Term has expired. All terms and conditions of
40 the Contract apply to each Work Order. No notices to proceed will be issued after 5:00,
41 P.M. on the final day of the Contract Term.
42

43 **ARTICLE VI.** The Contractor and the Owner agree that changes in this Agreement shall
44 become effective only when written in the form of an amendment approved and signed
45 by the Owner and the Contractor.
46

47 The Contractor and the Owner agree that the Owner shall have the right to request any
48 alterations, deviations, reductions or additions to the Detailed Scope of Work of the
49 individual Work Orders or specifications or any of them, and the amount of the cost
50 thereof shall be handled by issuance of a Supplemental Work Order.
51
52

1 This contract shall be deemed completed when the work of all individual Work Orders is
2 finished in accordance with all Contract Documents as amended by such changes. No
3 such change or modification shall release or exonerate any surety upon any guaranty or
4 bond given in connection with this contract.
5
6

7 **ARTICLE VII.** In the event of a dispute between the Owner or Project Manager and the
8 Contractor as to an interpretation of any of the specifications or as to the quality of
9 sufficiency of material or workmanship, the decision of the Project Manager shall for the
10 time being prevail and the Contractor, without delaying the job, shall proceed as directed
11 by the Project Manager without prejudice to a final determination by negotiation,
12 arbitration by mutual consent or litigation and should the Contractor be finally determined
13 to be either wholly or partially correct, the Owner shall reimburse him for any added costs
14 they may have incurred by reason of work done or material supplied beyond the terms
15 of the contract as a result of complying with the Project Manager's directions as
16 aforesaid. In the event the Contractor shall neglect to prosecute the work properly or
17 fail to perform any provisions of this contract, the Owner, after three days' written notice
18 to the Contractor, may, without prejudice to any other remedy it may have, make good
19 such deficiencies and may deduct the cost thereof from the payment then or thereafter
20 due to the Contractor, subject to final settlement between the parties as in this paragraph
21 hereinabove provided.
22
23

24 **ARTICLE VIII. TERMINATION:** If the Contractor should be adjudged a bankrupt, or if
25 they should make a general assignment for the benefit of their creditors, or if a receiver
26 should be appointed on account of their insolvency, or if they or any of their
27 subcontractors should persistently violate any of the provisions of the contract, or if they
28 should persistently or repeatedly refuse or should fail, except in cases for which
29 extension of time is provided, to supply enough properly skilled workmen or proper
30 material, or if they should fail to make prompt payment to subcontractors or for material
31 or labor or persistently disregard laws, ordinances or the instructions of the Project
32 Manager, then the Owner may, upon the certificate of the Project Manager, when
33 sufficient cause exists to justify such action, serve written notice upon the Contractor
34 and their surety of its intention to terminate the contract, such notice to contain the
35 reasons for such intention to terminate the contract, and unless within five (5) days after
36 the serving of such notice, such violations shall cease and satisfactory arrangements for
37 correction thereof be made, the contract shall, upon the expiration of said five days,
38 cease and terminate.
39

40 In the event of any such termination, the Owner shall immediately serve written notice
41 thereof upon the surety and the Contractor, and the surety shall have the right to take
42 over and perform the contract, provided, however, that if the surety within ten (10) days
43 after the serving upon it of notice of termination does not give the Owner written notice
44 of its intention to take over and perform the contract or does not commence performance
45 thereof within the ten (10) days stated above from the date of the serving of such notice,
46 the Owner may take over the work and prosecute the same to completion by contract or
47 by any other method it may deem advisable for the account and at the expense of the
48 Contractor, and the Contractor and their surety shall be liable to the Owner for any
49 excess cost occasioned the Owner thereby, and in such event the Owner may without
50 liability for so doing, take possession of and utilize in completing the work, such
51 materials, appliances, plant and other property belonging to the Contractor as may be
52 on the site or the work and necessary therefore. In such case, the Contractor shall not
53 be entitled to receive any further payment until the work is finished.

1
2 If the unpaid balance of the contract price shall exceed the expense of finishing the work,
3 including compensation for additional managerial and administrative services, such
4 excess shall be paid to the Contractor. If such expense shall exceed such unpaid
5 balance, the Contractor shall pay the difference to the Owner. The expense incurred by
6 the Owner as herein provided, and damage incurred through the Contractor's default,
7 shall be certified by the Project Manager.
8

9
10 **ARTICLE IX.** The Contractor and their subcontractors shall comply with Sections 1770
11 – 1780 of the California Labor Code and the provisions of Sections 2.52 and 2.55 of the
12 General Conditions concerning the payment of wages to all workers and mechanics,
13 and the employment and payment of apprentices by the Contractor or any subcontractor
14 for all work performed under this Agreement.
15

16
17 **ARTICLE X.** The Contractor and their subcontractors shall comply with Sections 1810
18 to 1815 of the California Labor Code and the provisions of Section 2.51 of the General
19 Conditions, concerning hours of work and payment of overtime compensation for all
20 work performed under this Agreement.
21

22
23 **ARTICLE XI. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor
24 agrees to and shall indemnify, save, hold harmless and at County's request, defend
25 County and its officers, agents and employees, and the Project Manager and their
26 respective officers, agents and employees, from any and all costs and expenses,
27 attorney fees and court costs, damages, liabilities, claims and losses occurring or
28 resulting to County, or the Project Manager in connection with the performance, or failure
29 to perform, by Contractor, its officers, agents or employees under this Agreement, and
30 from any and all costs and expenses, attorney fees and court costs, damages, liabilities,
31 claims and losses occurring or resulting to any person, firm or corporation who may be
32 injured or damaged by the performance, or failure to perform, of Contractor, its officers,
33 agents or employees under this Agreement. In addition, Contractor agrees to indemnify
34 County for Federal, State of California and/or local audit exceptions resulting from non-
35 compliance herein on the part of Contractor.
36

37 In any and all claims against the County, the Project Manager, or any of their respective
38 officers, agents or employees, initiated by any employee of the Contractor, any
39 Subcontractor, anyone directly or indirectly employed by any of them or anyone for
40 whose acts any of them may be liable, the indemnification obligation set forth in the
41 immediately preceding paragraph shall not be limited in any way by any limitation on the
42 amount or type of damages, compensation or benefits payable by or for the Contractor
43 or any Subcontractor under workmen's compensation acts, disability benefit acts or other
44 employee benefit acts.
45

46
47 **ARTICLE XII. INSURANCE:** Without limiting the Owner's right to obtain indemnification
48 from Contractor or any third parties, Contractor, at its sole expense, in accordance with
49 the provisions of Section 2.40 of the General Conditions, shall maintain in full force and
50 effect the following insurance policies throughout the term of this Agreement, excepting
51 only those policies for which a longer term is specified:
52
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1 A. Commercial General Liability Insurance, with scope and amount of coverage
2 as specified in Section 2.40 E.2 of the General Conditions.

3
4 B. Automobile Liability Insurance, with scope and amount of coverage as specified in
5 Section 2.40 E.2 of the General Conditions.

6
7 C. Professional Liability Insurance, with scope and amount of coverage as specified in
8 Section 2.40 E.3 of the General Conditions.

9
10 D. Worker's Compensation Insurance, with scope and amount of coverage as
11 specified in Section 2.40 E. 4 of the General Conditions.

12
13 The Certificate of Insurance shall be issued in triplicate, to the COUNTY OF FRESNO,
14 and all other participating agencies, whether or not said agencies are named herein,
15 who contribute to the cost of the work or have jurisdiction over areas in which the work
16 is to be performed and all officers and employees of said agencies while acting within
17 the course and scope of their duties and responsibilities.

18
19
20 **ARTICLE XIII. MISCELLANEOUS PROVISIONS:**

21
22 1. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time
23 during business hours, and as often as the OWNER may deem necessary, make
24 available to the OWNER for examination all of its records and data with respect to the
25 matters covered by this Agreement. The CONTRACTOR shall, upon request by the
26 OWNER, permit the OWNER to audit and inspect all of such records and data necessary
27 to ensure CONTRACTOR'S compliance with the terms of this Agreement.
28 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be
29 subject to the examination and audit of the Auditor General for a period of three (3) years
30 after final payment under contract (Government Code Section 8546.7).

31
32 2. INDEPENDENT CONTRACTOR.

33
34 In performance of the work, duties, and obligations assumed by
35 CONTRACTOR under this Agreement, it is mutually understood and agreed that
36 CONTRACTOR, including any and all of CONTRACTOR officers, agents, and
37 employees will at all times be acting and performing as an independent
38 contractor, and shall act in an independent capacity and not as an officer, agent,
39 servant, employee, joint venture, partner, or associate of the OWNER.
40 CONTRACTOR and OWNER shall comply with all applicable provisions of law
41 and the rules and regulations, if any, of governmental authorities having
42 jurisdiction over matters of the subject thereof. Because of its status as an
43 independent contractor, CONTRACTOR shall have absolutely no right to
44 employment rights and benefits available to OWNER's employees.
45 CONTRACTOR shall be solely liable and responsible for providing to, or on
46 behalf of, its employees all legally-required employee benefits. In addition,
47 CONTRACTOR shall be solely responsible and save OWNER harmless from all
48 matters related to payment of CONTRACTOR's employees, including
49 compliance with social security, withholding, and all other regulations governing
50 such matters. It is acknowledged that during the term of this Agreement,

1 CONTRACTOR may be providing services to others unrelated to the OWNER or
2 to this Agreement.

3
4 **3. DISCLOSURE OF SELF-DEALING TRANSACTIONS**

5
6 This provision is only applicable if the CONTRACTOR is operating as a
7 corporation (a for-profit or non-profit corporation) or if during the term of the
8 agreement, the CONTRACTOR changes its status to operate as a corporation.
9

10 Members of the CONTRACTOR's Board of Directors shall disclose any self-
11 dealing transactions that they are a party to while CONTRACTOR is providing
12 goods or performing services under this agreement. A self-dealing transaction
13 shall mean a transaction to which the CONTRACTOR is a party and in which one
14 or more of its directors has a material financial interest. Members of the Board of
15 Directors shall disclose any self-dealing transactions that they are a party to by
16 completing and signing a Self-Dealing Transaction Disclosure Form, attached
17 hereto as Exhibit A and incorporated herein by reference, and submitting it to the
18 OWNER prior to commencing with the self-dealing transaction or immediately
19 thereafter.
20

21
22 **ARTICLE XIV.** The Contractor represents that they have secured the payment of
23 Workers Compensation in compliance with the provisions of the Labor Code of the State
24 of California and Paragraphs B.3, C.3 and E.4 of Section 2.40 of the General Conditions,
25 and that they will continue so to comply with such statutory and contractual provisions
26 for the duration and entirety of the performance of the work contemplated herein.
27

28 This Contract, **21-J-___**, was awarded by the Board of Supervisors on
29 _____. It has been reviewed by the Department of Public Works and
30 Planning and is in proper order for signature of the Chairman of the Board of
31 Supervisors.
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IN WITNESS WHEREOF, they have executed this Agreement this _____
day of _____, 2022

(CONTRACTOR)

COUNTY OF FRESNO

(OWNER)

(Taxpayer Federal I.D. No.)

By _____
Title _____

By _____
Brian Pacheco, Chairman
of the Board of Supervisors of the
County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of
California

FOR ACCOUNTING USE ONLY
VARIOUS ORGS.
0001/8830/10000/7295
0001/43601150/10000/7295
0001/8852/10000/7295

By _____
Deputy

END OF SECTION

CONTRACT: JOB ORDER CONTRACT

CONTRACT NO: #21-J-02, 21-J-03, 21-J-04, Class B

(This guaranty shall be executed by the successful bidder in accordance with Section 2.32 of the General Conditions. The bidder may execute the guaranty on this page at the time of submitting the bid.)

G U A R A N T Y

To the Owner: County of Fresno

The undersigned guarantees the construction and installation of the following work included in this project:

ALL WORK

Should any of the materials or equipment prove defective or should the work as a whole prove defective, due to faulty workmanship, material furnished or methods of installation, or should the work or any part thereof fail to operate properly as originally intended and in accordance with each individual Work Order Detailed Scope of Work and specifications, due to any of the above causes, all within twelve (12) months after the date on which the Work Order under this contract is accepted by the Owner, the undersigned agrees to reimburse the Owner, upon demand, for its expenses incurred in restoring said work to the condition contemplated in said project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or, upon demand by the Owner, to replace any such material and to repair said work completely without cost to the Owner so that said work will function successfully as originally contemplated.

The Owner shall have the unqualified option to make any needed replacement or repairs itself or to have such replacements or repairs done by the undersigned. In the event the Owner elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the Owner. If the undersigned shall fail or refuse to comply with his obligations under this guaranty, the Owner shall be entitled to all costs and expenses reasonably incurred by reason of said failure or refusal.

(Company)

By: _____

(Title)

Date: _____

END OF SECTION

1 GENERAL CONDITIONS

2
3
4 2.01 IDENTIFICATION OF CONTRACT

- 5
6 A. The Agreement shall be signed by the Contractor and the Owner.
7
8 B. The Contract Documents are defined in ARTICLE II of the Agreement.
9
10 C. The Contract Documents form the Contract for Construction (“Contract”). This
11 Contract represents the entire and integrated agreement between the parties
12 hereto and supersedes all prior negotiations, representations or agreements,
13 either written or oral. The Contract may be amended or modified only by a
14 Modification as defined above. The Contract Documents shall not be construed
15 to create any contractual relationship of any kind between the Architect or
16 Engineer of record and the Contractor, but the Architect or Engineer of record
17 shall be entitled to performance of the obligations of the Contractor intended
18 for their benefit and to enforcement thereof. Nothing contained in the Contract
19 Documents shall create any contractual relationship between the Owner and
20 any Subcontractor or Sub-subcontractor.
21

22
23 2.02 EXECUTION, CORRELATION, AND INTENT OF CONTRACT DOCUMENTS

- 24
25 A. The Contract Documents are complementary and anything called for by one
26 shall be supplied as if called for by all, providing it comes clearly within the
27 scope of the Contract.
28
29 B. In the event of conflicting provisions within the Job Order Contract, the
30 following order of precedence with item “1” representing the highest
31 precedence, for resolution of the conflict shall apply:
32
33 1. Agreement
34 2. Addenda (later takes precedence over earlier)
35 3. Work Orders (including Detailed Scopes of Work and Requests for
36 Proposals)
37 4. Project Manual
38 5. The Construction Task Catalog®
39 6. Technical Specifications
40
41 C. The intent of the Contract Documents is to include all items necessary for the
42 proper execution and completion of the Work. Words and abbreviations that
43 have well-known technical or trade meanings are used in the Contract
44 Documents in accordance with such recognized meanings.
45
46 D. Execution of the Contract by the Contractor is a representation that the
47 Contractor has become familiar with the local conditions under which the Work
48 is to be performed, and has correlated personal observations with the
49 requirements of the Contract Documents.
50

- 1 E. All work and material shall be the best of the respective kinds specified or
2 indicated. Should any workmanship or materials be required that are not
3 directly or indirectly called for in the Contract Documents, but which
4 nevertheless are necessary for proper fulfillment of the obvious intent thereof,
5 said workmanship or materials shall be the same for similar parts that are
6 detailed, indicated or specified, and the Contractor shall understand the same
7 to be implied and provide for it in his/her tender as if it were particularly
8 described or delineated.
9

10
11 2.03 OWNERSHIP AND USE OF DOCUMENTS
12

13 All Contract Documents and copies thereof furnished shall remain the property of the
14 Owner. With the exception of one (1) contract set for each party to the Contract, such
15 documents are to be returned by Contractor or suitably accounted for to the Owner on
16 request at the completion of the Work. Submission or distribution to meet official
17 regulatory requirements or for other purposes in connection with the Project is not to
18 be construed as publication in derogation of the Architect's common law copyright or
19 other reserved rights. The Owner's use of the documents will not increase the
20 Architect's design liability beyond the Project and the site for which the design was
21 originally intended.
22

23
24 2.04 DEFINITIONS
25

26 The following words, or variations thereof, as used in these documents have meanings
27 as defined:
28

- 29 A. The Work - The Work comprises the completed construction required of the
30 Contractor by the Contract Documents, and includes all labor, materials,
31 equipment and services necessary to produce such construction, and all
32 materials, other permits and equipment incorporated or to be incorporated in
33 such construction.
34
35 B. The Project – The collective improvements to be constructed by the Contractor
36 pursuant to a Work Order, or a series of related Work Orders.
37
38 C. Owner - The County of Fresno, State of California, as represented by the
39 Fresno County Board of Supervisors and so named in the Agreement. The
40 term Owner means the Owner or the Owner's authorized representative (also
41 known as the Project Manager) for this project.
42
43
44 D. Architect of record – The Owner and his/her authorized representative, as
45 defined in Section 2.04C, or a duly California licensed Architect.
46
47 E. Contractor - When used in the General Conditions refers to person(s) or entity
48 (partnership or corporation) so named in Agreement and when used in the
49 body of the Specifications, refers to the Contractor for that specific work,
50 whether it be the General Contractor, Subcontractor, or other Contractor. The

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term Contractor means the Contractor or the Contractor's authorized representative.

- F. Subcontractor - Person, persons, entity, co-partnership or corporation having direct contract with Contractor to perform any of the Work at the site. The term Subcontractor means a Subcontractor or a Subcontractor's authorized representative. The term Subcontractor does not include any separate contractor or any separate contractor's subcontractors.
- G. Sub-subcontractor – Person, persons, entity, co-partnership or corporation having a direct or indirect contract with a Subcontractor to perform any of the Work at the site (i.e. a second-tier, third-tier or lower-tier Subcontractor). The term Sub-subcontractor means a Sub-subcontractor or an authorized representative thereof.
- H. Adjustment Factor – A competitively bid adjustment to be applied to the unit prices listed in the Construction Task Catalog®.
- I. Construction Task Catalog®- A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
- J. Detailed Scope of Work – A document setting forth the work the Contractor is obligated to complete for a particular Work Order.
- K. Work Order – A written order issued by the Owner, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Work Order Completion Time for the Work Order Price. A project may consist of one or more Work Orders.
- L. Work Order Completion Time – The time within which the Contractor must complete the Detailed Scope of Work.
- M. Work Order Price – The amount a Contractor will be paid for completing a Work Order.
- N. Joint Scope Meeting – A site meeting attended by the Owner and Contractor to discuss the work before the Detailed Scope of Work is finalized.
- O. Maximum Contract Value - The maximum value of Work Orders that the Contractor may receive under this Contract.
- P. Minimum Contract Value – The minimum value of Work Orders that the Contractor is guaranteed the opportunity to perform under this Contract.
- Q. Non Pre-priced Task – An item of work required by the Detailed Scope of Work but not included in the Construction Task Catalog®.
- R. Normal Working Hours – Includes the hours from 7:00 a.m. to 5:00 p.m. Monday through Friday, except for Owner holidays.

- 1 S. Notice to Proceed - A written notice issued by the Owner directing the
2 Contractor to proceed with construction activities to complete the Work Order.
3
4 T. Other than Normal Working Hours – Includes the hours of 5:00 p.m. to 7:00
5 a.m. Monday through Friday and all day Saturday, Sunday, and Owner
6 Holidays.
7
8 U. Pre-priced Task – An item of work included in the Construction Task Catalog®
9 for which a Unit Price is given.
10
11 V. Price Proposal – A price proposal prepared by the Contractor that includes the
12 Pre-priced Tasks, Non Pre-priced Tasks, appropriate quantities and
13 appropriate Adjustment Factors required to complete the Detailed Scope of
14 Work.
15
16 W. Proposal Package – A set of documents including at least: (1) a Price Proposal;
17 (2) a proposed construction schedule; (3) a list of proposed subcontractors; (4)
18 sketches, drawings, or layouts; and (5) technical data or information on
19 proposed materials or equipment.
20
21 X. Request for Proposal – A written request to the Contractor to prepare a
22 Proposal for the Detailed Scope of Work referenced therein.
23
24 Y. Supplemental Work Order - A Work Order issued to add or delete Work from
25 an existing, related Work Order.
26
27 Z. Technical Specifications – Contains the written requirements for materials,
28 equipment, systems, standards and workmanship for the Work, and
29 performance of related services.
30
31 AA. Unit Price - The price published in the Construction Task Catalog® for a specific
32 construction or construction related work task. Unit Prices for new Pre-priced
33 Tasks can be established during the course of the Contract and added to the
34 Construction Task Catalog®. Each Unit Price is comprised of labor, equipment,
35 and material costs to accomplish that specific Pre-priced Task.
36
37 BB. Days- All days shall be measured in calendar days unless specifically noted
38 otherwise in these documents or referenced codes.
39
40 CC. Year- One year shall be measured in terms of 365 calendar days.
41
42

43 2.05 SPECIFICATIONS AND DRAWINGS
44

- 45 A. Precedence – Anything mentioned in the Specifications and not shown on the
46 Drawings, or shown on the drawings and not mentioned in the specifications,
47 shall be of like effect as if shown or mentioned in both. Subject to Section 2.02,
48 in cases of discrepancy concerning dimension, quantity and location, the
49 Drawings shall take precedence over the Specifications. Explanatory notes on
50 the Drawings shall take precedence over conflicting drawn indications. Large
51 scale details shall take precedence over smaller scale details and figured

1 dimensions shall take precedence over scaled measurement. Where figures
2 are not shown, scale measurements shall be followed but shall in all cases be
3 verified by measuring actual conditions of Work already in place. In cases of
4 discrepancy concerning quality and application of materials and non-technical
5 requirements over materials, the specifications shall take precedence over
6 Drawings.

7
8 B. Division of Specifications - For convenience of reference and to facilitate the
9 letting of independent contracts, this specification may be separated into
10 certain sections; such separation shall not operate to oblige the Owner,
11 Architect or Professional Consultant to establish the limits of any contract
12 between the Contractor and Sub-Contractor each of whom shall depend upon
13 his/her own contract stipulations. The General Conditions apply with equal
14 force to all work, including extra work.

15
16 C. Governing Factors - Dimensions figured on drawings shall be followed in every
17 case in preference to scale of drawings.

18
19 D. Discrepancies - Should the Contractor, at any time, discover a discrepancy in
20 a drawing or specification, or any variation between dimensions on drawings
21 and measurements at site, or any lacking of dimensions or other information,
22 he/she shall report at once to the Project Manager requesting clarification and
23 shall not proceed with the work affected thereby until such clarification has
24 been made. If the Contractor proceeds with work affected by such
25 discrepancies, without having received such clarification, he/she does so at
26 his/her own risk. Any adjustments involving such circumstances made by the
27 Contractor, prior to approval by the Project Manager, shall be at the
28 Contractor's risk and the settlement of any complications or disputes arising
29 therefrom shall be at the Contractor's sole expense and Contractor shall
30 indemnify, hold harmless and defend Owner, Owner's representatives, and
31 Project Manager from any liability or loss with respect to said adjustments.

32
33 E. Scope of Drawings – When drawings are included in the Detailed Scope of
34 Work, the drawings shall be held to determine the general character of the
35 Work as well as its details. Parts not detailed shall be constructed in
36 accordance with best standard practice for work of this class, so as to afford
37 the requisite strength and logically complete the parts they compose. Where
38 it is obvious that a drawing illustrates only a part of a given work or of a number
39 of items, the remainder shall be deemed repetitious and so construed. The
40 Contractor shall be responsible for all errors made in using any drawings which
41 have been superseded.

42
43 F. Shop Drawings, Product Data and Samples –

44
45 1. Shop Drawings are drawings, diagrams, schedules and other data
46 specially prepared for the Work by the Contractor or any Subcontractor,
47 manufacturer, supplier or distributor to illustrate some portion of the
48 Work. Product Data are illustrations, standard schedules, performance
49 charts, instructions, brochures, diagrams and other information
50 furnished by the Contractor to illustrate a material, product or system
51 for some portion of the Work. Samples are physical examples that

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illustrate materials, equipment or workmanship, and establish standards by which the work will be judged.

2. The Contractor shall prepare, review, approve and submit to the Project Manager, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.
3. By preparing, approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that the Contractor has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the Work, the Project, the Work Order and the Contract Documents.
4. The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's review of Shop Drawings, Product Data or Samples, unless the Contractor has specifically informed the Project Manager in writing of such deviation at the time of submission and the Architect has reviewed the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect's review of them.
5. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications. The cost of such certifications shall be borne by the Contractor. Owner may elect to have an independent certification performed at its own expense. The Owner shall have final approving authority for performance-based items.
6. The Contractor shall direct specific attention, in writing or on resubmitted Shop drawings, Product Data, or Samples, to revisions other than those requested by the Architect on previous submittals.
7. No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been reviewed by the Architect. All such portions of the Work shall be in accordance with reviewed submittals.
8. Submission of Shop Drawings and Samples to the Project Manager is required for only those items specifically mentioned in the Specification Sections. If Contractor submits Shop Drawings for items other than the above, the Project Manager will not be obligated to distribute or review them. Contractor shall be responsible for the procuring of Shop Drawings for his/her own use as he/she may require for the progress of the Work.

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9. The term "Shop Drawings" as used herein also includes but is not limited to fabrication, erection, layout and setting drawings, manufacturer's standard drawings, descriptive literature, catalogs, brochures, performance and test data, wiring and control diagrams, all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment or systems and the positions and layout of each conform to the Contract requirements. As used herein the term "manufactured" applies to standard units usually mass-produced, and the term "fabricated" means items specifically assembled or made out of- selected materials to meet individual design requirements. Shop Drawings shall establish the actual detail of all manufactured or fabricated items; indicate proper relation to adjoining work; amplify design details of mechanical and electrical equipment in proper relation to physical spaces in the structure; and incorporate minor changes of design or construction to suit actual conditions.
10. Drawings: Following Contractor's review and approval, Contractor shall submit to the Project Manager for approval four (4) minimum to six (6) maximum prints and/or pdf submission of the same information via email. (Required delivery methods and quantities of submittals will be determined at the time of the Pre-Construction Meeting). The Project Manager will check the submittal to see if it is complete. If complete, the Project Manager will forward the drawings to the Owner and the Architect. The Architect and Owner will check the drawings and note Architect and Owner comments and affix a stamp to the drawings indicating the status of acceptance, and will return same to the Project Manager, each retaining prints for his/her records. The Architect or his/her consultants, as applicable, will review the Shop Drawings; mark the prints with required revisions; stamp the prints and indicate "No Exceptions Taken", "Make Corrections Noted", "Revise and Resubmit", "Submit Specified Item", or "Rejected", and return the prints. The Project Manager will return the prints to the Contractor. The Contractor shall then print and distribute the appropriate number of copies to his/her job personnel as required. If a drawing is stamped "Rejected" or "Revise and Resubmit", the Contractor shall correct and resubmit as outlined above. When stamped "Make Corrections Noted", or similar instructions, the Contractor shall correct and resubmit for record only, three (3) prints of each drawing. Also see Technical Specifications, Division I, General Requirements.
11. Samples: Following Contractor's review and approval, Contractor shall submit to the Architect, five (5) minimum samples of all materials in quantities and sizes as specified herein as requested by the Architect. Submittals shall be given to the Architect at a time determined by the Contractor, which allows for any necessary resubmittal and which will not cause any delay in the Work. Samples will be forwarded to the Architect. If a sample is stamped "Rejected" or "Revise and Resubmit", one sample so noted will be returned to the Contractor. The Contractor shall correct and resubmit as outlined above. If a sample is stamped "Make Corrections Noted", one sample so noted will be returned.

1 Corrected samples shall be resubmitted for approval as per the original
2 submittal. Also see Technical Specifications and General
3 Requirements.
4

5 12. Brochures: Following Contractor's review and approval, Contractor
6 shall submit to the Architect, five (5) copies of all manufacturer's
7 catalogs or brochures as required. Brochures will be forwarded to the
8 Architect for review. If a brochure is stamped "No Exception Taken",
9 two (2) copies will be returned to the Contractor. If stamped "Rejected",
10 one marked copy and two (2) unmarked copies will be returned.
11 Corrected copies shall be resubmitted for approval as per the original
12 submittal. Also see General Requirements.
13

14 13. Manufacturer's Instructions: Where any item or work is required by
15 Specifications to be furnished, installed or performed in accordance
16 with a specified product manufacturer's instructions, Contractor shall
17 procure and distribute the necessary copies of such instructions to all
18 concerned parties.
19

20 G. Materials - All materials, unless otherwise specified, shall be new and of good
21 quality, proof of which shall be furnished by the Contractor; in case of doubt as
22 to kind or quality required, samples shall be submitted to the Architect through
23 the Project Manager who will specify the kind and use of the material
24 appropriate to the location and the function of the item in question. Contractor
25 shall furnish such item accordingly. Before final payment, all material rejected
26 by the Architect or Project Manager shall be promptly removed from the
27 premises by the Contractor, whether or not completely installed, and promptly
28 and properly replaced with correct materials, including any other work adjoining
29 if disturbed, in accordance with the contract and without expense to the Owner;
30 the Contractor also shall pay for work of other Contractors as is affected by
31 such removals and replacements.
32
33

34 2.06 THE ARCHITECT

35
36 A. The Owner may delegate all or a portion of its rights and responsibilities to a
37 licensed Architect as deemed necessary per Work Order.
38

39 B. The Architect advises the Project Manager in all aspects of the construction
40 phase of the Project. The Architect's functions include advice and assistance
41 to the Project Manager in the correct interpretation and application of the
42 Contract Documents. The Architect is not authorized independently to issue
43 Addenda, Clarifications, Field Orders, Work Authorizations, or Supplemental
44 Work Orders, or in any other way to bind the Owner in discussions with the
45 Contractor.
46

47 C. The Contractor shall deliver all correspondence relating to the proper execution
48 of the Work to the Project Manager. The Project Manager reserves the right
49 to consult with the Architect and Owner prior to responding to the Contractor's
50 correspondence.
51

- 1 D. When discussions between the Contractor and the Project Manager occur
2 either on the site or elsewhere, but the Architect is not present, the Project
3 Manager reserves the right to consult with the Architect and Owner prior to
4 issuing his/her final decision or instruction.
5
6 E. The Architect shall review or take other appropriate action upon the
7 Contractor's submittals such as Shop Drawings, Product Data and Samples,
8 but only for conformance with the design concept of the Work and the
9 information given in the Contract Documents. Such action shall generally be
10 taken within ten (10) working days, however under certain circumstances such
11 as very complex submittals or if large number of submittals are submitted at
12 one (1) time it may take longer. In this case the Contractor will be notified and
13 given the opportunity to advise the Architect of priorities. The Architect's
14 review of a specific item shall not indicate review of an assembly of which the
15 item is a component.
16
17

18 2.07 THE PROJECT MANAGER
19

- 20 A. The Project Manager is the authorized representative of the Owner in all
21 aspects of administering the construction contract on behalf of the Owner. All
22 communications from and to the Contractor will be channeled through the
23 Project Manager. However, the Project Manager does not have the authority
24 to bind the Owner in matters affecting adjustments to the time or cost of the
25 project as defined in the Agreement for Construction.
26
27 B. The Project Manager will be the Owner's representative during the construction
28 and warranty periods, and until final payment to all contractors is due. The
29 Project Manager will advise and consult with the Owner. All instructions to the
30 Contractor shall be forwarded through the Project Manager. The Project
31 Manager will have authority to act on behalf of the Owner only to the extent
32 provided in the Contract Documents, unless otherwise modified by written
33 instrument.
34
35 C. The Project Manager will be on site during construction to monitor the progress
36 and quality of the Work and to determine in general if the Work is proceeding
37 in accordance with the Contract Documents. On the basis of on-site
38 observations and communication with the Contractor, the Project Manager will
39 keep the Owner informed of the progress of the Work, and will endeavor to
40 guard the Owner against defects and deficiencies in the Work of the
41 Contractor.
42
43 D. The Project Manager shall at all times have access to the Work wherever it is
44 in preparation and progress. The Contractor shall provide facilities for such
45 access so that the Project Manager may perform its functions under the
46 Contract Documents.
47
48 E. Based on the Project Manager's observations, and an evaluation of the
49 Contractor's Application for Payment, the Project Manager will determine the
50 amount owing to the Contractor and will issue to the Owner Certificates for
51 Payment incorporating such amount.

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- F. The Project Manager will be the initial interpreter of the requirements of the Contract Documents and the initial judge of the performance hereunder by the Contractor. The Owner will have final authority of all such matters.
- G. The Project Manager will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with agreed upon time limits. Either party to the Contract may make written request to the Project Manager for such interpretations.
- H. Claims, disputes and other matters in question between the Contractor and the Project Manager relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred to the Owner (or his/her designee).
- I. All interpretations and decisions of the Project Manager will be in writing or in graphic form, and shall be both consistent with the intent of the Contract Documents and reasonably inferable therefrom.
- J. The Project Manager will have the authority to reject, or recommend to the Owner the rejection, of any work that does not conform to the Contract Documents. Whenever, in the Project Manager's opinion, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Project Manager will have authority to require special inspection or testing of the Work whether or not such work be then fabricated, installed or completed.
- K. The Project Manager will receive from the Contractor and review all Shop Drawings, Product Data and Samples, and forward same to Architect and Owner for review.
- L. Following consultation with the Owner, the Project Manager will take appropriate action on changes, and will have authority to order minor changes in the Work as provided herein.
- M. The Project Manager will conduct inspections to determine the date of Completion, and will receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor. The Project Manager will issue a final Project Certificate for Payment upon compliance with the requirements for completion and final payment. The Project Manager will monitor the warranty for a period of one (1) year from and after the date of acceptance of the Work, unless otherwise specified as a longer term.
- N. The duties, responsibilities and limitations of authority of the Project Manager as the Owner's representatives during construction as set forth in the Contract Documents, will not be modified or extended without written consent of the Owner, the Contractor and the Project Manager, which consent shall not be unreasonably withheld. Failure of the Contractor to respond within ten (10) business days to a written request shall constitute consent by the Contractor.

1 O. In case of the termination of the employment of the Project Manager, the
2 Owner may appoint a successor Project Manager, whose status and duties
3 under the Contract Documents shall be the same as those of the former Project
4 Manager.
5

6
7 2.08 OWNER

8
9 A. Information and Services Required of the Owner

- 10
11 1. Unless otherwise provided in the Contract Documents, the Owner shall
12 secure and pay for necessary approvals, easements, assessments and
13 charges required for the construction, use or occupancy of permanent
14 structures or for permanent changes in existing facilities.
15
16 2. Information or services under the Owner's control shall be furnished by
17 the Owner with reasonable promptness to avoid delay in the orderly
18 progress of the Work.
19
20 3. The Owner shall forward all instructions to the Contractor through the
21 Project Manager.
22

23 B. Owner's Right to Stop the Work

24
25 If the Contractor fails to correct defective work as required by Section 2.42
26 herein or persistently fails to carry out the Work in accordance with the Contract
27 Documents, the Owner, by a written order signed personally or by an agent
28 specifically so empowered by the Owner in writing, may order the Contractor
29 to stop the Work, or any portion thereof, until the cause for such order has been
30 eliminated; however, this right of the Owner to stop the Work shall not give rise
31 to any duty on the part of the Owner to exercise this right for the benefit of any
32 contractor or any other person or entity, except to the extent required by
33 Section 2.12.C.
34

35 C. Owner's Right to Carry Out the Work

36
37 If the Contractor defaults or neglects to carry out the Work in accordance with
38 the Contract Documents, and fails after written notice from the Owner to correct
39 such default or neglect with diligence and promptness, the Owner may, after
40 an additional written notice and without prejudice to any other remedy the
41 Owner may have, make good such deficiencies. In such case an appropriate
42 Supplemental Work Order shall be issued deducting from the payments then
43 or thereafter due the Contractor the cost of correcting such deficiencies,
44 including compensation for the additional services of the Architect or other
45 professionals made necessary by such default, neglect or failure. Such action
46 by the Owner and the amount charged to the Contractor are both subject to
47 the prior approval of the Architect. If the payments then or thereafter due the
48 Contractor are not sufficient to cover such amount, the Contractor shall pay the
49 difference to the Owner, or Owner may require payment by the surety on the
50 performance or warranty bonds as appropriate. Such action shall, in no way,

1 affect the status of either party under contract, nor be held as a basis of any
2 claim by the Contractor for damages or extension of time.

3
4 D. Award of Individual Work Orders

5
6 The Owner may award an individual Work Order to any selected Contractor.
7 Selection of the Contractor and award of the Work Order will be in compliance
8 with established Owner procedures and based on one or more of the following
9 criteria:

- 10
11 1. Rotational selection among all Contractors, unless otherwise
12 determined by the Owner.
13
14 2. Evaluation of past and current performance on Work Orders of a similar
15 nature and type of work, project size, construction management
16 challenges, schedule performance, design management requirements,
17 etc.
18
19 3. Balancing of work load (Work Order dollar volume and construction
20 backlog) among Contractors.
21
22 4. Management of Work Order dollar volume within bonding limitations of
23 the Contractor.
24
25 5. Price, as it relates to the Owner's independent cost estimate.
26
27 6. Contractor's responsiveness to the Owner on Work Orders.
28
29 7. Other appropriate criteria as deemed in the best interest of the Owner.
30

31
32 2.09 CONTRACTOR RESPONSIBILITIES

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34 A. Procedure for Developing a Work Order

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36 As the need exists, the Owner will notify the Contractor of a Project, schedule
37 a Joint Scope Meeting and issue a Notice of Joint Scope Meeting. The
38 Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:

- 39
40 1. the general scope of the work;
41
42 2. alternatives for performing the work and value engineering;
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44 3. access to the site and protocol for admission;
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46 4. hours of operation;
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48 5. staging area;
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50 6. requirements for catalog cuts, technical data, samples and shop
51 drawings;

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7. requirements for professional services, sketches, drawings, and specifications;
8. construction duration;
9. liquidated damages;
10. the presence of hazardous materials;
11. date on which Proposal is due.

Upon completion of the joint scoping process, the Owner will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the Owner will issue a Request for Proposal that will require the Contractor to prepare a Work Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis on which the Contractor will develop its Work Order Package and the Owner will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

The Owner may, at this option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the Owner cannot agree on the quantities required, or for any other reason as determined by the Owner. In all such cases, the Owner shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

B. Preparation of the Price Proposal

The Contractor will prepare Price Proposals in accordance with the following:

1. Pre-priced Tasks: A Pre-priced Task is a task described and for which a Unit Price is set forth in the Construction Task Catalog[®]. For Pre-priced Tasks the Contractor shall identify the task and quantities required from the Construction Task Catalog[®].
2. Non Pre-priced Tasks: Units of work not included in the Construction Task Catalog[®], but within the general scope and intent of this Contract, may be negotiated into this Contract as needs arise. Such work requirements shall be incorporated into and made a part of this Contract for the Work Order to which they pertain, and may be incorporated into the Construction Task Catalog[®] if determined appropriate by the County at the negotiated price. Non Pre-Priced Tasks shall be separately identified and submitted in the Proposal.

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- a. The Contractor shall break down any Non Pre-price item if the labor, material or equipment required to accomplish the Non Pre-priced task can be used out of the Construction Task Catalog® at a pre-price rate times the Bidder's appropriate Adjustment Factor. Whether a Work requirement is Pre-priced or Non Pre-priced is a final determination by the County, binding and conclusive on the Contractor.
- b. Information submitted in support of Non Pre-priced work shall include, but not be limited to, the following: Complete specifications and technical data, including work unit content, work unit costs data, schedule requirements; quality control and inspection requirements. Pricing data submitted in support of Non Pre-Priced Tasks shall include a cost or price analysis report, establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the County, cost data shall be submitted demonstrating that the Contractor solicited and received three bids. The Contractor shall provide an installed unit price (or demolition price if appropriate), which shall include all costs required to accomplish the Non Pre-priced Task.
- c. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

Contractor Performed Duties

A = The number of hours for each labor classification and hourly rates

B = Equipment costs (other than small tools)

C = Three independent quotes for all materials

Total Cost for self-performed work = (A+B+C) x Normal Hours Adjustment Factor (Only if A & B cannot be priced out of the Construction Task Catalog®)

For Work performed by Subcontractors:

If the Work is to be subcontracted, the Contractor must submit three independent bids from Subcontractors. If three quotes or bids cannot be obtained, the Contractor will provide the reason in writing for the County's approval as to why three quotes cannot be submitted.

D = Subcontractor Costs (supported by three quotes)

Total Costs of Non Pre-Priced Task = D x Normal Hours Adjustment Factor

- d. After a Non Pre-priced Task has been approved by the Owner, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.

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

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

- 4. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The cost of expediting services or equipment use fees are not reimbursable.

- 5. Design requirements will be determined by the scope of work defined in each Work Order. If the level of Architect/Engineer services for a Work Order requires stamped plans and specifications for the development of the Detailed Scope of Work, the Owner shall be responsible to prepare them. As needed, the contractor may assist with the development of the scope through one or more joint scope meetings and subsequent review of the prepared documents. All shop drawings, submittals and similar documents required in connection with a particular Work Order are considered to be incidental to the Contract and included in the Contractor's Adjustment Factors.

- 6. The Contractor's Price Proposal shall include, at a minimum:
 - a. Price Proposal;
 - b. Back Up for Non Pre-priced Tasks;
 - c. Any other documentation requested by the Owner.

- 7. The Contractor's Price Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Price Proposals shall be rejected. The time allowed for preparation of the Contractor's Price Proposal will depend on the complexity and urgency of the Work Order but should average between seven (7) and fourteen (14) days. On complex Work Orders, such as Work Orders requiring incidental engineering/architectural drawings and approvals and permits,

1 allowance will be made to provide adequate time for preparation and
2 submittal of the necessary documents.
3

4 8. By submitting a Price Proposal to the Owner, the Contractor agrees to
5 accomplish the Detailed Scope of Work in accordance with the Request
6 for Proposal at the price submitted. It is the Contractor's responsibility
7 to include the necessary tasks and quantities in the Price Proposal and
8 apply the appropriate Adjustment Factor(s) prior to delivering it to the
9 Owner.

10
11 9. If the Contractor requires clarifications or additional information
12 regarding the scope of work in order to prepare the Price Proposal, the
13 request must be submitted so that the submittal of the Price Proposal
14 is not delayed.
15

16 C. Review of the Price Proposal
17

18 1. If the Owner finds the Contractor's Price Proposal unacceptable, the
19 Owner may request the Contractor to re-submit its Price Proposal or
20 cancel the Work Order. After the Owner has reviewed the Price
21 Proposal and an agreement has been reached between the Owner and
22 the Contractor as to the nature of the revisions, if any, the Contractor is
23 not allowed to make any changes to the revised Price Proposal other
24 than the agreed upon changes. Unless otherwise specified by the
25 Owner, if the Contractor is required to resubmit the Price Proposal, the
26 revised Price Proposal is due no later than 48 hours after the changes
27 have been agreed upon.
28

29 2. The Contractor may choose the means and methods of construction;
30 subject however, to the Owner's right to reject any means and methods
31 proposed by the Contractor that:
32

33 a) Will constitute or create a hazard to the work, or to persons or
34 property; or
35

36 b) Will not produce finished Work in accordance with the terms of
37 the Contract; or
38

39 c) Unnecessarily increases the price of the Work Order when
40 alternative means and methods are available; or
41

42 d) Deviates from the Detailed Scope of Work.
43

44 3. Once the Price Proposal is accepted by the Owner (by issuance of a
45 Notice to Proceed through the Gordian System), the Work Order
46 becomes a firm fixed, lump sum contract. Unless specifically stated in
47 the Detailed Scope of Work, no adjustment in the proposed Pre-priced
48 Tasks and Non Pre-priced Tasks or quantities is allowed. Inspection of
49 the Contractor's Work shall be against the Detailed Scope of Work
50 including any Technical Specifications and Drawings, not against the
51 Price Proposal.

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D. Preparation of the Proposal Package:

1. Time for Submittal: Upon acceptance of the Contractor's Price Proposal, the Contractor will be required to submit the Proposal Package within five (5) working days of said acceptance, unless otherwise specified by the Owner. If the Contractor fails to meet the deadline for submittal of the Proposal Package, the Owner may declare the Contractor in default and initiate termination of the Work Order.
2. The Proposal Package shall include:
 - a. Price Proposal as agreed to
 - b. Final back-up for any Non Pre-priced Tasks (if applicable)
 - c. Subcontractor List, including:
 - i. The name, license number and the location of the place of business of each subcontractor who will perform work or labor or render service to the general contractor in or about the construction of the work or improvement in an amount in excess of one-half (1/2) of one percent (1%) of the general contractor's total proposal amount, and
 - ii. The portion of the work which will be done by each subcontractor.
 - iii. The attention of bidders is directed to the provisions of Public Contract Code Section 4100 et seq which set forth the consequences and possible penalties which may result from a failure to comply strictly with the foregoing requirements for listing of subcontractors.
 - d. Final drawings, calculations, specifications (if applicable)
 - e. Final catalog cuts, (if applicable)
 - f. Special insurance, (if applicable)
 - g. For Special equipment and installations, a copy of the warranty document (if applicable)
 - h. Any other documentation required for the Work Order as indicated on the RFP (if applicable)
3. By submitting a Proposal Package to the Owner, the Contractor is agreeing to accomplish the Work outlined in the Request For Proposal and the Detailed Scope of Work for that particular Work Order.

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E. Review of the Proposal Package and Issuance of the Work Order:

1. The Owner will evaluate the entire Proposal Package.
2. The Owner reserves the right to reject a Contractor's Proposal Package based on inadequate documentation, unacceptable subcontractors, or other inconsistencies on the Contractor's part.
3. The Owner reserves the right to reject a Price Proposal or cancel a Project for any reason. The Owner also reserves the right not to issue a Work Order if it is determined to be in the best interests of the Owner. The Owner may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Work Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Work Order Proposal with the Owner.
4. Each Work Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Work Order Price and the Work Order Completion Time. All clauses of this Contract shall be applicable to each Work Order. The Work Order, signed by the Owner and delivered to the Contractor constitutes the Owner's acceptance of the Contractor's Proposal Package. A signed copy of the Work Order will be provided to the Contractor.
5. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the Owner. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Work Order. The Contractor shall be compensated in accordance with the Construction Task Catalog® and Non Pre-priced Tasks as if the work had been ordered under the standard procedures.

F. Review of Contract Documents and Field Conditions

1. The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Project Manager any discrepancy or inconsistency that may be discovered. The Contractor shall not be liable to the Owner or the Project Manager for any damage resulting from any such inconsistencies or discrepancies in the Contract Documents unless the Contractor recognized such inconsistencies or discrepancies and knowingly failed to report it to the Project Manager, or the Contractor was responsible for the preparation of the Contract Documents. The Contractor shall perform no portion of the Work at any time unless authorized by the Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

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2. Neither the Owner nor the Project Manager or Architect assume any responsibility for an understanding or representation made by any of their agents or representation prior to the execution of the Agreement unless (1) such understanding or representations are expressly stated in the Agreement, and (2) the Agreement expressly provides that responsibility therefore is assumed by the Owner.
3. Failure by the Contractor to acquaint himself/herself with all available information will not relieve him/her from responsibility for estimating properly the difficulty or cost of successfully performing the Work.
4. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Any inconsistencies or discrepancies discovered by the Contractor shall be reported to the Project Manager at once.
5. Before submitting any Request for Information (RFI), or other contractor initiated request for information, the Contractor shall determine that the information requested is not clearly provided in the Contract Documents. RFI's shall be submitted to the Project Manager only from the Contractor, or Owner, and not from any subcontractor, supplier or other vendor, and shall be on a form approved by the Project Manager. The Contractor shall provide a revised and updated RFI Priority Schedule on a weekly basis. The RFI Priority Schedule shall rank RFI's in order of priority and include a brief statement of reason for priority. Owner initiated RFI's will not be listed on the Contractor's RFI Priority Schedule. The Owner will provide the Architect or Engineer a separate list of Owner initiated RFI's upon request of the Architect or Engineer. The Architect or Engineer will endeavor to respect the order of priorities as requested by the Contractor or Owner for the overall benefit of the Project. The RFI process is for information and clarification only and may not be utilized to obtain approval for changes in Work Order Price or time. Also see Division 01 - General Requirements.

G. Supervision Procedures

1. The Contractor shall efficiently supervise and direct the Work, using therein the Contractor's best skill and diligence for which he/she is remunerated in the Work Order Price. He/She shall carefully inspect the site and study and compare the Contract Documents, as ignorance of any phase of any of the features or conditions affecting the Contract will not excuse him/her from carrying out its provisions to its full intent.
2. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications

1 shall be so confirmed upon written request in each case. The
2 Superintendent who begins the project shall remain on the project until
3 the project is completed, as long as the Contractor employs that person.
4 The Superintendent shall not be replaced without the approval of the
5 Owner.
6

- 7 3. The Contractor shall be responsible to the Owner for the acts and
8 omissions of his/her employees, subcontractors and their agents and
9 employees, and other persons performing any of the Work under a
10 contract with the Contractor.
- 11
- 12 4. The Contractor shall at all times enforce strict discipline and good order
13 among his/her employees and shall not employ on the Work any unfit
14 person or anyone not skilled in the task assigned to him/her.
- 15
- 16 5. The Contractor shall not be relieved from his/her obligations to
17 perform the Work in accordance with the Contract Documents either
18 by the activities or duties of the Owner or the Architect or Engineer in
19 his/her administration of the Contract, or by inspections, tests or
20 approvals required or performed by persons other than the
21 Contractor.
- 22
- 23 6. Contractor shall alert and inform their employees that State law
24 requires that the identities of inmates/wards/patients/clients be kept
25 confidential. Revealing the identities of inmates/wards/patients/clients
26 is punishable by law.
- 27

28 H. Construction Procedures

- 29
- 30 1. For any work that takes place within secured facilities: All access to
31 the construction site shall be coordinated with the appropriate Fresno
32 County department as identified in the Detailed Scope of Work.
33 Security background checks will be required for any employee that
34 performs work within the secure perimeter of a facility. Security
35 background forms can be obtained from the Project Manager. After
36 the acceptance of the Contractor's Work Order Proposal but prior to
37 the Notice to Proceed and the commencement of work, the forms for
38 all required persons shall be submitted to the appropriate department
39 for review. Vendor badges and/or other forms of identification will
40 then be issued which must be worn at all times while within the
41 secured areas of the site. The costs for the required background
42 checks will be borne by the County.
- 43
- 44 2. Means and Methods - The Contractor shall be solely responsible for
45 and control of construction means, methods, techniques, sequences,
46 coordination and procedures for all the Work of this contract.
47 Additionally, he/she shall be responsible for safety precautions and
48 programs in connection with the Work.
- 49
- 50 3. The Contractor shall coordinate all work with the Project Manager to
51 minimize any interruptions to the normal operation of any affected

1 facilities; particularly interruptions to air conditioning, electrical services,
2 alarm systems, communications and computer systems. The
3 Contractor shall be responsible for all costs incurred by the Owner on
4 a system as a result of work by the Contractor or damage caused by
5 the Contractor's operations, including costs associated with false fire
6 alarms caused by Contractor's operations.
7

- 8 4. Laws of County and State - The Contractor must comply with all laws,
9 rules, regulations, provisions and ordinances of the County in which the
10 Work is being done, and all State laws pertaining to the Work.
11
12 5. Safeguards - The Contractor shall provide, in conformity with all local
13 codes and ordinances and as may be required, such temporary walls,
14 fences, guard-rails, barricades, lights, danger signs, enclosures, etc.,
15 and shall maintain such safeguards until all work is completed.
16
17 6. Housekeeping - Contractor shall keep the premises free of excess
18 accumulated debris. Clean up as required and as directed by the
19 Project Manager. At completion of work all debris shall be removed
20 from the site. Refer to General Requirements for additional
21 requirements.
22
23 7. Labor and Materials - Unless otherwise provided in the Contract
24 Documents, the Contractor shall provide and pay for all labor,
25 materials, equipment, tools, construction equipment and machinery,
26 water, heat, utilities, transportation, and other facilities and services
27 necessary for the proper execution and completion of the Work,
28 whether temporary or permanent and whether or not incorporated or to
29 be incorporated in the Work.
30
31 8. The Contractor shall deliver to the Project Manager, prior to final
32 acceptance of the Work as a whole, signed certificates from suppliers
33 of materials and manufactured items stating that such items conform to
34 the Contract Documents.
35
36 9. The Contractor, immediately upon Notice to Proceed of each individual
37 Work Order (or where shop drawings, samples, etc., are required,
38 immediately upon receipt of review thereof) shall place orders for all
39 materials, work fabrication, and/or equipment to be employed by
40 him/her in that portion of the Work contracted for. The Contractor shall
41 keep all materials, work fabrications and/or equipment specified and
42 shall advise the Project Manager promptly, in writing, of all orders
43 placed and of such materials, work fabrications and/or equipment which
44 may not be available in a timely manner for the purposes of the
45 Contract.
46
47 10. Any worker whose work is unsatisfactory to the Owner or the Architect
48 or Engineer, or are considered by the Owner or Architect or Engineer
49 to be careless, incompetent, unskilled or otherwise unfit shall be
50 dismissed from work under the Contract upon written request to the
51 Contractor from the Owner or the Architect or Engineer.

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11. Temporary Facilities – Contractor may connect to existing water and electricity available on the site provided it is suitable to the Contractor's requirements. Water and electricity used will be paid by the Owner. Contractor shall bear all expenses for carrying the water or electricity to the appropriate locations and to connect or tap into existing lines. Toilet facilities may be available on a site to the workmen engaged in the performance of this contract. It shall be the responsibility of the Contractor to confirm with the Owner the availability of toilet facilities on the site. The use of such facilities may be revoked in the event of excess janitorial requirements.
12. Contractor shall not perform any fire hazardous operation adjacent to combustible materials. Any fire hazardous operation shall have proper fire extinguisher close by and the adjacent area shall be policed before stopping work for the day. Contractor shall provide not less than one OSHA/NFPA Class 6-ABC fire extinguisher for each 9,000 square feet of project area or fraction thereof.
13. Contractor shall erect temporary dust separation partitions and floor mats as necessary to confine dust and debris within area of work. Contractor shall post signs, erect and maintain barriers and warning devices for the protection of the general public and Owner personnel. The Contractor shall provide adequate protection for all parts of the present building and its contents and occupants wherever work under this contract is to be performed. The Contractor shall observe that the health and welfare of occupants of the existing building may be affected by noises and fumes produced by the construction. Insofar as is possible, loud and unnecessary noise is to be avoided and noise producing work should be performed as far away from occupied areas as is consistent with the efficient conduct of the work.
14. Trenching and Excavation - In accordance with Section 7104 of the California Public Contract Code, the following provisions shall apply to any contract involving digging of trenches or other excavations that extend deeper than four feet below the surface:
 - a. The contractor shall promptly, and before the following conditions are disturbed, notify the Owner, in writing, of any:
 - i. Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - ii. Subsurface or latent physical conditions at the site differing from those indicated.
 - iii. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily

1 encountered and generally recognized as inherent in
2 work of the character provided for in the contract.
3

4 b. The Owner shall promptly investigate the conditions, and if it
5 finds that the conditions do materially so differ, or do involve
6 hazardous waste, and cause a decrease or increase in the
7 contractor's cost of, or the time required for, performance of any
8 part of the work, shall issue a Supplemental Work Order in
9 accordance with the provisions of Section 2.09 of the General
10 Conditions.
11

12 c. In the event that a dispute arises between the Owner and the
13 contractor whether the conditions materially differ, or involve
14 hazardous waste, or cause a decrease or increase in the
15 contractor's cost of, or time required for, performance of any
16 part of the work, the contractor shall not be excused from any
17 scheduled completion date provided for by the contract, but
18 shall proceed with all work to be performed under the contract.
19 The contractor shall retain any and all rights provided either by
20 contract or by law which pertain to the resolution of disputes and
21 protests between the contracting parties.
22

23
24 2.10 SUBCONTRACTORS
25

26 A. Agreements - Agreements between the Contractor, Subcontractors, and
27 Subcontractors of lower tier shall be subject to the approval of the Owner, but
28 in no case does such approval relieve the Contractor of any conditions imposed
29 by the Contract Documents. The Contractor shall only use subcontractors
30 included in his/her Work Order Proposal unless first approved by the Owner
31 pursuant to statute. The Contractor shall not use any subcontractor who is
32 ineligible to perform work on a Public Works Project pursuant to section 1777.1
33 or 1777.7 of the Labor Code. Notwithstanding any other provision of the
34 Contract Documents, subcontractors may be added, deleted or substituted
35 only in accordance with the provisions of Public Contract Code Section 4100
36 et seq.
37

38 B. Relation with Subcontractor – By an appropriate agreement, written where
39 legally required for enforceability, the Contractor shall bind every
40 Subcontractor and require therein that every Subcontractor agrees to be bound
41 by the terms of the Contract Documents to carry out their provisions insofar as
42 applicable to their work; and the Contractor further agrees to pay to each
43 Subcontractor promptly upon issuance of Certificate of Payment, his/her or
44 their due portion. Said agreement shall preserve and protect the rights of the
45 Owner and the Architect under the Contract Documents with respect to the
46 work to be performed by the Subcontractor so that the subcontracting thereof
47 will not prejudice such rights, and shall allow to the Subcontractor, unless
48 specifically provided otherwise in the Contractor-Subcontractor Agreement,
49 the benefit of all rights, remedies and redress against the Contractor that the
50 Contractor, under the Contract Documents, has against the Owner. Where
51 appropriate, the Contractor shall require each Subcontractor to enter into

1 similar agreements with their Sub-subcontractors. The Contractor shall make
2 available to each proposed Subcontractor, prior to the execution of the
3 Subcontract, copies of the Contract Documents to which the Subcontractor will
4 be bound by this Paragraph and identify to the Subcontractor any terms and
5 conditions of the proposed Subcontract which may be at variance with the
6 Contract Documents. Each Subcontractor shall similarly make copies of
7 Contract Documents available to their Sub-subcontractors. Nothing contained
8 herein shall be deemed to create an agency relationship between the Owner
9 and any Subcontractor or material supplier.

- 10
- 11 C. Owner's Relation - Neither the acceptance of the name of Subcontractor nor
12 the suggestion of such name nor any other act of the Owner or Architect nor
13 anything contained in any Contract Document is to be construed as creating
14 any contractual relation between the Owner (or Owner's authorized
15 representatives) and any Subcontractor of any tier nor as creating any
16 contractual relation between the Architect and any Subcontractor of any tier.
- 17
- 18 D. All Subcontractors employed by the Contractor shall be appropriately licensed
19 in conformity with the laws of the State of California.
- 20
- 21 E. Jurisdictional disputes between Subcontractors or between Contractor and
22 Subcontractor shall not be mediated or decided by the Owner or the Architect.
23 The Contractor shall be responsible for the resolution of all such disputes
24 based upon his/her contractual relationship with his/her Subcontractors.
25

26

27 2.11 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE
28 CONTRACTS

- 29
- 30 A. The Owner reserves the right to perform work related to the Project with the
31 Owner's own forces, and to award separate contracts in connection with other
32 portions of the Project or other work on the site under these or similar
33 Conditions of the Contract. If the Contractor claims that the Owner's action
34 results in delay, damage or additional cost attributable thereto, the Contractor
35 shall make such claim as provided elsewhere in the Contract Documents.
- 36
- 37 B. When separate contracts are awarded for different portions of the Project or
38 other work on the site, the term Contractor in the Contract Documents in each
39 case shall mean the Contractor who executes each separate Owner-
40 Contractor Agreement.
- 41
- 42 C. The Owner shall provide for coordination of the activities of the Owner's own
43 forces and of each separate contractor with the Work of the Contractor, who
44 shall cooperate with them. The Contractor shall participate with other separate
45 contractors and the Owner in reviewing their construction schedules when
46 directed to do so. The Contractor shall make any revisions to the construction
47 schedule deemed necessary after a joint review and mutual agreement. The
48 construction schedules shall then constitute the schedules to be used by the
49 Contractor, separate contractors and the Owner until subsequently revised.
50

1 D. Unless otherwise provided in the Contract Documents, when the Owner
2 performs construction or operations related to the Project with the Owner's own
3 forces, the Owner shall be deemed to be subject to the same obligations and
4 to have the same rights which apply to the Contractor under the Conditions of
5 the Contract.
6

7
8 2.12 MUTUAL RESPONSIBILITY
9

10 A. The Contractor shall afford the Owner and separate contractors reasonable
11 opportunity for introduction and storage of their materials and equipment and
12 performance of their activities and shall connect and coordinate the
13 Contractor's construction and operations with theirs as required by the Contract
14 Documents.
15

16 B. When any part of the Contractor's Work depends upon proper execution or
17 results of the work of the Owner or any separate contractor, the Contractor
18 shall, prior to proceeding with the Work, promptly report to the Project Manager
19 any apparent discrepancies or defects in such other work that render it
20 unsuitable for such proper execution and results. Failure of the Contractor so
21 to report shall constitute an acceptance of the Owner's or separate contractor's
22 work as fit and proper to receive the Work, except as to defects which may
23 subsequently become apparent in such work by others.
24

25 C. If, following the reporting of any discrepancy or defect as required herein
26 above, the Contractor suffers damage due to disruption or delay caused by the
27 separate contractor, without fault by the Owner, the Contractor's remedy shall
28 be limited to seeking recovery from the separate contractor.
29

30 D. Any costs caused by defective or ill-timed work shall be borne by the Contractor
31 responsible therefor.
32

33 E. Should the Contractor cause damage to the work or property of the Owner, or
34 to other work or property on the site, the Contractor shall promptly remedy such
35 damage as provided herein.
36

37 F. Should the Contractor wrongfully delay or cause damage to the work or
38 property of any separate contractor, the Contractor shall, upon due notice,
39 promptly attempt to settle with such other contractor by agreement, or
40 otherwise to resolve the dispute. If such separate contractor sues the Owner
41 on account of any delay or damage alleged to have been caused by the
42 Contractor, the Owner shall notify the Contractor who shall defend such
43 proceedings, and if any judgment or award against the Owner (or Owner's
44 authorized representatives) arises therefrom, the Contractor shall pay or
45 satisfy such judgment or award in full and shall reimburse the Owner for all
46 costs which the Owner has incurred in connection with such matter.
47

48
49 2.13 OWNER'S RIGHT TO CLEAN UP
50

1 If a dispute arises between the Contractor and separate contractors as to their
2 responsibility for cleaning up as required in the Contract Documents, the Owner may
3 clean up and the contractor responsible shall pay Owner such portions of the cost as
4 the Project Manager shall determine to be just.
5

6
7 2.14 GOVERNING LAW

8
9 The Contract shall be governed by the law of the State of California.
10

11
12 2.15 INSPECTION

13
14 A. All material and workmanship (if not otherwise designated by the Contract
15 Documents) shall be subject to inspection, examination, and test by the Owner
16 and Project Manager at any and all times during manufacture and/or
17 construction and at any and all places where such manufacture and/or
18 construction are carried on. The Owner and Project Manager shall have the
19 right to reject defective material and workmanship or require its correction.
20

21 B. The Contractor shall furnish promptly without additional charge, all reasonable
22 facilities, labor, and materials necessary for the safe and convenient inspection
23 and tests that may be required by the Owner and Project Manager.
24

25 C. Where the Contract Documents, instructions by the Owner, laws, ordinances,
26 or any public authority having jurisdiction requires work to be inspected, tested
27 or approved before work proceeds, such work shall not proceed, nor shall it be
28 concealed prior to inspection.
29

30 D. The Contractor shall give the Project Manager at least two (2) business days
31 advance notice of the readiness for any Contract compliance inspection by the
32 Inspector. The Contractor shall give notice as required by all other inspecting
33 and testing agencies of jurisdiction for Code and regular compliance
34 inspection. In all cases, the Contractor shall schedule inspections so as not to
35 delay the Work.
36

37 E. If the Project Manager determines that any work requires additional special
38 inspection beyond that identified in the specifications, the Project Manager will,
39 upon written authorization from the Owner, instruct the Contractor to order
40 such special inspection, testing or approval, and the Contractor shall give
41 notice as provided above. If such special inspection or testing reveals a failure
42 of the Work to comply with the requirements of the Contract Documents, the
43 Contractor shall bear all costs thereof, including compensation for the Project
44 Manager's additional services, testing or inspections made necessary by such
45 failure; otherwise the Owner shall bear such costs, and an appropriate
46 Supplemental Work Order shall be issued.
47

48 F. Should it be considered necessary or advisable by the Project Manager at any
49 time either before acceptance of the entire Work or after acceptance and within
50 the guaranty period to make an examination of work already completed, by
51 removing or tearing out same, the Contractor shall on request promptly furnish

1 all necessary facilities, labor, and material. If such work is found to be defective
2 in any material respect, due to the fault of the Contractor or his/her
3 Subcontractors, he/she shall defray all the expenses of such examination and
4 of satisfactory reconstruction. If, however, such work is found to meet the
5 requirements of the contract, any compensation deemed appropriate shall be
6 handled by issuance of a Contract Change Order to the Contractor and he/she
7 shall, in addition, if completion of the work has been delayed thereby, be
8 granted a suitable extension of Work Order Time on account of the additional
9 work involved.

10
11 G. Required certificates of inspection, testing or approval shall be secured by the
12 Contractor and the Contractor shall promptly deliver them to the Project
13 Manager for review and evaluation of compliance with the appropriate
14 specifications and standards.

15
16 H. When the work is completed the Contractor shall notify the Project Manager in
17 writing that the work will be ready for final inspection and test on a definite date
18 which shall be stated in such notice.

19
20
21 2.16 TAXES, PERMITS, FEES, AND INDEMNIFICATION FOR PATENT INFRINGEMENT
22 CLAIM

23
24 A. The Contractor shall pay for and include all Federal, State and local taxes direct
25 or indirect for the work or portions thereof provided by the Contractor which are
26 legally enacted at the time the Notice to Proceed is issued, whether or not yet
27 enacted, and secure and pay all fees and charges for permits and licenses,
28 unless otherwise specified.

29
30 B. Royalty and license fees incidental to the use of any patented material, device
31 or process shall be paid by the Contractor and in the event of a claim of alleged
32 infringement of patent copyright, or Trade Secret rights, the Contractor shall
33 indemnify, save the Owner (and Owner's authorized representatives) free and
34 harmless, and defend, at the Contractor's own expense, any and all suits that
35 may be brought in such connection.

36
37 C. Unless otherwise provided in the Contract Documents, the Owner shall secure
38 and pay for the building permit, permanent utility connection fees, and right-of-
39 way encroachment permit. The Contractor shall secure and pay for temporary
40 construction utilities, and all other permits and governmental fees, licenses and
41 inspections necessary for the proper execution and completion of the Work.

42
43 D. The Contractor shall give all notices and comply with all laws, ordinances,
44 rules, regulations and lawful orders of any public authority bearing on the
45 performance of the Work.

46
47 E. It is not the responsibility of the Contractor to make certain that the Contract
48 Documents are in accordance with applicable laws, statutes, building codes
49 and regulations. If the Contractor observes that any of the Contract Documents
50 are at variance therewith in any respect, the Contractor shall promptly notify

1 the Project Manager in writing, and any necessary changes shall be
2 accomplished by appropriate Modification.

3
4 F. If the Contractor performs any work knowing it to be contrary to any laws,
5 ordinances, rules and regulations, without notice to the Project Manager, the
6 Contractor shall assume full responsibility therefore and shall bear all costs
7 attributable thereto.

8
9 G. Any reference in the Contract Documents to codes, standard specifications or
10 manufacturer's instructions shall mean the latest printed edition of each in
11 effect at the Contract date.

12
13
14 2.17 CONTRACTOR'S CONSTRUCTION SCHEDULE

15
16 A. Within seven (7) calendar days after receipt of Notice to Proceed for each
17 individual Work Order, the Contractor shall submit a Construction Schedule in
18 CPM (Critical Path Method) form to the Project Manager for approval. The
19 Construction Schedule shall be sufficiently detailed to accurately depict all the
20 work required by the Contract. CPM Construction Schedule shall reflect shop
21 drawings; submittals due and return dates, fabrication and delivery times, cost
22 loading, crew mix, and equipment loading data. The Contractor shall thereafter
23 adhere to the Construction Schedule, as updated monthly, or as necessary in
24 accordance with the Contract Documents including any scope changes, or
25 changes in the work approved by the Owner during the course of construction.
26 "Slack" or "float" time on the CPM Construction Schedule is neither for the sole
27 benefit of the Owner or Contractor.

28
29
30 B. Within fourteen (14) calendar days after the pre-construction conference, the
31 Contractor shall provide a Submittal and Procurement Schedule indicating time
32 periods for review of Shop Drawings, Data, Samples, and procurement of
33 material and equipment required for the Work. Contractor shall allow time for
34 submittal review in accordance with the General Requirements Section –
35 Construction Progress Documentation. All items that require review by the
36 Project Manager and/or are not readily available from stock and requiring more
37 than thirty-five (35) days lead-time shall be included in the Submittal and
38 Procurement Schedule. Items listed in the Submittal and Procurement
39 Schedule shall also be identified as activities on the CPM Construction
40 Schedule. Contractor shall identify items requiring coordination with work of
41 separate contractors. The working day to calendar date correlation shall be
42 based upon the Contractor's proposed work week with adequate allowance for
43 legal holidays, days lost due to abnormal weather, and any special
44 requirements of the Project.

45
46 C. The Construction Schedule shall be prepared and maintained by the
47 Contractor.

48
49 D. The Owner, Project Manager, Contractor and other Contractor(s) shall jointly
50 review the progress of the work weekly. Should this review, in the opinion of
51 the Project Manager, indicate that the work is behind the schedule established

1 by currently reviewed Construction Schedule, the Contractor shall either (1)
2 provide a plan to the Project Manager indicating the steps the Contractor
3 intends to take in order to recover the time behind schedule and conform to the
4 reviewed Construction Schedule; or (2) submit a revised Construction
5 Schedule for completion of the work, remaining within the Work Order
6 Completion Time, to the Project Manager for review by the next weekly
7 meeting. If the Contractor's recovery or revised schedule requires work to
8 occur during Other Than Normal Working Hours, the Contractor will be
9 responsible for any resulting costs incurred by the Owner, including but not
10 limited to, the costs for construction management, contract administration,
11 inspection, testing and staffing.
12

13 E. The Contractor shall deliver copies of his/her daily job logs to the Project
14 Manager and Owner on a weekly basis or as otherwise agreed to by Owner.
15 At a minimum, the Contractor's daily job log should include the sub-contractors
16 working onsite, number of workers and their trade classification, description of
17 work, visitors, temperature and weather conditions, accidents, delays, and any
18 other important information pertaining to the project that day. The Contractor
19 will schedule and coordinate the Work of all sub-contractors on the Project.
20 The Contractor will keep the Sub-contractors informed of the Construction
21 Schedule to enable the Contractor to plan and perform the Work properly.
22

23
24 2.18 RECORDS, DOCUMENTS AND SAMPLES AT THE SITE

- 25
26 A. The Contractor shall maintain all records of required Review Agencies, County
27 or State inspections and shall promptly notify the Project Manager of the results
28 of any inspection. Copies of all such records shall be provided to the Owner.
29
30 B. The Contractor shall secure and maintain required certificates of inspection,
31 testing or approval and shall promptly deliver them to the Project Manager.
32
33 C. The Contractor shall maintain at the Project site, on a daily basis, one (1)
34 record copy of all Drawings, Specifications, Addenda, Work Orders and other
35 Modifications, in good order and marked currently to record all changes made
36 during construction, and reviewed Shop Drawings, Product Data and Samples.
37 These shall be available to the Project Manager and the Owner and reviewed
38 weekly, and shall be delivered to the Project Manager for forwarding to the
39 Owner upon completion of the Project. The Contractor shall advise the Project
40 Manager on a current basis of all changes in the Work made during
41 construction. Payment may be withheld from Contractor for failure to maintain
42 current Record Documents.
43

44
45 2.19 USE OF SITE

- 46
47 A. The Contractor shall confine operations at the site to areas permitted by law,
48 ordinances, permits and the Contract Documents, and shall not unreasonably
49 encumber the site with any materials or equipment.
50

- 1 B. The Contractor shall coordinate all of the Contractor's operations with, and
2 secure approval from, the Project Manager before using any portion of the site.
3 Also see Technical Specifications, Division I, General Requirements.
4

5
6 2.20 CUTTING AND PATCHING OF WORK
7

- 8 A. The Contractor shall be responsible for all cutting, fitting or patching that may
9 be required to complete the Work or to make its several parts fit together
10 properly.
11
12 B. The Contractor shall not damage or endanger any portion of the Work or the
13 work of the Owner or any separate contractors by cutting, patching or otherwise
14 altering any work, or by excavation. The Contractor shall not cut or otherwise
15 alter the work of the Owner or any separate contractor except with the written
16 consent of the Owner and of such separate contractor. The Contractor shall
17 not unreasonably withhold from the Owner or any separate contractor consent
18 to cutting or otherwise altering the Work.
19
20 C. The Contractor in all cases shall exercise extreme care in any cutting
21 operations, and perform such operations under adequate supervision by
22 competent mechanics skilled in the applicable trade. Openings shall be neatly
23 cut and shall be kept as small as possible to avoid unnecessary damage.
24 Careless and/or avoidable cutting damage, etc., will not be tolerated, and the
25 Contractor will be held responsible for such avoidable or willful damage.
26
27 D. All replacing, patching and repairing of all materials and surfaces cut or
28 damaged in the execution of the Work shall be performed by experienced
29 mechanics of the several trades involved. All work of such nature shall be done
30 with the applicable materials, in such a manner that all surfaces so replaced,
31 repaired, or patched, will, upon completion of the Work, match the surrounding
32 similar surfaces.
33

34
35 2.21 CLEANING UP
36

- 37 A. The Contractor shall at all times keep the premises free from accumulation of
38 waste materials or rubbish caused by the Contractor's operations. At the
39 completion of the Work, the Contractor shall remove all the Contractor's waste
40 materials and rubbish from and about the Project as well as all the Contractor's
41 tools, construction equipment, machinery and surplus materials.
42
43 B. If the Contractor fails to clean up at the completion of the Work, the Owner may
44 do so and the cost thereof shall be paid by the Contractor.
45

46
47 2.22 INDEMNIFICATION
48

- 49 A. To the fullest extent permitted by law, Contractor agrees to and shall indemnify,
50 save, hold harmless and at Owner's request, defend Owner and its officers,
51 agents and employees, and the Architect and Consultants and their respective

1 officers, agents and employees, from any and all costs and expenses, attorney
2 fees and court costs, damages, liabilities, claims and losses occurring or
3 resulting to Owner, the Architect or Consultants in connection with the
4 performance, or failure to perform, by Contractor, its officers, agents or
5 employees under this Agreement, and from any and all costs and expenses,
6 attorney fees and court costs, damages, liabilities, claims and losses occurring
7 or resulting to any person, firm or corporation who may be injured or damaged
8 by the performance, or failure to perform, of Contractor, its officers, agents or
9 employees under this Agreement. In addition, Contractor agrees to indemnify
10 Owner for Federal, State of California and/or local audit exceptions resulting
11 from non-compliance herein on the part of Contractor.
12

13 B. In any and all claims against the Owner, the Architect or Consultants, or any of
14 their respective officers, agents or employees, initiated by any employee of the
15 Contractor, any Subcontractor, anyone directly or indirectly employed by any
16 of them or anyone for whose acts any of them may be liable, the
17 indemnification obligation set forth in the immediately preceding paragraph
18 shall not be limited in any way by any limitation on the amount or type of
19 damages, compensation or benefits payable by or for the Contractor or any
20 Subcontractor under workmen's compensation acts, disability benefit acts or
21 other employee benefit acts.
22

23 1. Independent Contractor: In performance of the work, duties and
24 obligations assumed by Contractor under this Agreement, it is mutually
25 understood and agreed that Contractor, including any and all of the
26 Contractor's officers, agents, and employees will at all times be acting
27 and performing as an independent contractor, and shall act in an
28 independent capacity and not as an officer, agent, servant, employee,
29 joint venturer, partner, or associate of the Owner. Furthermore, Owner
30 shall have no right to control or supervise or direct the manner or
31 method by which Contractor shall perform its work and function.
32 However, Owner shall retain the right to administer this Agreement so
33 as to verify that Contractor is performing its obligations in accordance
34 with the terms and conditions thereof.
35

36 Contractor and Owner shall comply with all applicable provisions of
37 law and the rules and regulations, if any, of governmental authorities
38 having jurisdiction over matters the subject thereof.
39

40 Because of its status as an independent contractor, Contractor shall
41 have absolutely no right to employment rights and benefits available
42 to Owner employees. Contractor shall be solely liable and responsible
43 for providing to, or on behalf of, its employees all legally-required
44 employee benefits. In addition, Contractor shall be solely responsible
45 and save Owner harmless from all matters relating to payment of
46 Contractor's employees, including compliance with Social Security
47 withholding and all other regulations governing such matters. It is
48 acknowledged that during the term of this Agreement, Contractor may
49 be providing services to others unrelated to the Owner or to this
50 Agreement
51

1 2.23 FAIR EMPLOYMENT PRACTICES CLAUSE

2
3 Nondiscrimination: In connection with the performance of Work under the contract,
4 the Contractor agrees (as prescribed in Chapter 6 of Division 3 of Title II of the
5 Government Code of the State of California, commencing at Section 12900 and by
6 Labor Code Section 1735) not to discriminate against any employee or applicant for
7 employment because of race, religious creed, color, national origin, ancestry,
8 physical disability, mental disability, medical condition, marital status or sex. The
9 aforesaid provisions shall include, but not be limited to, the following: employment,
10 upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or
11 termination, rates of pay or other forms of compensation, and selection for training,
12 including apprenticeship. The Contractor agrees to post hereafter in conspicuous
13 places, available for employees and applicants for employment, Notices to be
14 provided by the County, setting forth the provisions of this discrimination clause. The
15 Contractor further agrees to insert the foregoing provisions in all subcontracts
16 hereunder, except subcontracts for standard commercial supplies of raw materials.
17

18
19 2.24 PAYMENT

20
21 A. The Owner shall make one payment for all Work Orders that have a Work
22 Order Completion Time of 45 days or less, or a Work Order Price of \$25,000
23 or less. For all other Work Orders, the Owner may make partial, monthly
24 payments based on a percentage of the work completed.
25

26 B. SCHEDULE OF VALUES

27
28 Before the first Application for Payment, the Contractor shall submit to the
29 Project Manager a Schedule of Values allocated to the various portions of the
30 Work, prepared in such form and supported by such data to substantiate its
31 accuracy as the Project Manager may require. This schedule, unless objected
32 to by the Project Manager, shall be used only as a basis for the Contractor's
33 Applications for Payment.
34

35 C. APPLICATIONS FOR PAYMENT

36
37 The Owner will make progress payments to the Contractor upon completion of
38 portions of the Work, as covered by the Contract Documents, in accordance
39 with established Owner procedures. Before submitting an Application for
40 Payment (Final or Partial) the Contractor shall reach an agreement with the
41 Project Manager (in consultation with the Architect) concerning the percentage
42 complete of the Detailed Scope of Work and the dollar value for which the
43 Application for Payment may be submitted.
44

45 1. On or about the twentieth (20th) of the month in which the work was
46 performed, the Contractor shall submit to the Project Manager an
47 itemized Application for Payment, notarized if required, supported by
48 such data substantiating the Contractor's right to payment as the Owner
49 or the Project Manager may require, including appropriate updates to
50 the Construction Schedule, and reflecting retainage, if any, as provided
51 elsewhere in the Contract Documents. Payment is expressly

1 conditioned upon submission by the Contractor of conditional and
2 unconditional waivers and release of lien rights upon progress payment
3 as the Owner or the Architect may require. Waiver and Release forms
4 must be submitted on forms approved by the Owner. Copies of said
5 forms shall comply with Civil Code Section 8132 through 8138,
6 inclusive.
7

8 2. Unless otherwise provided in the Contract Documents, payments may
9 be made on account of materials or equipment not incorporated in the
10 Work but delivered and suitably stored at the site and, if approved in
11 advance by the Owner, payments may similarly be made for materials
12 or equipment suitably stored at some other location agreed upon in
13 writing. Payments for materials or equipment stored on or off the site
14 shall be conditioned upon submission by the Contractor of bills of sale
15 or such other procedures satisfactory to the Owner to establish the
16 Owner's title to such materials or equipment or otherwise protect the
17 Owner's interest, including applicable insurance and transportation to
18 the site for those materials and equipment stored off the site.
19

20 3. The Contractor warrants that title to all work, materials and equipment
21 covered by an Application for Payment will pass to the Owner either by
22 incorporation in the construction or upon receipt of payment by the
23 Contractor, whichever occurs first, free and clear of all liens, stop
24 notices, claims, security interest or encumbrances, hereinafter referred
25 to as "liens"; and that no work, materials or equipment covered by an
26 Application for Payment will have been acquired by the Contractor, or
27 by any other person performing work at the site or furnishing materials
28 and equipment for the Project, subject to an agreement under which an
29 interest therein or an encumbrance thereon is retained by the seller or
30 otherwise imposed by the Contractor or such other person.
31

32 4. On or about the twentieth (20th) day of the month following the month
33 in which the work was performed, the Owner shall pay to the Contractor
34 ninety-five percent (95%) of the value of said work in place, as checked
35 and approved by the Project Manager. The balance of five percent
36 (5%) of the estimate shall be retained by the Owner until the time of
37 final acceptance of said work. In lieu of the five percent (5%) retainage,
38 the Contractor may substitute securities as provided herein below.
39

40 a. If the Owner does not pay the Contractor within thirty (30) days
41 after receipt of an undisputed and properly submitted payment
42 request for a progress payment, excluding that portion of the
43 final payment designated by the contract as retention earnings,
44 then the Owner shall pay interest to the Contractor as provided
45 by Public Contract Code Section 20104.50. Said interest
46 penalty is the sole recourse of Contractor and Contractor shall
47 have no right to stop the Work until payment of the amount
48 owing has been received, nor shall the Work Order Completion
49 Time be extended, nor shall the Work Order Price be increased
50 in any way, including by reason of any costs incurred by
51 Contractor, except to the extent of said interest payment.

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b. Pursuant to Public Contract Code Section 7107, in the event of a dispute between the Owner and Contractor, the Owner may withhold from the final payment an amount not to exceed one hundred and fifty percent (150%) of the disputed amount. Except as so provided, the Owner shall release the retention withheld within sixty (60) days after the date of Work Order completion of the work of improvement, as "completion" is defined in Public Contract Code Section 7107. In the event that retention payments are not made within the time periods required by Public Contract Code Section 7107, the Owner may be subject to the interest provisions of Public Contract Code Section 7107.

5. Security Substitutions and Escrow for Moneys Withheld to Insure Contractor's Performance. Pursuant to Public Contract Code section 22300, the Contractor may deposit in an escrow, equivalent securities for any moneys withheld to ensure performance and have said moneys paid directly to Contractor, or, in the alternative, have the Owner deposit such moneys directly into an escrow. Upon the closing of any such escrow, Contractor shall pay to each Subcontractor, not later than twenty (20) days after receipt of the closing payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to insure the performance of the Contractor. Any escrow established pursuant to this article shall be with a state or federally chartered bank, shall be at the sole expense of the Contractor, and shall be established using an escrow agreement in substantially the following form:

(Begin Escrow Agreement)

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the County of Fresno, (hereinafter called "Owner"), _____ (hereinafter called "Contractor"); and _____, a state or federally chartered bank in California, (hereinafter called "Escrow Agent").

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of \$ _____, and dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the contractor, the owner shall make payments of the retention earnings directly to the escrow agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within ten (10) days of the deposit. The market value of the securities at the time of the substitution, as valued by the Owner, shall be at least equal to the cumulative total cash amount then required to be withheld as retention under the terms of the contract between Owner and Contractor. If the Owner determines that the securities are not adequate it will notify Contractor and Escrow Agent, and Contractor shall deposit additional security as further determined by the Owner. Securities shall be held in the name of the Owner and shall designate the Contractor as the beneficial owner.
2. Securities eligible for investment under subdivision (c) of the above-referenced Section 22300 shall include those listed in Section 16430 of the Government Code, and shall also include bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, and standby letters of credit. Deposit of any other type of security may be permitted only by mutual agreement of the Contractor and the Owner, evidenced by an amendment to this agreement executed by all of the parties hereto.
3. Upon the deposit of adequate securities, Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions.
4. When the Owner, at Contractor's written request, makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

- 1 5. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow
2 Agent in administering the Escrow Account and all expenses of the Owner. The
3 Owner, Contractor and Escrow Agent shall determine these expenses and payment
4 terms.
5
- 6 6. The interest earned on the securities or the money market accounts held in escrow
7 and all interest earned on that interest shall be for the sole account of Contractor and
8 shall be subject to withdrawal by Contractor at any time and from time to time without
9 notice to the Owner.
10
- 11 7. Contractor shall have the right to withdraw all or any part of the principal in the Escrow
12 Account only by written notice to Escrow Agent accompanied by written authorization
13 from Owner to the Escrow Agent that Owner consents to the withdrawal of the amount
14 sought to be withdrawn by Contractor.
15
- 16 8. The Owner shall have the right to draw upon the securities or any amount paid directly
17 to Escrow Agent in the event of default by the Contractor. Upon seven (7) days written
18 notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall
19 immediately convert the securities to cash and shall distribute the cash, including any
20 amounts paid directly to Escrow Agent, as instructed by the Owner. Escrow Agent
21 shall not be concerned with the validity of any notice of default given by Owner
22 pursuant to this paragraph, and shall promptly comply with Owner's instructions to pay
23 over said escrowed assets. Escrow Agent further agrees not to interplead the
24 escrowed assets in response to conflicting demands and hereby waives any present
25 or future right of interpleader.
26
- 27 9. Upon receipt of written notification from the Owner certifying that the Contract is final
28 and complete, and that the Contractor has complied with all requirements and
29 procedures applicable to the Contract, Escrow Agent shall release to Contractor all
30 securities and interest on deposit less escrow fees and charges of the Escrow
31 Account. The escrow shall be closed immediately upon disbursement of all moneys
32 and securities on deposit and payment of fees and charges.
33
- 34 10. Escrow Agent shall rely on the written notifications from the Owner and Contractor
35 pursuant to Sections (6), (7), (8) and (9) of this Agreement and the Owner and
36 Contractor shall hold Escrow Agent harmless from Escrow Agent's release and
37 disbursement of the securities and interest as set forth above.
38
- 39 11. Securities eligible for investment under this Agreement, as provided by Public Contract
40 Code Section 22300, shall be those listed in Section 16430 of the Government Code,
41 bank or savings and loan certificates of deposit, interest bearing demand deposit
42 accounts, standby letters of credit, or any other security mutually agreed to by the
43 Contractor and Owner.
44
- 45 12. The venue of any litigation concerning the rights and obligations of the parties to this
46 agreement shall be the County of Fresno and the parties hereto waive the removal
47 provisions of Code of Civil Procedure Section 394.
48
- 49 13. The names of the persons who are authorized to give written notice or to receive
50 written notice on behalf of the Owner and on behalf of Contractor in connection with
51 the foregoing, and exemplars of their respective signatures are as follows:

Contract No.: #21-J-02
21-J-03
21-J-04

General Conditions
00 72 00-36

GENERAL BUILDING
JOB ORDER CONTRACTS

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On behalf of Owner:

Title – **Business Manager**

Name – **Lemuel Asprec**

Signature _____

Address- **2220 Tulare, 6th Floor
Fresno, CA 93721**

On behalf of Contractor:

Title

Name

Signature _____

Address

On behalf of Escrow Agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner:

Title – **Steven White, Director
Department of Public Works and Planning**

Signature _____

Address- **2220 Tulare, 6th Floor
Fresno, CA 93721**

Contractor:

Title

Name

Signature _____

Address

Escrow Agent:

Title

Name

Signature

Address

(End Escrow Agreement)

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6. Itemized Breakdown: The Contractor shall submit a financial breakdown of the work, itemized by crafts or sections as designated by the Owner. The Contractor's payment shall be based upon the monthly percentage of completion of these items.
 7. Lien Waivers: The Owner may require the Contractor to submit, along with the progress payment request, notarized lien waivers from each Subcontractor, materials or equipment supplier. Lien waivers shall comply with Civil Code Section 8132, et seq., and the aggregate sum thereof shall reflect all progress payments previously made.

12 D. CERTIFICATES FOR PAYMENT

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1. The Project Manager shall, within seven (7) days after the receipt of the Project Application for Payment, review the Project Application for Payment and either issue a Project Certificate for Payment to the Owner for such amounts as the Project Manager determines are properly due, or notify the Contractor in writing of the reasons for withholding a Certificate provided in Part F of this Section 2.24.
 2. The issuance of a Project Certificate for Payment will constitute a representation by the Project Manager to the Owner that, based on the Project Manager's observations at the site as provided herein and the data comprising the Project Application for Payment, the Work has progressed to the point indicated and that, to the best of the Project Manager's knowledge, information and belief, the quality and timeliness of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Completion of the Work, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate); and that based upon all currently available information, the Contractor is entitled to payment in the amount certified. However, by issuing a Project Certificate for Payment, the Project Manager shall not thereby be deemed to represent that the Project Manager has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, has reviewed the construction means, methods, techniques, sequences or procedures, or has made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid on account of the Work Order Price.

44 E. PROGRESS PAYMENTS

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1. After the Project Manager has issued a Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.
 2. The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on

1 account of such Subcontractor's Work, the amount to which
2 Subcontractor is entitled, reflecting the percentage actually retained, if
3 any, from payments to the Contract on account of such Subcontractor's
4 Work. The Contractor shall, by an appropriate agreement with each
5 Subcontractor, require each Subcontractor to make payments to their
6 Sub-subcontractors in similar manner.
7

8 3. The Project Manager may on request of any Subcontractor, at the
9 Project Manager's discretion, furnish to that Subcontractor, if
10 practicable, information regarding the percentages of completion or the
11 amounts applied for by the Contractor and the action taken thereon by
12 the Project Manager on account of Work done by such Subcontractor.
13

14 4. Neither the Owner nor the Project Manager shall have any obligation to
15 pay or to see to the payment of any monies to any Subcontractor or
16 Material Suppliers except as may otherwise be required by law.
17

18 5. Neither certification of a progress payment, delivery of a progress
19 payment, nor partial or entire use or occupancy of the Project by the
20 Owner, shall constitute an acceptance of any Work not performed in
21 accordance with the Contract Documents.
22

23 F. PAYMENTS WITHHELD
24

25 1. The Project Manager may decline to certify payment and may withhold
26 the Certificate in whole or in part to the extent necessary to reasonably
27 protect the Owner, if, in the Project Manager's opinion, the Project
28 Manager is unable to make representations to the Owner as provided
29 herein above for Certificates for Payment. If the Project Manager is
30 unable to make representations to the Owner and certify payment in
31 the amount of the Project Application, the Project Manager will notify
32 the Contractor as provided herein. If the Contractor and the Project
33 Manager cannot agree on a revised amount, the Project Manager will
34 promptly issue a Project Certificate for Payment for the amount for
35 which the Project Manager is able to make such representations to the
36 Owner. The Project Manager may also decline to certify payment or,
37 because of subsequently discovered evidence or subsequent
38 observations, the Project Manager may nullify the whole or any part of
39 any Project Certificate for Payment previously issued to such extent as
40 may be necessary, in the Project Manager's opinion, to protect the
41 Owner from loss because of:
42

- 43 a. Defective Work not remedied;
- 44 b. Third party claims filed or reasonable evidence indicating
45 probable filing of such claims, including claims by separate
46 contractors;
- 47 c. Failure of the Contractor to make payments properly to
48 Subcontractors, or for labor, materials or equipment;
- 49 d. Architect's determination, based upon reasonable evidence,
50 that the Work cannot be completed for the unpaid balance of
51 the Contract Sum;

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- e. Damage to the Owner or another contractor;
 - f. Architect's determination, based upon reasonable evidence, that the Work will not be accomplished in compliance with the Work Order Completion Time;
 - g. Persistent failure to carry out the Work in accordance with the Contract Documents;
 - h. Failure of the Contractor to submit Construction Schedules or Submittal and Procurement Schedules as required;
 - i. Failure of the Contractor to maintain record drawings on a current basis;
 - j. Failure of the Contractor to submit notarized lien waivers from each Subcontractor, materials or equipment supplier;
 - k. Failure of the Contractor to submit certified payroll reports;
 - l. Stop notice served upon the Owner.
2. A retention in the amount of one-thousand dollars (\$1,000) will be withheld from the Contractor's monthly progress payment for each and every required document not submitted in a timely manner by the Contractor or its subcontractors up to a maximum of ten-thousand dollars (\$10,000). For purposes of this Paragraph, the term "required document" includes, but is not limited to, certified payrolls, labor compliance documents, Disadvantaged Business Enterprise documents, and any other information or documents required to be submitted by the Contractor or any of its subcontractors under the terms of this Agreement or pursuant to applicable federal, state or local laws or regulations. The retention provided for in this Paragraph shall be in addition to any other deduction or retention allowed under this Agreement, and shall be in addition to any other remedy or consequence provided by law for untimely submission of any required document. Such retention shall remain in effect only until such time as the required documents have been submitted by the Contractor or its subcontractor(s) and have been determined by the Owner to be both complete and acceptable as to form.
3. When the grounds as noted above are removed, payment shall be made for amounts withheld on the basis thereof.

G. COMPLETION AND FINAL PAYMENT

1. Following the Contractor's completion of the Work of each individual Work Order, the Contractor shall forward to the Project Manager a written notice that the Work is ready for final inspection and acceptance, and shall also forward to the Project Manager a final Application for Payment. Upon receipt, the Project Manager will promptly make such inspection. When the Project Manager finds the Work acceptable under the Contract documents and the Contract fully performed, the Project Manager will issue a Project Certificate for Payment which will certify the final payment due the Contractor. This certification will constitute a representation that, to the best of the Project Manager's knowledge, information and belief, and on the basis of observations and inspections, the Work has been completed in accordance with the

1 Terms and Conditions of the Contract Documents and that the entire
2 balance found to be due the Contractor, and noted in said Certificate,
3 is due and payable. The Project Manager's certification of said Project
4 Certificate for Payment will constitute a further representation that the
5 conditions precedent to the Contractor's being entitled to final payment
6 as set forth herein below have been fulfilled.
7

- 8 2. Neither the final payment on each individual Work Order nor the
9 remaining retainage shall become due until the Contractor submits to
10 the Project Manager (1) an affidavit that all payrolls, bills for materials
11 and equipment, and other indebtedness connected with the Work for
12 which the Owner or the Owner's property might in any way be
13 responsible, have been paid or otherwise satisfied, (2) consent of
14 surety, if any, to final payment, and (3) other data establishing payment
15 or satisfaction of all such obligations, such as receipts, releases and
16 waivers of liens arising out of the Contract, to the extent and in such
17 form as may be designated by the Owner. If any Subcontractor refuses
18 to furnish a release or waiver required by the Owner, the Contractor
19 may furnish a bond satisfactory to the Owner to indemnify the Owner
20 against any such lien. The bond cannot be from the original surety
21 insurer for the project or any affiliate of the original surety. If any such
22 lien remains unsatisfied after all payments are made, the Contractor
23 shall refund to the Owner all monies that the latter may be compelled
24 to pay in discharging such lien.
25
- 26 3. All provisions of this Agreement, including without limitation those
27 establishing obligations and procedures, shall remain in full force and
28 effect notwithstanding the making or acceptance of final payment, and
29 the making of final payment shall not constitute a waiver of any claims
30 by the Owner.
31
- 32 4. Upon completion and acceptance of all work whatsoever required on
33 each individual Work Order, and upon the release of all claims against
34 the Owner as specified, the Owner shall file a written Notice of
35 Completion with the County Recorder as to the entire amount of work
36 performed for each individual Project.
37
- 38 5. Final payment will be released within sixty (60) days after the date of
39 acceptance of the Work as reflected in the Notice of Completion filed
40 with the County Recorder's Office; provided, that Owner may withhold
41 from the final payment, in the event of a dispute between Owner and
42 Contractor, retentions in and amount not exceeding 150 percent of the
43 disputed amount. At the Contractor's option, the Owner may release
44 retention upon receipt of an unconditional lien release for the full value
45 of the Work Order and any of its Supplemental Work Orders.
46
- 47 6. All manufacturers' warranties required by the Contract Documents shall
48 commence on the date of the Notice of Completion for the Work. It
49 shall be the Contractor's responsibility, through appropriate contractual
50 arrangements with all subcontractors, materialmen and suppliers, to
51 ensure compliance with this requirement.

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7. The acceptance by the Contractor of the final payment, after the date of Notice of Completion of the Project, shall be and shall operate as a release to the Owner of all claims and of all liability to the Contractor, under the Contract Documents or otherwise, for all things done or furnished in connection with this Work, excepting only the Contractor's claims for interest upon final payment, if such final payment be improperly delayed. No payments, however, final or otherwise, shall operate to release the Contractor or his/her sureties from any obligations under the Contract Documents, including but not limited to the Performance and Payment Bonds.

2.25 CHANGES TO THE WORK

- A. The Owner, without invalidating the Contract or a Work Order, may order changes in the Work within the general scope of the Contract consisting of additions, deletion or other revisions. All such changes in the Work shall be authorized by a Supplemental Work Order, and shall be performed under the applicable conditions of the Contract Documents.
- B. SUPPLEMENTAL Work ORDER: A Work Order issued to add or delete Work from an existing, related Work Order. Only an executed Supplemental Work Order will effectuate change in either the Work Order Price and/or the Work Order Time.
- C. All claims for additional compensation to the Contractor shall be presented in writing before the expense is incurred and will be adjusted as provided herein. No work shall be allowed to lag pending such adjustment, but shall be promptly executed as directed, even if a disputed claim arises. No claim will be considered after the work in question has been done unless a Supplemental Work Order has been issued or a timely written notice of claim has been made by Contractor.
- D. Supplemental Work Orders are developed by the same method as a Work Order as provided under Section 2.09.A, Procedures for Developing a Work Order.
- E. The value of tasks deleted from the Detailed Scope of Work shall be calculated according to the standard procedures for calculating all Pre-priced Tasks and Non Pre-priced Tasks. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Price Proposal.

2.26 NOT USED

2.27 SITE CONDITIONS

- A. Where investigations have been conducted by the Owner of existing conditions on a site, including subsurface conditions, such investigations are made for the

1 purpose of design only and for the information of bidders. The results of such
2 investigations represent only the statement by the Owner as to the
3 circumstance and character of materials actually encountered by the Owner
4 during the investigations. The Owner makes no guarantee or warranty,
5 express or implied, that the conditions indicated are representative of
6 conditions existing throughout the site of a Project or any part of it, or that
7 unanticipated conditions might not occur.
8

9 B. All excavation work shall be performed on an "unclassified basis"; that is, such
10 work shall include the removal of all material encountered including earth or
11 rock formations, regardless of the type or hardness thereof, or groundwater
12 conditions in the excavation, the cost of such excavations being included in the
13 Work Order Price. Unclassified excavation Work includes drilling or blasting
14 operations.
15

16 C. If site conditions are discovered that materially differ from previous information
17 that the Contractor has received, and that could not have been discovered by
18 the Contractor through prudent and reasonable investigation prior to
19 developing the Work Order Price Proposal for the work, the Contractor shall be
20 compensated for additional costs incurred in working with the unknown site
21 conditions, but only to the extent that such previously unknown and
22 undiscoverable site conditions cause the Contractor to incur costs in addition
23 to the Work Order price for that portion of the work. The Contractor must be
24 able to demonstrate clearly the original Work Order price for that portion of the
25 work (plus any Supplemental Work Orders applicable to that portion of the
26 work) and the additional costs incurred as a direct result of the unknown site
27 conditions. Only additional costs over and above the amount of the Work Order
28 price for that portion of the work will be compensated upon a recommendation
29 of approval by the Project Manager.
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32 2.28 REQUEST FOR EQUITABLE ADJUSTMENT

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34 A. If the Contractor considers a Request for Equitable Adjustment is justified for
35 any increase in the Work Order Time, the Contractor shall promptly, upon first
36 observance of the condition giving rise to the request, provide the Project
37 Manager and Owner written notice of such condition and circumstance. This
38 notice shall be given by the Contractor before proceeding to execute the Work,
39 except in emergency endangering life or property, in which case the Contractor
40 shall proceed in accordance with the Emergency provisions of these General
41 Conditions. No such request shall be valid unless so made. A Supplemental
42 Work Order shall be required to authorize any change in the Work Order Time
43 resulting from such request for equitable adjustment.
44

45 B. If the Contractor requests that additional cost or time is involved because of,
46 but not limited to, (1) any written interpretation pursuant to Section 2.07.G, (2)
47 any order by the Owner to stop the Work pursuant to Section 2.08 where the
48 Contractor was not at fault, or any such order by the Project Manager as the
49 Owner's agent, (3) any written order for a minor change in the Work issued
50 pursuant to Section 2.29, the Contractor shall make such request for equitable
51 adjustment as provided in Section 2.28.A.

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2.29 MINOR CHANGES IN THE WORK

The Project Manager will have authority to order minor changes in the Work not involving an adjustment in the Work Order Price or extension of the Work Order Time and not inconsistent with the intent of the Contract Documents. Such changes shall be enacted by written order issued through the Project Manager, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

2.30 SUCCESSORS AND ASSIGNS

The Owner and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other.

2.31 ASSIGNMENT OF MONEYS

The Contractor shall not assign moneys due or to become due him/her under the contract without the written consent of the Auditor-Controller of Fresno County. Any assignment of moneys shall be subject to all proper set-offs in favor of the County of Fresno and to all deductions provided for in the contract and particularly all money withheld, whether assigned or not, shall be subject to being used by the County of Fresno for the completion of the work in the event that the Contractor should be in default therein.

2.32 GUARANTEE OF WORK

A. The Contractor warrants to the Owner that all materials and equipment and the work as a whole furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents, for one (1) year from the date of Notice of Completion of each Project, unless a longer period is otherwise specified. All manufacturer's warranties required by the Contract Documents shall commence on the date of the filing of the Notice of Completion for the Work (which date necessarily will follow the performance under separate contracts. It shall be the Contractor's responsibility, through appropriate contractual arrangements with all subcontractors, material manufacturers and suppliers, to ensure compliance with this requirement. All Work not conforming to these requirements, including substitutions not properly reviewed and authorized, may be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- 1 B. If repairs or changes are required in connection with guaranteed work within
2 any guaranteed period, which, in the opinion of the Project Manager is
3 rendered necessary as the result of the use of materials, equipment or
4 workmanship which are inferior, defective, or not in accordance with the
5 Contract Documents, the Contractor shall, promptly upon receipt of notice from
6 the Owner, and without expense to the Owner (1) place in satisfactory condition
7 in every particular all of such guaranteed work, correct all defects therein, and
8 (2) make good all damage to the building or site, or equipment or contents
9 thereof, which, in the opinion of the Project Manager, is the result of the use
10 of materials, equipment or workmanship which are inferior, defective, or not in
11 accordance with the Contract Documents; and (3) make good any work or
12 materials, or the equipment and contents of said building or site disturbed in
13 fulfilling any such guarantee.
14
- 15 C. If the Contractor disturbs any work guaranteed under another contract in
16 fulfilling the requirements of the contract or of any guarantee, embraced in or
17 required thereby, he/she shall restore such disturbed work to a condition
18 satisfactory to the Project Manager and guarantee such restored work to the
19 same extent as it was guaranteed under such other contract.
20
- 21 D. The Owner may have the defects corrected if the Contractor, after notice, fails
22 to proceed promptly to comply with the terms of the guarantee and the
23 Contractor and his/her surety shall be liable for all costs and expenses incurred
24 in connection therewith.
25
- 26 E. All special guarantees applicable to definite parts of the work that may be
27 stipulated in the Contract Documents shall be subject to the terms of this Article
28 2.32 during the first (1st) year (365 Calendar Days) of the life of such special
29 guarantee.
30

31
32 2.33 RESPONSIBILITY FOR DAMAGE
33

- 34 A. Neither the Owner, the Architect, nor any officer or employee of the County,
35 or officer or employee thereof, within the limits of which the work is being
36 performed, shall be answerable or accountable in any manner, for any loss or
37 damage that may happen to the work or any part thereof; or for any of the
38 materials or other things used or employed in performing the work; or for injury
39 to any person or persons, either workmen or the public, for damage to property
40 from any cause which might have been prevented by the Contractor, or his/her
41 workmen, or anyone employed by him/her, against all of which injuries or
42 damages to persons and property the Contractor having control over such work
43 must properly guard.
44
- 45 B. The Contractor shall be responsible for any liability imposed by law for any
46 damage to any person or property resulting from defects or obstructions or
47 from any cause whatsoever during the progress of the work or at any time
48 before the issuance of the Notice of Completion.
49
- 50 C. The Contractor shall indemnify and hold harmless the Owner, the Project
51 Manager, the Architect, and all of their respective officers and employees, from

1 all claims, lawsuits or actions of every kind and nature whatsoever, brought for,
2 or on account of any injuries or damages received or sustained by any person
3 or persons, resulting from any act or admission by the Contractor or his/her
4 servants or agents, in the construction of the work or by or in consequence of
5 any negligence in guarding the same, in improper materials used in its
6 construction, or by or on account of any act or omission of the Contractor or
7 his/her agents in the performance of Contractor's obligations under the
8 Contract Documents. In addition to any remedy authorized by law, so much of
9 the money due the Contractor under and by virtue of the contract as shall be
10 considered necessary by the Owner may be retained by the Owner until
11 disposition has been made of such claims, lawsuits or actions for damages as
12 aforesaid.
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15 2.34 WRITTEN NOTICE

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17 Subject to any additional requirements that may be applicable to claims under the
18 immediately following Article 2.35 RESOLUTION OF CONTRACT CLAIMS AND
19 DISPUTES, formal service, when required, of written notice shall be deemed to have
20 been duly served if delivered in person, to the individual or member of the firm or
21 entity or to an officer of the corporation for whom it was intended, or if sent by
22 registered or certified mail to the listed address of that entity for the attention of such
23 individual.
24

25
26 2.35 RESOLUTION OF CONTRACT CLAIMS AND DISPUTES

- 27
28 A. A Claim is a demand or assertion sent by registered mail or certified mail with
29 return receipt requested by one (1) of the parties seeking, as a matter of right,
30 adjustment or interpretation of Contract terms, payment of money, extension
31 of time, or a request for equitable adjustment or Supplemental Work Order
32 which cannot be resolved per provisions of Section 2.25 - CHANGES TO THE
33 WORK. Any Claim shall be reduced to writing and filed with the Project
34 Manager, within ten (10) calendar days after the Contractor has notice of the
35 condition giving rise to the Claim, and final action per Section 2.25 - CHANGES
36 TO THE WORK procedures has taken place or has been declared as such in
37 writing, by either party. Such ten (10)-day notice of an asserted claim is in
38 addition to the requirement for prompt notice required per Section 2.25 -
39 CHANGES TO THE WORK.
40
41 B. The Contractor shall not claim or recover any overhead cost administrative or
42 otherwise, particularly 'Home Office' expenses, 'Extended site overhead', or
43 any other overhead cost on the basis of any 'Home Office' damages formula,
44 'Eichleay' formula, 'Total Cost' recovery formula or any other such formula.
45
46 C. REQUIREMENTS FOR FILING A CLAIM. Claims shall be submitted to the
47 Project Manager. Claims must be filed within the time specified above, but in
48 no event shall any claim be considered by the Project Manager that is filed later
49 than the date of final payment of the Project. The claim shall be in writing and
50 shall be a sum certain if known. If unknown, Contractor shall specify the basis
51 for establishing the sum certain. Claim shall include a statement of the reasons
52 for the asserted entitlement, and include the documents necessary to

1 substantiate the claim. Such documents may include but are not limited to
2 payroll records, purchase orders, quotations, invoices, estimates,
3 subcontracts, daily logs, supplier contracts, subcontract billings, bid takeoffs,
4 equipment rental invoices, ledgers, journals, daily reports, job diaries, and any
5 documentation related to the requirements of Section 2.25 - CHANGES TO
6 THE WORK. In the case of a continuing delay, only one (1) claim is necessary.
7 If adverse weather conditions are the basis for a claim for additional time, such
8 claim shall be documented by data substantiating that weather conditions were
9 abnormal for the period of time and could not have been reasonably
10 anticipated, and that weather conditions had an adverse effect on the critical
11 activities on the construction schedule. The Contractor shall certify, at the time
12 of submission of a claim, as follows:

13
14 "I, _____, being the _____
15 _____ (MUST BE AN OFFICER) of
16 _____ (GENERAL CONTRACTOR),
17 declare under penalty of perjury under the laws of the State of
18 California, and do personally certify and attest that: I have thoroughly
19 reviewed the attached claim for additional compensation and/or
20 extension of time, and know its contents, and said claim is made in
21 good faith; The supporting data is truthful and accurate; That the
22 amount requested accurately reflects the contract adjustment for which
23 the Contractor believes the Owner is liable; and, further, that I am
24 familiar with California Penal Code Section 72 and California
25 Government Code Section 12560, et seq, pertaining to false claims,
26 and further know and understand that submission or certification of a
27 false claim may lead to fines, imprisonment and/or other severe legal
28 consequences.
29

30 By: _____
31 (Contractor's signature) (Date)
32

33 D. Nothing in this Article is intended to extend the time limit or supersede notice
34 requirements otherwise provided by this contract or by applicable law for the
35 filing of claims. Any formal claim shall be processed in accordance with the
36 provisions of Public Contract Code Section 9204 and Section 20104 et. seq.,
37 each of which establishes a process for resolution of claims, the provisions of
38 which are consistent with and effectively summarized by the following
39

40 1. The Owner (or his/her designee), shall review the facts pertinent to the
41 claim, obtain additional information deemed necessary for a decision (if
42 any), review recommendations of the Project Manager, coordinate with
43 the contract administrator (if any) and secure assistance from legal and
44 other advisors, and render a written decision on the claim within forty-
45 five (45) days of receipt of the claim. If additional information or
46 documentation is thereafter required, it shall be requested and provided
47 pursuant to this subdivision, upon mutual agreement of the Owner (or
48 his/her designee) and claimant. The Owner's (or his/her designee's)
49 written response to the claim, as supplemented by any additional
50 information and/or documentation provided by claimant, shall be
51 submitted to the claimant within fifteen (15) days after receipt of the

1 further information and/or documentation or within a period of time no
2 greater than that taken by the claimant in producing the additional
3 information, whichever is greater.
4

5 2. If the claimant disputes the written response of Owner (or his/her
6 designee), or Owner fails to respond within the time prescribed, the
7 claimant may so notify the Owner (or his/her designee), in writing, either
8 within fifteen (15) days of receipt of the Owner (or his/her designee's)
9 response or within fifteen (15) days of the Owner (or his/her designee's)
10 failure to respond within the time prescribed, respectively, and demand
11 an informal conference to meet and confer for settlement of the issues
12 in dispute. Upon a demand, the Owner (or his/her designee) shall
13 schedule a meet and confer conference within thirty (30) days for
14 settlement of the dispute.
15

16 3. Within ten (10) business days following conclusion of the meet and
17 confer conference, any unpaid portion of the claim remaining in dispute
18 shall be submitted to nonbinding mediation, as that term is defined by
19 Public Contract Code Section 9204(d)((2)(C)).
20

21 4. If following the conclusion of the meet and confer conference and
22 mediation process, the claim or any portion thereof remains in dispute,
23 the claimant may file a claim pursuant to Chapter 1 (commencing with
24 Section 900) and Chapter 2 (commencing with Section 910) of Part 3
25 of Division 3.6 of Title 1 of the Government Code. For purposes of
26 those provisions, the running of the period of time within which a claim
27 must be filed shall be tolled from the time the claimant submits his/her
28 written claim pursuant to subdivision (a) until the time the claim is
29 denied, including any period of time utilized by the meet and confer
30 conference and mediation process as described in the immediately
31 preceding Paragraphs 2 and 3 of this Section D.
32

33 5. In the event of any perceived conflict between the summary of the
34 procedure set forth in this Article and the actual provisions of the
35 Public Contract Code Section 9204 and Section 20104, et seq., the
36 statutory provisions shall control; and in the event of any perceived
37 conflict between the provisions of Section 9204 and Section 20104, et
38 seq., the provisions of Section 9204 shall control.
39

40 E. Procedures for Civil Actions to Resolve Disputed Claims: Non-binding
41 Mediation: Within sixty (60) days, but no earlier than thirty (30) days, following
42 the filing of a responsive pleading, the court shall submit the matter to
43 non-binding mediation unless waived by mutual stipulation by both parties.
44 The mediation process shall provide for the selection within fifteen (15) days
45 by both parties of a disinterested third person as mediator, shall be
46 commenced within thirty (30) days of the submittal, and shall be concluded
47 within fifteen (15) days from the commencement of the mediation unless a time
48 requirement is extended upon a good cause shown to the court. If the parties
49 fail to select a mediator within the 15-day period, any party may petition the
50 court to appoint the mediator.
51

Judicial Arbitration: 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 the 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 subsection consistent with the rules pertaining to judicial arbitration. Arbitrators shall be experienced in construction law.

Appeals: As provided by statute (specifically Public Contract Code section 20104.4(b)(3) and Code of Civil Procedure section 1141.21), any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees, also pay the attorneys' fees on appeal of the other party.

F. CLAIMS AND DISPUTES EXEMPT FROM FILING REQUIREMENTS. The requirements and procedures imposed by this Article do not apply to:

- 1. Any claims by the Owner; or
- 2. Any claim for or respecting personal injury or death or reimbursement or other compensation arising out of or resulting from liability for personal injury or death; or
- 3. Any claim or dispute relating to stop payment requests or stop notices; or
- 4. Any claim or dispute related to the approval, refusal to approve, or substitution of Subcontractors, regardless of tier, and suppliers.

G. PAYMENT OF UNDISPUTED PORTION OF CLAIM. Owner shall pay claimant such portion of a claim that is undisputed except as otherwise provided in the contract.

H. CONTINUE WORK DURING DISPUTE. In the event of any disputed claim or other dispute between the Owner and the Contractor, the Contractor will not stop work but will prosecute the work diligently to completion in his/her manner directed by the Owner, and the dispute shall be resolved by a court of law after completion of the Work. However, Contractor must submit all disputes in accordance with the provisions of this Section 2.35.

I. SUIT IN FRESNO COUNTY ONLY. Any litigation arising out of this Contract shall be brought in Fresno County and Contractor hereby waives the removal provisions of California Code of Civil Procedure Section 394.

2.36 PERFORMANCE BOND, LABOR AND MATERIAL PAYMENT BOND AND WARRANTY BOND

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A. The Contractor shall furnish Performance Bond in the amount of one hundred percent (100%) of the Contract Sum, and Payment Bond in the amount of one hundred percent (100%) of the Contract Sum and One Year Warranty Bond in the amount of ten percent (10%) of the Final Contract Sum, which is the cumulative amount that will have been paid to Contractor for all of the Work performed under the Contract once the Project has been completed and the Work has been accepted by the County.

B. All bonds required, whether Bid bonds, Performance, Payment, Warranty or other bonds, shall be issued by an admitted surety insurer authorized by the California Insurance Commissioner to transact surety insurance in the state. The same admitted surety insurer must issue the Bid Bond, Performance Bond, Payment Bond, and Warranty Bond. The payment, performance and warranty bonds required by these specifications will neither be accepted nor approved by the Owner unless the bonds are underwritten by an admitted surety and the requirements of California Code of Civil Procedure section 995.630 are met. The bonds must include a physical mailing address, phone number, FAX number, and contract person for the admitted surety insurer. The Owner further reserves the right to satisfy itself as to the acceptability of the surety and the form of bond. Upon request of the Owner, the bidder must submit the following documents:

1. The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument authorizing the person who executed the bond to do so.
2. A certified copy of the certificate of authority of the insurer issued by the California Insurance Commissioner.
3. A certificate from the county clerk that the certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended, or in the event that it has, that renewed authority has been granted.
4. A financial statement of the assets and liabilities of the insurer to the end of the quarter calendar year prior to thirty (30) days next preceding the date of the execution of the bond, in the form of an officers' certificate as defined in Corporations Code section 173.

2.37 RIGHTS AND REMEDIES

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

B. No action or failure to act by the Owner, or by the Project Manager or Architect, regarding any deficiency, breach or default in performance by the Contractor under the Contract Documents, shall be deemed or construed to constitute acquiescence of the Owner in connection therewith or with regard to any subsequent deficiency, breach or default in performance by the Contractor; nor

1 shall any such prior act of failure to act by or on behalf of Owner be deemed or
2 construed as a waiver of any rights in favor of Owner regarding any such
3 deficiency, breach or default in performance by the Contractor, regardless of
4 the similarity to the prior incident or circumstance when no action was taken
5 regarding any alleged deficiency, breach or default in performance by the
6 Contractor.
7
8

9 2.38 TIME, DELAYS AND LIQUIDATED DAMAGES

10
11 A. DEFINITIONS

- 12
13 1. Unless otherwise provided, the Work Order Completion Time is the
14 period of time allotted in the Contract Documents for completion of the
15 Work of an individual work Order, including authorized adjustments
16 thereto.
17
18 2. The Date of Commencement of the Work is the date established in the
19 Notice to Proceed.
20
21 3. The Date of Completion of the Work is the date of which the work is
22 certified as complete by the Project Manager as specified in the Notice
23 of Completion.
24
25 4. The term "day" as used in the Contract Documents shall mean calendar
26 day unless specifically designated otherwise.
27

28 B. PROGRESS AND COMPLETION

- 29
30 1. Time is of the essence regarding all time limits stated in the Work Order
31 Notice to Proceed. By executing the Work Order, the Contractor
32 confirms that the Work Order Completion Time is a reasonable period
33 for performing the Work of the individual Work Order.
34
35 2. The Contractor shall begin the Work on the Date of Commencement.
36 The Contractor shall not knowingly, except by agreement or instruction
37 of the Owner in writing, prematurely commence operations on the site
38 or elsewhere prior to the effective date of insurance required herein to
39 be furnished by the Contractor. The Date of Commencement of the
40 Work shall not be changed by the effective date of such insurance.
41
42 3. The Contractor shall carry the Work forward expeditiously with
43 adequate forces and shall achieve Completion of the Work within the
44 Work Order Completion Time.
45

46 C. DELAYS AND EXTENSIONS OF TIME

- 47
48 1. Delays in prosecution of parts or classes of the Work that are not
49 demonstrated to prevent or delay completion of an entire Project or
50 specific milestones within the Work Order Completion Time are not
51 "unavoidable delays" for purposes of this section.

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2. In all cases, the time authorized for extension of the Work Order Completion Time shall be no greater than the number of days directly attributable to the event or circumstances which causes unavoidable delay in the completion of a Project. Contractor shall be entitled, in the case of unavoidable delays, to an extension in the Work Order Completion Time, but not to any increase to the Work Order Price. "Unavoidable delay" for this purpose shall be defined as follows:

- a. Unavailable Materials. That materials or articles called for in the Contract Documents are not obtainable within the time required for timely completion; provided that such materials or articles were listed by the Contractor in the schedule required by Section 2.17 - CONTRACTOR'S CONSTRUCTION SCHEDULE; that the Contractor demonstrates that the unavailability of the materials is in fact the cause for the delay, and could not have been avoided by an appropriate adjustment in the Construction Schedule; and that the unavailability of such materials is due to circumstances beyond the Contractor's control. If good cause for delay is demonstrated pursuant to this subsection, the Owner, at its sole discretion, may grant a time extension.
- b. Force Majeure. That delays in construction have resulted from circumstances beyond the control of the Contractor and which the Contractor could not have provided against by the exercise of reasonable care, prudence, foresight, and diligence. Unavoidable delays within the meaning of this subparagraph shall be those caused by acts of God, war, insurrection, civil disorder, fire, floods, epidemic, or strikes.
- c. Unseasonable Weather. An extension of Work Order Completion Time may be granted due to weather which is unsuitable for the Work currently in progress, upon the determination of the Owner that the weather conditions in fact caused the delay in completion of a Project and that such weather conditions were not, and could not in the exercise of reasonable diligence, have been foreseen by the Contractor. Seasonable weather that, in the exercise of reasonable foresight and diligence, should be expected in the area at the time of year in question is not cause for an extension of time.
- d. Time Extensions Due to Supplemental Work Orders or Work Authorizations. A time extension may be granted due to additional work that results in a delay in a Project caused by the approval by the Owner of a Supplemental Work Order or Work Authorization. The Contractor shall be entitled to a Work Order Completion Time extension Supplemental Work Order only when the extra Work is demonstrated by the Contractor to have caused a delay in a Project.

1 e. Owner Caused Delays. In the event that a Project is delayed
2 by acts of the Owner not authorized by the Contract Documents
3 which the Contractor demonstrates will or have caused an
4 unavoidable delay, the Contractor shall be entitled to a Work
5 Order Completion Time Supplemental Work Order to offset the
6 extra time incurred by the Contractor. The Contractor will not
7 be entitled to adjustments in the Work Order Price. Extra time
8 shall be limited to that which is directly identified as critical by
9 the delay.

10
11 4. The Contractor specifically agrees that a time extension as provided
12 herein is its sole remedy for Owner-caused delays, and agrees to make
13 no claim or demand for additional damages, nor claim an acceleration
14 of the time for performance.

15
16 5. The Contractor shall not be entitled to any Work Order Completion Time
17 extension nor Work Order Price adjustment for alleged Owner delays if
18 the Owner has acted within the time limits specified by the Contract
19 Documents.

20
21 D. NOTICE OF DELAYS

22
23 1. Contractor shall notify the Project Manager promptly whenever the
24 Contractor foresees any event or circumstance that may delay the
25 prosecution of the Work and in Contractor's opinion may provide
26 grounds for an extension, and shall in any event notify the Project
27 Manager immediately upon the occurrence of any such delay. The
28 Contractor shall take immediate steps to prevent, if possible, the
29 occurrence or continuance of the delay. If this cannot be done, the
30 Project Manager shall determine how long the delay shall continue and
31 to what extent the prosecution and completion of the Work are being
32 delayed thereby. Such notification shall specify with detail the cause
33 asserted by the Contractor to constitute grounds for an extension.
34 Failure of the Contractor to submit such a notice within ten (10) days
35 after the initial occurrence of the event-giving rise to the delay shall
36 constitute a waiver by the Contractor of any request for a time
37 extension, and no extension shall be granted as a consequence of such
38 delay.

39
40 2. If the Contractor believes that the delay in prosecution in the Work will
41 result in an unavoidable delay in completion of the entire Project, the
42 Contractor shall submit evidence to support that belief, together with its
43 request for a time extension. Such evidence shall include a
44 demonstration that the delayed portion of the Work will affect the Critical
45 Path Scheduling of the entire Project. The Contractor shall also submit
46 a proposed revised Construction Schedule, which accounts for the
47 delay in completion of the entire Project caused by the delay in
48 prosecution of part of the Project, and includes a revised Critical Path
49 demonstrating how the Project will be completed within the proposed
50 revised Work Order Completion Time.
51

1 E. INVESTIGATION; PROCEDURE.

- 2
- 3 1. Upon receipt of a request for Time extension, the Project Manager shall
- 4 conduct an investigation of the facts asserted by the Contractor to
- 5 constitute grounds for an extension. The results of this investigation
- 6 shall be reported by the Project Manager to the Contractor and shall
- 7 indicate whether he/she will recommend for or against such extension
- 8 to the Owner. The performance of this investigation by the Project
- 9 Manager shall not be construed as direction or recommendation to the
- 10 Contractor regarding scheduling of the work. Scheduling this work is
- 11 the sole responsibility of the Contractor.
- 12
- 13 2. The Project Manager may, in his/her sole discretion, defer this
- 14 recommendation to allow the accumulation of time extensions due to
- 15 Work Authorizations into a periodic or final Supplemental Work Order
- 16 request.
- 17
- 18 3. Upon receiving the Project Manager's recommendation to the Owner
- 19 regarding the Contractor's request for a time extension, the Contractor
- 20 may either withdraw its application for extension or request that it be
- 21 scheduled for action by the Owner. If the Owner disallows the request,
- 22 there shall be no allowance made for the time during which the request
- 23 was pending, and the Contractor shall remain obligated to complete the
- 24 Work in the time specified.
- 25
- 26 4. If the Owner approves the time extension Supplemental Work Order,
- 27 the new Construction Schedule submitted by the Contractor and
- 28 approved by the Owner shall be deemed to amend the original
- 29 Construction Schedule approved by the Owner; thereafter, the
- 30 amended Construction Schedule shall have the same force and effect
- 31 as the originally approved Progress Schedule.
- 32
- 33 5. The revised Construction Schedule must be submitted within seven (7)
- 34 calendar days of the date in which the Owner approves the change.
- 35
- 36 6. The Contractor agrees that the Owner's determination as to the
- 37 existence of grounds for an extension and, the duration of any such
- 38 extension, shall be final and binding upon both Owner and Contractor.
- 39

40 F. DISCRETIONARY TIME EXTENSION FOR BEST INTEREST OF OWNER

- 41
- 42 1. The Owner reserves the right to extend the Work Order Completion
- 43 Time for completion of the Work if the Director of Public Works and
- 44 Planning or designee determines that such extension is in the best
- 45 interest of the Owner.
- 46
- 47 2. In the event that such discretionary extension is made at the request of
- 48 the Contractor, the Owner shall have the right to charge to the
- 49 Contractor all or any part, as the Board may deem proper, of the actual
- 50 cost to the Owner for engineering, inspection, supervision, contract
- 51 administration, incidental and other overhead expenses that accrue

1 during period of such extension, and to deduct all or any portion of such
2 amounts from the final payment for the Work Order.
3

- 4 3. In the event such extension is ordered over the objection of the
5 Contractor, the Contractor shall be entitled to a Supplemental Work
6 Order adjusting the price paid to reflect the actual costs incurred by the
7 Contractor as a direct and proximate result of the delay, upon his/her
8 written application therefor, accompanied by such verification of costs
9 as the Project Manager requires. Only additional direct costs incurred
10 at the site will be reimbursable by Supplemental Work Order.
11

12 G. LIQUIDATED DAMAGES
13

- 14 1. If the Work is not completed by Contractor in the time specified in the
15 Work Order or within any period of extension authorized pursuant to
16 this Article, the Contractor acknowledges and admits that the Owner
17 will suffer damage, and that it is impracticable and infeasible to fix the
18 amount of actual damages. Therefore, it is agreed by and between the
19 Contractor and the Owner that the Contractor shall pay to the Owner
20 as fixed and liquidated damages, and not as a penalty, the sum
21 specified in Section 005213, Agreement, Article III for each calendar
22 day of delay until the Work is completed and accepted, and that both
23 the Contractor and the Contractor's surety shall be liable for the total
24 amount thereof, and that the Owner may deduct said sums from any
25 monies due or that may become due to the Contractor.
26
- 27 2. This liquidated damages provision shall apply to all delays of any nature
28 whatsoever, save and except only unavoidable delays approved by the
29 Owner pursuant to the provisions of Article 2.38.C.2 hereinabove, or
30 discretionary time extensions approved by the Board of Supervisors
31 pursuant to the provisions of Article 2.38.F hereinabove.
32

33 H. EXTENSION OF TIME NOT A WAIVER.
34

- 35 1. Any extension of a Work Order Completion Time granted pursuant to
36 this Article shall not constitute a waiver by the Owner, nor a release of
37 the Contractor, from his/her obligations to perform a Work Order within
38 the allotted Work Order Completion Time.
39
- 40 2. Granting of a time extension due to one (1) circumstance on one (1)
41 request therefore shall not constitute a granting by the Owner of an
42 extension of time for any other circumstance or the same circumstance
43 occurring at some other time, and shall not be interpreted as a
44 precedent for any other request for extension.
45

46
47 2.39 PROTECTION OF PERSONS AND PROPERTY
48

49 A. SAFETY PRECAUTIONS AND PROGRAMS
50

1 The Contractor shall be responsible for initiating, maintaining and supervising
2 all safety precautions and programs in connection with the Work.

3
4 B. SAFETY OF PERSONS AND PROPERTY

5
6 The Contractor shall take all reasonable precautions for the safety of, and shall
7 provide all reasonable protection to prevent damage, injury or loss to:

- 8
9 1. All employees on the Work and all other persons who may be affected
10 thereby;
- 11
12 2. All the work and all materials and equipment to be incorporated therein,
13 whether in storage or off the site, and that is under the care, custody or
14 control of the Contractor or any of the Contractor's Subcontractors or
15 Sub-subcontractors;
- 16
17 3. Other property at the site or adjacent thereto, including trees, shrubs,
18 lawns, walks, pavements, roadways, structures and utilities not
19 designated for removal, relocation or replacement in the course of
20 construction; and
- 21
22 4. The work of the Owner or other separate contractors.

23
24 C. The Contractor shall give all notices and comply with all applicable laws,
25 ordinances, rules, regulations and lawful orders of any public authority bearing
26 on the safety of persons or property or their protection from damage, injury or
27 loss.

28
29 D. The Contractor shall erect and maintain, as required by existing conditions and
30 the progress of the Work, all reasonable safeguards for safety and protection,
31 including posting danger signs and other warnings against hazards,
32 promulgating safety regulations and notifying owners and users of adjacent
33 facilities.

34
35 E. When the use or storage of explosives or other hazardous materials or
36 equipment is necessary for the execution of the Work, the Contractor shall
37 exercise the utmost care and shall carry on such activities under the
38 supervision of properly qualified personnel.

39
40 F. The Contractor shall promptly remedy all damage or loss to any property
41 referred to above caused in whole or in part by the Contractor, any
42 Subcontractor, any Sub-subcontractor, anyone directly or indirectly employed
43 by any of them, or any one for whose acts any of them may be liable, and for
44 which the Contractor is responsible under the above noted clauses, except
45 damage or loss attributable solely to the acts or omissions of the Owner, the
46 Project Manager, or anyone directly or indirectly employed by any of them, or
47 by anyone for whose acts any of them may be liable, and not attributable in
48 any degree to the fault or negligence of the Contractor. The foregoing
49 obligations of the Contractor are in addition to the Contractor's obligations
50 under the Indemnification provisions provided herein.

- 1 G. The Contractor shall designate a responsible member of the Contractor's
2 organization at the site whose duty shall be the prevention of accidents. This
3 person shall be the Contractor's superintendent unless otherwise designated
4 by the Contractor in writing to the Owner and the Project Manager.
5
6 H. The Contractor shall not load or permit any part of the Work to be loaded
7 in a manner that could endanger its safety or pose a risk to anyone working
8 at the Project site.
9
10 I. EMERGENCIES
11 In any emergency affecting the safety of persons or property the Contractor
12 shall act, at the Contractor's discretion, to prevent threatened damage, injury
13 or loss. Any additional compensation or extension of time claimed by the
14 Contractor on account of emergency work shall be determined as provided in
15 the provisions herein for Changes in the Work.
16
17

18 2.40 INSURANCE

19
20 A. CONTRACTOR'S INSURANCE

- 21
22 1. Bidders' attention is directed to the insurance requirements below. It is
23 highly recommended that Bidders confer with their respective
24 insurance carriers or brokers to determine in advance of bid submission
25 the availability of the insurance certificates and endorsements required
26 below. A bidder who is awarded a contract and thereafter fails to
27 comply strictly with the insurance requirements, will be deemed to be
28 in default of its obligations.
29
30 2. Contractor shall procure, and maintain for the duration of the Contract,
31 and for 3 years thereafter, insurance against claims for injuries to
32 persons or damage to property which may arise from or in connection
33 with the performance of the work hereunder by the Contractor, his/her
34 agents, representatives, employees or Subcontractors. The cost of
35 such insurance shall be included in the Contractor's bid.
36
37 3. No later than ten (10) calendar days following the Award of the
38 Contract, and prior to execution of the Agreement for Construction by
39 the Owner, the Contractor shall submit certificates of insurance, signed
40 by an authorized agent of the insurer, attesting to insurance coverage
41 of the Contractor as required by this Article.
42

43 B. MINIMUM SCOPE OF INSURANCE.

44 Coverage shall be at least as broad as:

- 45
46
47 1. Insurance Services Office Commercial General Liability coverage
48 ("occurrence" form CG0001).
49
50 2. Insurance Services Office Business Auto Coverage form number CA
51 0001 0187 covering Automobile Liability, code 1 "any auto".

- 1
2 3. Workers' Compensation insurance as required by the Labor Code of
3 the State of California and Employers Liability insurance.
4
5

6 C. MINIMUM LIMITS OF INSURANCE.
7

8 Contractor shall maintain limits no less than:
9

- 10 1. General Liability: One million dollars (\$1,000,000.00) combined single
11 limit per occurrence for bodily injury, personal injury and property
12 damage. If Commercial General Liability Insurance or other form with
13 a general aggregate limit is used, either the general aggregate limit
14 shall apply separately to this project/location or the general aggregate
15 limit shall be three times the required occurrence limit.
16
17 2. Automobile Liability: One million dollars (\$1,000,000.00) combined
18 single limit per accident for bodily injury and property damage.
19
20 3. Workers' Compensation and Employers Liability: Workers'
21 compensation limits as required by the Labor Code of the State of
22 California and Employers Liability limits of one million dollars
23 (\$1,000,000.00) per accident.
24

25 D. DEDUCTIBLES AND SELF-INSURED RETENTIONS.
26

27 Any deductibles or self-insured retentions must be declared to and approved
28 by the Owner. If approved at the option of the Owner, either: the insurer shall
29 reduce or eliminate such deductibles or self-insured retentions as respects the
30 Owner, its officers, officials, employees and volunteers; or the Contractor shall
31 procure a bond guaranteeing payment of losses and related investigations,
32 claim administration and defense expense.
33

34 E. OTHER INSURANCE PROVISIONS.
35

36 The policies are to contain, or be endorsed to contain, the following provisions:
37

- 38 1. Fire Insurance / Builders Risk Insurance.
39
40 a. At the Owner's option, the Contractor shall secure "All Risk"
41 type Builder's Risk Insurance for the Work to be performed
42 pursuant to this Agreement for an individual Work Order. The
43 policy shall cover not less than losses due to fire, explosion,
44 vehicle damage, theft, flood, earthquake and civil commotion
45 with no coinsurance penalty provision.
46
47 b. The Contractor shall obtain and keep in force insurance against
48 loss or damage by fire and the customary extended perils
49 including windstorm, hail, explosion, aircraft, vehicle, smoke,
50 riot, and civil commotion, vandalism, sprinkler leakage
51 (including earthquake) as covered under the standard forms of

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California Standard Fire Insurance Policy for school projects or Factory Insurance Association and/or Factory Mutual Insurance Company for projects other than schools. The policy shall cover the entire structure on which the work of this contract is to be done, up to the full insurable value thereof, including items of labor and materials connected therewith on the site, materials in place or to be used as part of the permanent construction including materials stored and partially paid for by the Owner as provided in Division 01 – General Requirements, surplus materials, shanties, protective fences, bridges, or temporary structures, miscellaneous materials and supplies incident to the work, and such scaffolding, staging, towers, forms and equipment as are not owned or rented by the Contractor, the cost of which is included in the cost of the work. EXCLUDED: This insurance does not cover any tools owned by mechanics, any tools, equipment, scaffolding, staging, towers, and forms owned or rented by the Contractor, the capital value of which is not included in the cost of the Work, or any structures erected for the Contractor's administration of the Project. The loss, if any, is to be adjustable with and payable to the Owner as trustee for the insured as their interests may appear, except in such cases as may require payment of all or a proportion of said insurance to be made to a mortgagee or trustee as its interest may appear.

c. The Owner shall be named as insured jointly with the Contractor and other proper parties, all as their respective interests may appear. All subcontractors shall be insured to the extent of their portion of the work under the Contractor. The Owner, Contractor and all subcontractors waive all rights, each against the others, for damages caused by fire or other perils covered provided under the terms of this article, except such rights as they may have to the proceeds of the insurance held by the party obtaining and maintaining the insurance policy in force who acts as trustee of said policy. Certificates of such insurance shall be filed with the Owner. If the Contractor fails to effect or maintain insurance as above and so notifies the Owner, the Owner may insure his own interest and charge the cost thereof to the Contractor.

d. In the event of a partial or total destruction by the perils insured against, of any or all of the work and/or materials herein provided for, at any time prior to the final completion of the Contract and the final acceptance by the Owner of the Work or materials to be performed or supplied thereunder, the Contractor shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his sole cost and expense. Nothing herein provided for shall in any way excuse the Contractor or his surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

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2. Commercial General Liability and Automobile Liability Coverages.

- a. The Contractor shall secure Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000.00). This policy shall be issued on a per occurrence basis. The Owner may require specific coverage including completed operations, product liability, contractual liability, XCU, fire legal liability or any other liability insurance deemed necessary because of the nature of the contract. The Owner, its officers, officials, employees, agents, including Consulting Engineers while performing contract administration services, and volunteers are to be covered as insured as respects all of the following: liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by or on behalf of the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officers, officials, employees or volunteers.
- b. The Contractor's insurance coverage shall be primary insurance as respects the owner, its officers, officials, employees, agents, Consulting Engineers, and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, Employees, agents, Consulting Engineers, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect Coverage provided to the Owner, its officers, officials, employees, agents, Engineers, Consulting Engineers, or volunteers.
- d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Such Commercial General Liability insurance shall name the County of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by Owner, its officers, agents and employees shall be excess only and not contributing with insurance provided under Contractor's policies herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days

1 advance written notice given to Owner. Contractor shall obtain
2 endorsements to the Commercial General Liability insurance
3 policy naming Owner as an additional insured and providing for
4 a thirty (30) day prior written notice of cancellation or change in
5 terms or coverage
6

7 f. Comprehensive Automobile Liability Insurance with limits of not
8 less than One Million Dollars (\$1,000,000) per accident for
9 bodily injury and property damage. Coverage should include
10 owned and non-owned vehicles used in connection with this
11 Agreement and all applicable endorsements.
12

13 3. Professional Liability Coverage.
14

15 If Contractor employs licensed professional staff, (e.g., Ph.D., R.N.,
16 L.C.S.W., M.F.C.C.) in providing services, the Contractor shall secure
17 Professional Liability Insurance with limits of not less than one million
18 dollars (\$1,000,000.00) per occurrence, and three million dollars
19 (\$3,000,000.00) annual aggregate, with a provision for three (3) year
20 tail coverage.
21

22 4. Worker's Compensation and Employers Liability Coverage.
23

24 The Contractor shall obtain a policy of Worker's Compensation
25 insurance in accordance with applicable provisions of the California
26 Labor Code. The insurer shall agree to waive all rights of subrogation
27 against the Owner, its officers, officials, employees and volunteers for
28 losses arising from work performed by the Contractor for the Owner.
29 Contractor shall supply the Owner with certificates of insurance in
30 triplicate, evidencing that Workers Compensation Insurance is in effect
31 and providing that the Owner will receive 30 days' notice of
32 cancellation. If Contractor self-insures Workers Compensation,
33 Certificate of Consent to Self-Insure shall be provided to the Owner.
34

35 5. All Coverages.
36

37 Prior to the commencement of performing its obligations under this
38 Agreement, Contractor shall provide certificates of insurance and upon
39 request from Owner, formal endorsements for the foregoing policies, as
40 required herein, to the Owner, listing the name and address of the
41 official who will administer this contract, and stating that such insurance
42 coverage have been obtained and are in full force; that the County of
43 Fresno, its officers, agents and employees will not be responsible for
44 any premiums on the policies; that such Commercial General Liability
45 insurance names the County of Fresno, its officers, agents and
46 employees, individually and collectively, as additional insured, but only
47 insofar as the operations under this Agreement are concerned; that
48 such coverage for additional insured shall apply as primary insurance
49 and any other insurance, or self-insurance, maintained by Owner, its
50 officers, agents and employees, shall be excess only and not
51 contributing with insurance provided under Contractor's policies herein;

1 and each insurance policy required by this Section 2.40 shall be
2 endorsed to state that coverage shall not be suspended, voided,
3 canceled by either party, reduced in coverage or in limits except after
4 thirty (30) days' prior written notice has been given to the Owner.
5

6 F. ACCEPTABILITY OF INSURERS

7
8 Contractor shall obtain the policies and coverages specified herein from an
9 admitted insurer in good standing with and authorized to transact business in
10 this state by the California Department of Insurance, and having a **Best's**
11 **rating of no less than A FSC VIII.**
12

13 G. VERIFICATION OF COVERAGE

14
15 Contractor shall furnish the Owner with certificates of effecting coverage
16 required by this clause. The certificates for each insurance policy are to be
17 signed by a person authorized by that insurer to bind coverage on its behalf.
18 All certificates are to be received and approved by the owner before work
19 commences. The Owner reserves the right to require complete, certified
20 copies of all required insurance policies, at any time. In the event Contractor
21 fails to keep in effect at all times insurance coverage as herein provided, the
22 Owner may, in addition to other remedies it may have, suspend or terminate
23 this Agreement upon the occurrence of such event. The Certificate of
24 Insurance shall be issued in triplicate, and provided to the Owner within ten
25 (10) days of award, and also shall be provided to all other participating
26 agencies who contribute to the cost of the work or have jurisdiction over areas
27 in which the work is to be performed and all officers and employees of said
28 agencies while acting within the course and scope of their duties and
29 responsibilities.
30

31 H. SUBCONTRACTORS

32
33 Contractor shall include all Subcontractors as insured under its policies or shall
34 furnish separate certificates and endorsements for each Subcontractor. All
35 coverages for Subcontractors shall be subject to all of the requirements stated
36 herein.
37

38
39 2.41 UNCOVERING WORK

40
41 A. This Section shall apply to any Work installed and covered up by the
42 Contractor that is required by the Building Code or other statutory or
43 regulatory requirement to undergo inspection or special inspection and/or
44 testing approval by an appropriate official representing the Owner or other
45 public authority having jurisdiction to conduct such inspection and/or testing
46 or by any requirements specifically expressed in the Contract Documents.
47 Work covered up by the Contractor, Contractor's Subcontractor's or
48 Suppliers prior to inspection/special inspection and/or testing approval shall
49 be uncovered and repaired or replaced after inspection approval at the sole
50 expense of the Contractor. This shall apply to all labor and material needed

1 to complete both physical and cosmetic repairs, and any additional
2 inspection costs associated with restoring the Work.
3

- 4 B. This Section also shall apply to any Work installed and covered up by the
5 Contractor, Contractor's Subcontractor's or Suppliers that is determined by the
6 Owner or its Project Manager, during construction or within the Warranty
7 period, to be defective, broken or inoperative. Work covered up by the
8 Contractor, Contractor's Subcontractor's or Suppliers that is found to be
9 defective, broken or inoperative shall be uncovered and repaired or replaced
10 at the sole expense of the Contractor. This shall apply to all labor and material
11 needed to complete both physical and cosmetic repairs, and any additional
12 inspection costs associated with restoring the Work.
13

14
15 2.42 CORRECTION OF WORK
16

- 17 A. The Contractor shall promptly correct all Work rejected by the Project Manager
18 as defective or as failing to conform to the Contract Documents, whether or not
19 fabricated, installed or completed. The Contractor shall submit a plan of action,
20 within twenty-four (24) hours of notification of the rejected work by the Project
21 Manager, for correcting the rejected work. The Contractor shall bear all costs
22 of correcting such rejected Work, including compensation for the Engineer's
23 and Architect's additional services made necessary thereby.
24
- 25 B. If, within one (1) year after the date of acceptance of the Work as specified in
26 the Notice of Completion, or designated portion thereof, or within one (1) year
27 after acceptance by the Owner of designated equipment, or within such longer
28 period of time as may be prescribed by the terms of any applicable special
29 warranty required by the Contract Documents, any of the Work is found by
30 Owner to be defective or not in accordance with the Contract Documents, the
31 Contractor shall correct it promptly after receipt of a written notice from the
32 Owner to do so, unless the Owner has previously given the Contractor a written
33 acceptance of such condition. This obligation shall survive both final payment
34 for the Work or designated portion thereof and termination of the Contract. The
35 Owner shall give such notice promptly after discovery of the condition.
36
- 37 C. The Contractor shall, at his/her sole expense, remove from the site all portions
38 of the Work that are defective or nonconforming and which have not been
39 corrected under Articles 2.32, 2.42.A, and 2.42.B, unless the Owner waives
40 removal.
41
- 42 D. If the Contractor fails to submit a plan of action, within twenty-four (24) hours
43 of notification of the rejected work by the Project Manager, for correcting the
44 rejected work, or fails to correct defective or nonconforming Work as provided
45 herein in Articles 2.32, 2.42.A, and 2.42.B, the Owner may correct it in
46 accordance with Article 2.08.C.
47
- 48 E. If the Contractor does not take action under the plan to initiate such correction
49 of such defective or nonconforming Work within ten (10) days of written notice
50 from the Project Manager, the Owner may remove it and may store the
51 materials or equipment at the expense of the Contractor. If the Contractor does

1 not pay the cost of such removal and storage within ten (10) days thereafter,
2 the Owner may, upon ten (10) additional days' written notice, sell such Work
3 at auction or at private sale and shall account for the proceeds thereof, after
4 deducting all the costs that should have been borne by the Contractor,
5 including compensation for the Project Manager, Architect, or other
6 Professional's additional services made necessary thereby. If such proceeds
7 of sale do not cover all costs that the Contractor should have borne, the
8 difference shall be charged to the Contractor and an appropriate Supplemental
9 Work Order shall be issued. If the payments then or thereafter due the
10 Contractor are not sufficient to cover such amount, the Contractor shall pay the
11 difference to the Owner.

12
13 F. The Contractor shall bear the cost of making good all work of the Owner or
14 separate contractors destroyed or damaged by such correction or removal.

15
16 G. Nothing contained in this Section 2.42 shall be construed to establish a period
17 of limitation with respect to any other obligation which the Contractor might
18 have under the Contract Documents, including Section 2.32 hereof. The
19 establishment of the time periods noted in this Section 2.42, or such longer
20 period of time as may be prescribed by law or by the terms of any warranty
21 required by the Contract Documents, relates only to the specific obligation of
22 the Contractor to correct the defective or nonconforming Work, and has no
23 relationship to the time within which the Contractor's obligation to comply with
24 the Contract Documents may be sought to be enforced, nor to the time within
25 which proceedings may be commenced to establish the Contractor's liability
26 with respect to the Contractor's obligations other than specifically to correct the
27 defective or nonconforming Work.

28
29
30 2.43 ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK

31
32 If the Owner prefers to accept defective or nonconforming Work, the Owner may do
33 so instead of requiring its removal and correction, in which case a Supplemental Work
34 Order will be issued to reflect a reduction in the Work Order Price where appropriate
35 and equitable. Such adjustment shall be effected whether or not final payment has
36 been made. Project Manager shall determine the amount of reduction in the Work
37 Order Price.

38
39
40 2.44 TERMINATION BY THE OWNER

41
42 A. If the Contractor is adjudged bankrupt, or makes a general assignment for the
43 benefit of creditors, or if a receiver is appointed on account of the Contractor's
44 insolvency, or stop notices are served upon the Owner, or if the Contractor
45 persistently or repeatedly refuses or fails, except in cases for which extension
46 of time is provided, to supply enough properly skilled workers or proper
47 materials, or fails to make prompt payment to Subcontractors or for materials
48 or labor, or persistently disregards applicable laws, ordinances, rules,
49 regulations or orders of any public authority having jurisdiction, or otherwise is
50 guilty of a substantial violation of a provision of the Contract Documents, and
51 fails after written notice to commence and continue correction of such default,

1 are acceptable to the Owner, the Contractor shall be responsible for performing
2 said alterations at no additional cost to the Owner.

3
4 E. Submittals for approval of substitute materials shall contain sufficient detailed
5 information, descriptive brochures, drawings, samples or other data as is
6 necessary to provide a detailed side-by-side comparison to the specified
7 materials. It is the sole responsibility of the Contractor to submit complete
8 descriptive and technical information so the Project Manager can make proper
9 appraisal. Lack of either proper or sufficient information shall constitute cause
10 for rejection. Reference to product data will not be acceptable.

11
12 F. It is the Contractor's responsibility to confirm and correlate all quantities and
13 dimensions and coordinate with all trades whose work may be affected by the
14 requested substitution.

15
16
17 2.46 REFERENCE TO STANDARDS

18
19 A. Reference to known standards shall mean and intend the latest edition or
20 amendment published prior to date of these Specifications, unless specifically
21 indicated otherwise, and to such portions of it that relate and apply directly to
22 the material or installation called for on the Project.

23
24 B. Where material is specified solely by reference to standard specifications, the
25 Contractor shall, if requested by the Project Manager, submit to the Project
26 Manager for his/her approval, data on all such material proposed to be
27 incorporated into the Work of the Contractor, listing the name and address of
28 the vendor, the manufacturer or producer, and the trade or brand names of
29 such materials.

30
31
32 2.47 SPECIFICATIONS

33
34 A. The Specifications are organized into Divisions, Sections, and Trade headings
35 based on the Construction Specifications Institute's Master format and the
36 Master format numbering system. This organization shall not control the
37 Contractor in dividing the Work among Subcontractors or in establishing the
38 extent of the Work to be performed by any trade. The Contractor shall be
39 responsible for examining all Sections of the Specifications for inter-related
40 items of the Work, and for furnishing each item identified or specified.

41
42 B. No responsibility will be assumed by the Owner, Architect or the Project
43 Manager for omissions or duplications by the Contractor in the completion of
44 the Contract due to any alleged discrepancy in the arrangement of the material
45 in these Specifications, nor shall any such segregation of work and materials
46 operate to make the Project Manager an arbiter in defining the limits to the
47 agreements between the Contractor and his/her Subcontractors or suppliers.

48
49 C. The misplacement, addition or omission of any letter, word or punctuation mark
50 shall in no way damage the true spirit, intent or meaning of these
51 Specifications.

- 1 B. All Work shall be executed by mechanics skilled in their respective lines of
2 work.
3
4 C. When completed, all parts shall have been durably and substantially built and
5 shall present a neat, finished appearance.
6
7

8 2.51 HOURS OF WORK
9

- 10 A. Eight (8) hours of labor shall constitute a legal day's work upon all work done
11 hereunder, and it is expressly stipulated that no worker employed at any time
12 by the Contractor, or by a Subcontractor under this Contract, upon the Work,
13 shall be required or permitted to work thereon more than eight (8) hours in any
14 one (1) calendar day and forty (40) hours in any one (1) calendar week, except
15 as provided in Sections 1810-1815 inclusive, of the Labor Code of the State of
16 California, all the provisions of which are deemed to be incorporated herein as
17 if set forth in full; and it is further expressly stipulated that for each and every
18 violation of said last named stipulation, said Contractor shall forfeit, as a
19 penalty to the Owner, fifty dollars (\$50.00) for each worker employed by the
20 Contractor in the execution of this Contract, for each calendar day during which
21 said worker is required or permitted to labor more than eight (8) hours in any
22 one (1) calendar day and forty (40) hours in any one (1) calendar week in
23 violation of any of said provisions of the Labor Code.
24
25 B. Notwithstanding the above stipulations, pursuant to Section 1815 of the Labor
26 Code, work performed by employees of contractors in excess of eight (8) hours
27 per day and forty (40) hours during any one (1) week shall be permitted on the
28 Project upon compensation for all hours worked in excess of eight (8) hours
29 per day at not less than one and a half (1 1/2) times the basic rate of pay.
30
31

32 2.52 WAGE RATES
33

- 34 A. All projects under this Contract shall be subject to compliance monitoring and
35 enforcement by the Department of Industrial Relations (DIR), including the
36 obligation to submit certified payroll records directly to the DIR Compliance
37 Monitoring Unit (CMU) at least monthly using the CMU's eCPR system.
38 Detailed information may be obtained on the State of California's Department
39 of Industrial Relations website, www.dir.ca.gov/dlse/cmu/CMU.
40
41 The Contractor shall also submit certified payroll records of the Contractor,
42 Subcontractors and all Sub-subcontractors of any tier to the Project Manager
43 at least monthly.
44
45 B. Contractor shall, and shall cause each of its Subcontractors (as defined in
46 Labor Code section 1722.1) to provide written proof that they are currently
47 registered with the California Department of Industrial Relations at the time of
48 bid submittal, and have paid the applicable annual fee and are thereby qualified
49 to submit a bid and to perform public work pursuant to Labor Code section
50 1725.5, prior to award of this Contract or any subcontract hereunder. No bid

1 shall be accepted, nor shall this Contract or any subcontract hereunder, be
2 entered into without such proof.

3
4 C. Pursuant to Section 1770-1780 of the Labor Code of the State of California,
5 the Director of the Department of Industrial Relations has determined the
6 general prevailing rates of wages and rates for legal holidays and overtime in
7 the locality in which this work is to be performed, which under Labor Code
8 Section 1773.1 are deemed to include employer payments for health and
9 welfare, pension, vacation, travel time and subsistence pay, and
10 apprenticeship or other authorized training programs, for each craft or type of
11 worker or mechanic needed to perform this contract. Said wage rates are
12 available only at the Fresno County Department of Public Works and Planning,
13 Design Division, and will be made available to any interested person upon
14 request. Minimum wage rates for this Project, as predetermined by the
15 Secretary of Labor, are set forth in the Special Provisions. If there is a
16 difference between the minimum wage rates predetermined by the Secretary
17 of Labor and the Prevailing Wage Rates predetermined by the Director of the
18 Department of Industrial Relations of the State of California for similar
19 classifications of labor, the contractor and his subcontractors shall pay not less
20 than the higher wage rate.

21
22 D. It shall be mandatory upon the Contractor to whom the Contract is awarded,
23 and upon any Subcontractor under him/her to pay not less than the said
24 specified rates to all laborers, workers, and mechanics employed by them in
25 the execution of the Contract, and to pay all laborers, workers and mechanics
26 not less often than once weekly. The Contractor to whom the Contract is
27 awarded shall post a copy of the determination of prevailing wages at the job
28 site. The Contractor shall require all Subcontractors to comply with Sections
29 1770-1780 of the Labor Code of the State of California and shall insert into
30 every subcontract the requirements contained therein.

31
32 E. The Contractor shall comply with Labor Code Section 1775. In accordance
33 with said Section 1775, it is hereby further agreed that the Contractor shall
34 forfeit to the Owner, as a penalty, fifty dollars (\$50.00) for each laborer, worker,
35 or mechanic employed for each calendar day or portion thereof, who is paid
36 less than the said stipulated rates for any work done under the Contract, by
37 him/her or by any Subcontractor under him/her. The difference between said
38 stipulated rates and the amount paid to each worker for each calendar day or
39 portion thereof for which each worker was paid less than said stipulated rate
40 shall be paid to each worker by the Contractor. The Contractor, and each
41 Subcontractor, shall keep or cause to be kept an accurate record showing the
42 name, address, social security number, work classification, straight time and
43 overtime hours worked each day and week, and the actual per diem wages
44 paid to each journeyman, apprentice, worker or other employee employed by
45 him/her or her in connection with the public work. The records shall be open
46 at all reasonable hours to the inspection of the Owner, to its officers and
47 agents, and to the Division of Labor Law Enforcement of the State Department
48 of Industrial Relations, its deputies and agents, or as otherwise provided by
49 applicable law (including but not limited to Labor Code 1776).

50

- 1 F. In case it becomes necessary for the Contractor or any Subcontractor to
2 employ on the Work under this Contract any person in a trade or occupation
3 (except executive, supervisory, administrative, clerical or other non-manual
4 workers as such) for which no minimum wage rate is specified, the Contractor
5 shall immediately notify the Owner who shall promptly thereafter determine the
6 prevailing rate for such additional trade or occupation from the time of the initial
7 employment of the person affected and during the continuance of such
8 employment.
9

10
11 2.53 APPLICATION OF HIGHEST STANDARDS AND REQUIREMENTS
12

13 Whenever two (2) or more standards or requirements appear in these General
14 Conditions or in any other part of the Contract Documents that form the Contract, the
15 highest standard or requirement shall be applied and followed in the performance
16 under this Contract.
17

18
19 2.54 NONDISCRIMINATION IN EMPLOYMENT
20

21 Contractor shall comply with all Federal and State Laws prohibiting discrimination in
22 employment, including the following:
23

- 24 A. California Fair Labor Code Section 1735, which prohibits discrimination in
25 employment on any basis listed in subdivision (a) of Section 12940 of the
26 Government Code, as those bases are defined in Sections 12926 and 12926.1
27 of the Government Code, except as otherwise provided in Section 12940 of
28 the Government Code, and applies to all employers, employment agencies and
29 labor organizations.
30
- 31 B. Title VII of the Federal 1964 Civil Rights Act (42 U.S.C. Section
32 2000e - 2000e - 17) which prohibits employment discrimination on the basis
33 of race, color, sex, religion, or national origin, and applies to all employers that
34 employ at least fifteen (15) workers during each working day in each of twenty
35 (20) or more calendar weeks in the current or preceding year.
36
- 37 C. In addition to these two (2) laws of general application listed in the immediately
38 preceding paragraphs A and B, there are other Federal and State laws that
39 prohibit employment discrimination in particular cases.
40
- 41 D. The Owner is an Affirmative Action Employer and expects all of its contractors
42 and suppliers to familiarize themselves with, and comply with, all applicable
43 laws relating to employment discrimination.
44
- 45 E. To the extent required by law, the Contractor shall meet all requirements of law
46 relating to the participation of minority, women, and disabled veteran business
47 enterprise contracting goals, and shall comply with Public Contract Code
48 10115 et seq. and all applicable regulations. Contractor further agrees that,
49 when required, Contractor shall ensure compliance by all Subcontractors and
50 shall complete all forms required by all agencies exercising jurisdiction over
51 the project.

1
2
3 2.55 APPRENTICES
4

- 5 A. Pursuant to Sections 1770-1780 of the Labor Code of the State of California,
6 the Director of the Department of Industrial Relations has determined the
7 general prevailing rate of wages in the locality for each craft or type of worker
8 needed to execute the work. Said wage rates pursuant to Section 1773.2 of
9 the Labor Code are on file with the Clerk to the Fresno County Board of
10 Supervisors, and will be made available to any interested person on request.
11 A copy of this wage scale may also be obtained at the following Web Site:
12 *www.dir.ca.gov/dlsr*.
13
- 14 B. Pursuant to Section 1775 of the Labor Code of the State of California, nothing
15 in this Article shall prevent the employment of properly registered apprentices
16 upon public works. Every such apprentice shall be paid the standard wage paid
17 to apprentices under the regulations of the craft or trade at which he/she is
18 employed, and shall be employed only at the work of the craft or trade to which
19 he/she is registered.
20
- 21 C. Only apprentices, as defined in Section 3077, who are in training under
22 apprenticeship standards and written apprentice agreements under Chapter 4
23 (commencing at Section 3070), Division 3, of the Labor Code, are eligible to
24 be employed on public works. The employment and training of each apprentice
25 shall be in accordance with the provisions of the apprenticeship standards and
26 apprentice agreements under which he/she is training.
27
- 28 D. Fresno County is committed to increasing the availability of employment and
29 training opportunities, with particular attention to the plight of those who are
30 most economically disadvantaged. In an effort to advance that purpose, the
31 County will require that the Contractor and each subcontractor employed on
32 this Project shall use their best efforts to ensure that thirty-three percent (33%)
33 of apprentice hours, as determined by California Labor Code Section 1777.5
34 for each contractor and subcontractor of any tier on this Project, are performed
35 by qualified participants in state approved apprenticeship programs who also
36 are current or former "Welfare-to-Work" participants in the CalWORKs
37 program. Provided, that nothing contained in this Paragraph D shall be
38 interpreted to relieve or in any way diminish the obligation of the Contractor
39 and each subcontractor to comply fully with all applicable apprenticeship laws
40 in accordance with the California Labor Code and the California Code of
41 Regulations; and accordingly such requirements as are contractually imposed
42 by this Paragraph D shall be in addition to such legally mandated requirements,
43 and applicable only to the extent fully consistent therewith.
44
- 45 E. Incentives whereby the Contractor or Subcontractor receives partial
46 reimbursement for the wages paid to apprentices who qualify may be available.
47 The incentive program is administered by the County of Fresno, Department
48 of Social Services. For questions regarding the incentive program, contact the
49 Department of Social Services at (559) 230-4008.
50
51

1 2.56 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

2
3 Every provision of law and clause required by law to be inserted in this contract shall
4 be deemed to be inserted, and this contract shall be read and enforced as though it
5 were included, and if through mistake or otherwise any provision is not inserted or is
6 not correctly inserted, upon application of either party the contract shall be amended
7 to make the insertion or correction.
8

9
10 2.57 DRUG FREE WORKPLACE CERTIFICATION

11
12 A. The Contractor shall comply with Government Code Section 8355 in matters
13 relating to providing a drug-free workplace.
14

15 B. The Contractor shall publish a statement notifying employees that unlawful
16 manufacture, distribution, dispensation, possession, or use of controlled
17 substance is prohibited and specifying actions to be taken against employees
18 for violations, as required by Government Code Section 8355(a).
19

20 C. The Contractor shall establish a Drug-Free Awareness Program as required
21 by Government Code 8355(a)(2), to inform employees about all of the
22 following:
23

- 24 1. The dangers of drug abuse in the workplace,
- 25 2. The Contractor's policy for maintaining a drug-free workplace,
- 26 27 3. Any available counseling, rehabilitation and employee assistance
28 programs,
- 29 30 4. Penalties that may be imposed upon employees for drug abuse
31 violations.
32

33
34 D. Provide as required by Government Code 8355(c), that everyone who provides
35 work under the Agreement.
36

- 37 1. Will receive a copy of the company's drug-free policy statement, and
- 38 39 2. Will agree to abide by the terms of the Contractor's statement as a
40 condition of employment on the contract.
41

42
43 2.58 BUILDING PERMIT AND OTHER PERMITS

44
45 The Building permit shall be obtained and paid for by the Owner. All other required
46 permits are the responsibility of the Contractor to obtain. Fees for all other required
47 permits shall be reimbursed to the Contractor at actual cost when the County is
48 presented with a valid receipt.
49

50
51 2.59 CODES AND REGULATIONS

1
2 All work, materials and equipment shall be in full compliance with the California
3 Building Code; California Plumbing Code; California Electrical Code; California
4 Mechanical Code; California Fire Code; California Energy Code; as those codes may
5 be amended from time to time; Cal/OSHA Safety Regulations; all Federal, State and
6 Local laws, ordinances, regulations and Fresno County Charter provisions in effect
7 and applicable in the performance of the work.
8
9

10 2.60 JOB ORDER CONTRACTING SOFTWARE AND LICENSE

11
12 A. Job Order Contracting Software:

13
14 The County of Fresno (County) selected The Gordian Group's (Gordian) Job
15 Order Contracting (JOC) system for the execution of the JOC program. The
16 Gordian JOC system includes Gordian's proprietary eGordian® and Gordian
17 Cloud JOC Applications and Construction Task Catalog®, which shall be used
18 by the Contractor to prepare and submit Job Order Proposals, subcontractor
19 lists, and other requirements specified in the general conditions and as may be
20 requested by the County. The Contractor shall be required to execute
21 Gordian's JOC System License and User Agreement, and shall pay a 1% JOC
22 System License Fee on all work awarded to the JOC contractor by the County
23 for access to the Gordian JOC System.
24
25
26

END OF SECTION

Federal Requirements

Contract No. #21-J-02
21-J-03
21-J-04

Federal Requirements
00 72 01

GENERAL BUILDING
JOB ORDER CONTRACTS

ATTACHMENT A SECTION 14. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL.—The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, "Form FHWA 1273, are included in this Section 14. Whenever in said required contract provisions references are made to "SHA contracting officer," "SHA resident engineer," or "authorized representative of the SHA," such references shall be construed to mean "Engineer" as defined in Section 1-1.18 of the Standard Specifications.

PERFORMANCE OF PREVIOUS CONTRACT.—In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the required contract provisions, the Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION.—The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary projects.

Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28, USC, Sec. 1746, is included in the proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.—Part 26, Title 49, Code of Federal Regulations applies to this Federal-aid project. Pertinent sections of said Code are incorporated in part or in its entirety within other sections of these special provisions.

Schedule B—Information for Determining Joint Venture Eligibility

(This form need not be filled in if all joint venture firms are DBE owned.)

1. Name of joint venture _____

2. Address of joint venture _____

3. Phone number of joint venture _____

4. Identify the firms which comprise the joint venture. (The DBE partner must complete Schedule A.) _____

a. Describe the role of the DBE firm in the joint venture.

b. Describe very briefly the experience and business qualifications of each non-DBE joint venturer: _____

5. Nature of the joint venture's business _____

6. Provide a copy of the joint venture agreement.

7. What is the claimed percentage of DBE ownership? ____

8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.).

- a. Profit and loss sharing.
- b. Capital contributions, including equipment.
- c. Other applicable ownership interests.

9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:

a. Financial decisions _____

b. Management decisions, such as:

1. Estimating _____

2. Marketing and sales _____

3. Hiring and firing of management personnel _____

4. Purchasing of major items or supplies _____

c. Supervision of field operations _____

Note.—If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

Affidavit

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

.....
Name of Firm	Name of Firm
.....
Signature	Signature
.....
Name	Name
.....
Title	Title
.....
Date	Date

Date _____

State of _____

County of _____

On this ___ day of _____, 19 __, before me appeared (Name) _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission expires _____

[Seal]

Date _____

State of _____

County of _____

On this ___ day of _____, 19 __, before me appeared (Name) _____ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission expires _____

[Seal]

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

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

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the

contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Use of United States –flag vessels:

The contractor agrees –

(1) To utilize privately owned United State-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for Unites States-flag commercial vessels.

(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

FEMALE AND MINORITY GOALS

To comply with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-Aid Construction Contracts," the following are for female and minority utilization goals for Federal-aid construction contracts and subcontracts that exceed \$10,000:

The nationwide goal for female utilization is 6.9 percent.

The goals for minority utilization [45 Fed Reg 65984 (10/3/1980)] are as follows:

MINORITY UTILIZATION GOALS

Economic Area		Goal (Percent)
174	Redding CA: Non-SMSA (Standard Metropolitan Statistical Area) Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA CA Monterey	28.9
	7360 San Francisco-Oakland CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo	25.6
	7400 San Jose, CA	19.6
	CA Santa Clara, CA 7485 Santa Cruz, CA	14.9
	CA Santa Cruz 7500 Santa Rosa	9.1
	CA Sonoma 8720 Vallejo-Fairfield-Napa, CA	17.1
	CA Napa; CA Solano Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito	23.2
177	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA CA Placer; CA Sacramento; CA Yolo Non-SMSA Counties	16.1
	CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	14.3
178	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA CA Stanislaus	12.3
	8120 Stockton, CA CA San Joaquin	24.3
	Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne	19.8
179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA CA Kern	19.1
	2840 Fresno, CA	26.1

	CA Fresno Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	23.6
180	Los Angeles, CA: SMSA Counties: 0360 Anaheim-Santa Ana-Garden Grove, CA	11.9
	CA Orange	28.3
	4480 Los Angeles-Long Beach, CA	
	CA Los Angeles	21.5
	6000 Oxnard-Simi Valley-Ventura, CA	
	CA Ventura	19.0
	6780 Riverside-San Bernardino-Ontario, CA	
181	CA Riverside; CA San Bernardino	19.7
	7480 Santa Barbara-Santa Maria-Lompoc, CA	
	CA Santa Barbara	24.6
	Non-SMSA Counties	
	CA Inyo; CA Mono; CA San Luis Obispo	
	San Diego, CA: SMSA Counties	16.9
181	7320 San Diego, CA	
	CA San Diego	18.2
	Non-SMSA Counties	
	CA Imperial	

For the last full week of July during which work is performed under the contract, the prime contractor and each non material-supplier subcontractor with a subcontract of \$10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

TITLE VI ASSURANCES

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONTRACTOR) agrees as follows:

- a. Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the California Department of Transportation or FHWA to be pertinent to ascertain compliance with such

Regulations or directives. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the California Department of Transportation or the FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.

- e. Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this agreement, the California Department of Transportation shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR shall take such action with respect to any sub-agreement or procurement as the California Department of Transportation or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the California Department of Transportation enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

Federal Trainee Program Special Provisions
(to be used when applicable)

FEDERAL TRAINEE PROGRAM

For the Federal training program, the number of trainees or apprentices is _____

This section applies if a number of trainees or apprentices is specified in the special provisions. As part of the prime contractor's equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

The prime contractor has primary responsibility for meeting this training requirement.

If the prime contractor subcontracts a contract part, they shall determine how many trainees or apprentices are to be trained by the subcontractor. Include these training requirements in each subcontract.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of the prime contractor's needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, the prime contractor shall submit to the County of Fresno

1. Number of apprentices or trainees to be trained for each classification
2. Training program to be used
3. Training starting date for each classification

The prime contractor shall obtain the County of Fresno approval for this submitted information before the prime contractor starts work. The County of Fresno credits the prime contractor for each apprentice or trainee the prime contractor employs on the job who is currently enrolled or becomes enrolled in an approved program.

The primary objective of this section is to train and upgrade minorities and women toward journeyman status. The prime contractor shall make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area and show that they have made the efforts. In making these efforts, the prime contractor shall not discriminate against any applicant for training.

The prime contractor shall not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training

The prime contractor shall ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. The prime contractor's records must show the employee's answers to the questions.

In the training program, the prime contractor shall establish the minimum length and training type for each classification. The County of Fresno and FHWA approves a program if one of the following is met:

1. It is calculated to:
 - Meet the your equal employment opportunity responsibilities
 - Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, and it is administered in a way consistent with the equal employment responsibilities of Federal-aid highway construction contracts

The prime contractor shall obtain the State's approval for their training program before they start work involving the classification covered by the program.

The prime contractor shall provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The County of Fresno reimburses the prime contractor 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed on a Federal-aid project and prime contractor does at least one of the following:
 - a. Contribute to the cost of the training
 - b. Provide the instruction to the apprentice or trainee
 - c. Pay the apprentice's or trainee's wages during the off-site training period
3. If the prime contractor complies with this section.

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification or until the apprentice or trainee has completed the training program

The prime contractor shall furnish the apprentice or trainee with a copy of the program that the prime contractor will comply with in providing the training

(To be used, when applicable, in Federal-aid projects. Required for Federal Highway Projects with 100 or more working days. Calculate number of trainees as follows:
Per LAPM, Chapter 12, Plans, Specs & Estimates

FEDERAL TRAINEES (ON-THE-JOB TRAINING)

On selected federal-aid highway construction projects, “Federal Trainee” or “On-the-Job (OJT) Training” special provisions (Item 15 in LAPM Exhibit 12-G) must be included in the contract provisions to establish the number of trainees for the construction contract.

The main objectives of the Federal Trainee/OJT Program are to:

- Provide training for women and minorities which will upgrade their job skills, thereby increasing their access to higher-paying trade jobs and journeyman-level positions and
- Ensure that a diverse work force will meet future labor needs in the construction industry.

Filling training positions on each project must focus on hiring women and minorities, but not exclude anyone. If a contractor cannot meet the OJT objectives, direct recruitment efforts must be documented to show an effort at OJT compliance.

The major components of an OJT program include:

- The local agency must include the required federal training special provisions in the PS&E package if the project size and duration warrant an OJT program.
- The local agency should select contracts that contribute to the “Contract Training Goals.” These contracts must show the number of trainees, number of trainees upgraded to journeyman and level of skills.
- The local agency must review the training programs proposed by contractors. Approval or rejection is based on the legitimacy of the job-skill classifications proposed and the number of training hours specified.
- Caltrans must determine if statewide OJT is effective.
- The Contractor is responsible for recruitment and selection of trainees.
- The Contractor must evaluate training based on an approved training program.
- OJT provision costs are reimbursed by the FHWA in accordance with the Federal Requirement Training Special Provisions” included in selected contracts. Required trainees/apprentices are to be funded on the bidding schedule or by change order at \$0.80/hour; or the training program can be a bid item with the same reimbursement ratio as the construction project. OJT support services include recruiting, counseling, remedial training, and OJT program administration by others.
- If the Contractor does not show a good faith effort to provide acceptable training to the trainees specified, a sanction may be applied. Sanctions may include withholding progress payments if effective on-the-job training is not provided.

In California, federal “trainees” are considered registered apprentices. There are relatively few crafts in highway work, which utilize apprentices—bricklayers, carpenters, cement masons, electricians, equipment operators, ironworkers, pile bucks, and a few others. There are no apprentice teamsters or laborers. The ratio of journeymen to apprentices is generally 5 to 1.

With these thoughts in mind, the number of trainees established for a project should be determined by examining the extent of only that work which will be done by the apprentice-able crafts. The following procedure may be used as a guide for establishing the number of trainees for a federal-aid project:

1. If the proposed construction contract has less than 100 working days, no trainees and no Federal Trainee Program special provisions are needed.
2. If the proposed construction contract has 100 working days or more, add individual totals for each of the following work categories in the Engineer's Estimate:
 - Earthwork (except for imported borrow)
 - Pile driving
 - Portland Cement Concrete (except for precast concrete)
 - Masonry
 - Bar reinforcing and pre-stressing steel
 - Structural steel erection
 - Electrical
 - Buildings
3. Using the totals obtained above, determine the number of trainees for each work category from the following table: **Table 12-2: Federal Trainee Schedule**

Cost for Work Category	Number of Trainees	Cost for Work Category	Number of Trainees
< 400,000	0	16,000,000	15
≥ 400,000	1	18,000,000	16
700,000	2	20,000,000	17
1,000,000	3	23,000,000	18
1,500,000	4	26,000,000	19
2,000,000	5	29,000,000	20
2,500,000	6	33,000,000	21
3,000,000	7	37,000,000	22
4,000,000	8	41,000,000	23
5,000,000	9	45,000,000	24
6,500,000	10	50,000,000	25
8,000,000	11	> 50,000,000	*
10,000,000	12		
12,000,000	13		
14,000,000	14		

* 25, plus 1 additional trainee for every \$5,000,000 over \$50,000,000

4. If the totals for each of the work categories listed under Step 2 above are all less than \$400,000 then no trainees and no Federal Trainee Program special provisions are needed.
5. For any work category equal to or greater than \$400,000, total the trainees obtained for the applicable work categories and include the Federal Trainee Program special provisions. Calculate the contract cost using \$800 per trainee and include Federal Trainee Program under Supplemental Funds of the Engineer's Estimate.

FEDERAL REQUIREMENT TRAINING SPECIAL PROVISIONS

FEDERAL REQUIREMENT TRAINING SPECIAL PROVISION. -- As part of the Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide on-the-job training to develop full journeymen in the types of trades or job classification involved.

The goal for the number of trainees or apprentices to be trained under the requirements of this special provision will be _____.

In the event the Contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees or apprentices are to be trained by the subcontractor, provided however, that the Contractor shall retain the primary responsibility for meeting the training

requirements imposed by this special provision. The Contractor shall also insure that this Training Special Provision is made applicable to such subcontract. Where feasible, 25 percent of trainees or apprentices in each occupation shall be in their first year of apprenticeship or training.

The number of trainees or apprentices shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing work, the Contractor shall submit to the Department for approval the number of trainees or apprentices to be trained in each selected classification and training program to be used. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. The Contractor will be credited for each trainee or apprentice employed by

him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees or apprentices as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the Contractor shall make every effort to enroll minority and women trainees or apprentices (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees or apprentices) to the extent such persons are available within a reasonable area of recruitment. The Contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee or apprentice in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The Contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the Contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by both the Department and the Federal Highway Administration. The Department and the Federal Highway Administration will approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee or apprentice for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with the State of California, Department of Industrial Relations, Division of Apprenticeship Standards recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerical-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some

offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training. Except as otherwise noted below, the Contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the Engineer, reimbursement will be made for training of persons in excess of the number specified herein.

This reimbursement will be made even though the Contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the Contractor where he does one or more of the following and the trainees or apprentices are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or apprentice or pays the trainee's or apprentice's wages during the offsite training period.

No payment shall be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee or apprentice as a journeyman, is caused by the

Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee or apprentice will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees or apprentices be

on board for the entire length of the contract. A Contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees or apprentices specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Only trainees or apprentices registered in a program approved by the State of California's State Administrator of Apprenticeship may be employed on the project and said trainees or apprentices shall be paid the standard wage specified under the regulations of the craft or trade at which they are employed.

The Contractor shall furnish the trainee or apprentice a copy of the program he will follow in providing the training. The Contractor shall provide each trainee or apprentice with a certification showing the type and length of training satisfactorily completed. The Contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The contractor, subrecipient or subcontractor shall take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the Agency shows a contract goal for DBEs. The prime contractor shall make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

The prime contractor shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal.

It is the prime contractor's responsibility to verify that the DBE firm is certified as DBE at date of bid opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found [here](#).

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal.

Credit for materials or supplies the prime contractor purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

The prime contractor receives credit towards the goal if they employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1) as follows:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
- The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

a. Nondiscrimination Statement

The contractor, subrecipient or subcontractor will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the Local Agency components of the DBE Program Plan, the contractor, subrecipient or subcontractor will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

b. Contract Assurance

Under 49 CFR 26.13(b):

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. Prompt Progress Payment

The prime contractor or subcontractor shall pay to any subcontractor, not later than **seven days** after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subcontractors.

d. Prompt Payment of Withheld Funds to Subcontractors

The Agency may hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The Agency shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor. The Agency shall include either Method 1, Method 2, or Method 3 below and delete the other two.

Method 1: No retainage will be held by the Agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Method 2: No retainage will be held by the Agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Method 3: The Agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within seven (7) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Agency. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

e. Termination and Substitution of DBE Subcontractors

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the Agency's written consent. The prime contractor shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without prior written authorization from the Agency. Unless the Agency's prior written consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 15-G Construction Contract DBE Commitment form, included in the Bid.

The Agency authorizes a request to use other forces or sources of materials if the bidder shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The Local Agency stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the Local Agency's bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The Agency determines other documented good cause.

The prime contractor shall notify the original DBE of the intent to use other forces or material sources and provide the reasons, allowing the DBE 5 days to respond to the notice and advise the prime contractor and the Agency of the reasons why the use of other forces or sources of materials should not occur.

The prime contractor's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from the prime contractor to the DBE regarding the request.
3. Notices from the DBEs to the prime contractor regarding the request.

If a listed DBE is terminated or substituted, the prime contractor must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

f. Commitment and Utilization

Note: In the Agency's reports of DBE participation to Caltrans, the Agency must display both commitments and attainments.

The Agency's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The bidder shall submit the Exhibit 15-G Construction Contract DBE Commitment, included in the Bid book. This exhibit is the bidder's DBE commitment form. If the form is not submitted with the bid, the bidder must remove the form from the Bid book before submitting their bid.

The bidder shall complete and sign Exhibit 15-G Construction Contract DBE Commitment included in the contract documents regardless of whether DBE participation is reported. The bidder shall provide written confirmation from each DBE that the DBE is participating in the Contract. A copy of a DBE's quote serves as written confirmation. If a DBE is participating as a joint venture partner, the bidder shall submit a copy of the joint venture agreement.

If the DBE Commitment form, Exhibit 15-G, is not submitted with the bid, it must be completed and submitted by all bidders to the Agency within five (5) days of bid opening. If the bidder does not submit the DBE Commitment form within the specified time, the Agency will find the bidder's bid nonresponsive.

The prime contractor shall use each DBE subcontractor as listed on Exhibit 12-B Bidder's List of Subcontractors (DBE and Non-DBE), and Exhibit 15-G Construction Contract DBE Commitment form unless they receive authorization for a substitution.

The Agency shall request the prime contractor to:

1. Notify the Resident Engineer or Inspector of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
 - Name and business address of each 1st-tier subcontractor
 - Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see Exhibit 9-F Monthly Disadvantaged Business Enterprise Payment)

If the prime contractor is a DBE contractor, they shall include the date of work performed by their own forces and the corresponding value of the work.

Before the 15th of each month, the prime contractor shall submit a Monthly DBE Trucking Verification (LAPM Exhibit 16-Z1) form.

If a DBE is decertified before completing its work, the DBE must notify the prime contractor in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify the prime contractor in writing of the certification date. The prime contractor shall submit the notifications. Upon work completion, the prime contractor shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form within 30 days of contract acceptance.

Upon work completion, the prime contractor shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it within 90 days of contract acceptance. The Agency will withhold \$10,000 until the form is submitted. The Agency releases the withhold upon submission of the completed form.

BID OPENING The Agency publicly opens and reads bids at the time and place shown on the Notice to Contractors.

CONTRACT AWARD If the Agency awards the contract, the award is made to the lowest responsible and responsive bidder.

CONTRACTOR LICENSE

The Contractor must be properly licensed as a contractor from contract award through Contract acceptance (Public Contract Code § 10164).

CHANGED CONDITIONS

a. Differing Site Conditions

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
2. Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the Local Agency, at their option.)

b. Suspensions of Work Ordered by the Engineer

1. If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
2. Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.
4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

c. Significant Changes in the Character of Work

1. The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
3. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term "significant change" shall be construed to apply only to the following circumstances:
 - When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

BUY AMERICA

Furnish steel and iron materials to be incorporated into the work with certificates of compliance and certified mill test reports. Mill test reports must indicate where the steel and iron were melted and manufactured. Steel and iron materials must be produced in the U.S. except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)];
2. If the total combined cost of the materials does not exceed the greater of 0.1 percent of the total bid or \$2,500, materials produced outside the U.S. may be used.

Production includes:

1. Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;
2. Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

QUALITY ASSURANCE

The Local Agency uses a Quality Assurance Program (QAP) to ensure a material is produced to comply with the Contract. The Local Agency may examine the records and reports of tests the prime contractor performs if they are available at the job site. Schedule work to allow time for QAP.

PROMPT PAYMENT FROM THE AGENCY TO THE CONTRACTORS

The Agency shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract. If the Agency fails to pay promptly, the Agency shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the Agency shall act in accordance with both of the following:

1. Each payment request shall be reviewed by the Agency as soon as practicable after receipt for the purpose of determining that it is a proper payment request.
2. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

FORM FHWA-1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONTRACTS

(Excluding ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS)

DBE RUNNING TALLY OF ATTAINMENTS

After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.

EXHIBIT 16-O FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT

1. MARK APPROPRIATE BLOCK
 Contractor
 Subcontractor

2. COMPANY NAME, CITY, STATE: _____

3. PROJECT NUMBER: _____

4. DOLLAR AMOUNT OF CONTRACT: _____

5. PROJECT LOCATION: (County and State) _____

This collection of information is required by law and regulation 23 U.S.C. 140a and 23 CFR Part 230. The OMB control number for this collection is 2125-0019 expiring in March, 2016.

6. WORKFORCE ON FEDERAL-AID AND CONSTRUCTION SITE(S) DURING LAST FULL PAY PERIOD ENDING IN JULY 20__ (INSERT YEAR)

JOB CATEGORIES	TOTAL EMPLOYED		TOTAL RACIAL/ ETHNIC MINORITY		BLACK or AFRICAN AMERICAN		HISPANIC OR LATINO		AMERICAN INDIAN OR ALASKA NATIVE		ASIAN		NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		TWO OR MORE RACES		WHITE		APPRENTICES		ON THE JOB TRAINEES	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
	OFFICIALS	0	0	0	0																	
SUPERVISORS	0	0	0	0																		
FOREMEN/WOMEN	0	0	0	0																		
CLERICAL	0	0	0	0																		
EQUIPMENT OPERATORS	0	0	0	0																		
MECHANICS	0	0	0	0																		
TRUCK DRIVERS	0	0	0	0																		
IRONWORKERS	0	0	0	0																		
CARPENTERS	0	0	0	0																		
CEMENT MASONS	0	0	0	0																		
ELECTRICIANS	0	0	0	0																		
PIPEFITTER/PLUMBERS	0	0	0	0																		
PAINTERS	0	0	0	0																		
LABORERS-SEMI SKILLED	0	0	0	0																		
LABORERS-UNSKILLED	0	0	0	0																		
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

TABLE C (Table B data by racial status)

APPRENTICES	OJT TRAINEES	9. DATE	10. REVIEWED BY: (Signature and Title of State Highway Official)	11. DATE
0	0			
0	0			

8. PREPARED BY: _____
 (Signature and Title of Contractors Representative)

INSTRUCTIONS – FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS

- 1. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 2. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 3. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 4. Contract Completion Date** - Enter the date the contract was completed.
- 5. Contractor/Consultant** - Enter the contractor/consultant's firm name.
- 6. Business Address** - Enter the contractor/consultant's business address.
- 7. Final Contract Amount** - Enter the total final amount for the contract.
- 8. Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
- 9. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 10. Company Name and Business Address** - Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.
- 12. Contract Payments** - Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.
- 13. Date Work Completed** - Enter the date the subcontractor/subconsultant's item work was completed.
- 14. Date of Final Payment** - Enter the date when the prime contractor/consultant made the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.
- 15. Original DBE Commitment Amount** - Enter the "Total Claimed DBE Participation Dollars" from Exhibits 15-G or 10-O2 for the contract.
- 16. Total** - Enter the sum of the "Contract Payments" Non-DBE and DBE columns.
- 17. Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
- 18. Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
- 19. Phone** - Enter the area code and telephone number of the person signing the form.
- 20. Date** - Enter the date the form is signed by the contractor's preparer.
- 21. Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
- 22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
- 23. Phone** - Enter the area code and telephone number of the person signing the form.
- 24. Date** - Enter the date the form is signed by the Local Agency Representative.

**INSTRUCTIONS –DISADVANTAGED BUSINESS ENTERPRISES (DBE)
CERTIFICATION STATUS CHANGE**

- 1. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 2. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 3. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 4. Contract Completion Date** - Enter the date the contract was completed.
- 5. Contractor/Consultant** - Enter the contractor/consultant's firm name.
- 6. Business Address** - Enter the contractor/consultant's business address.
- 7. Final Contract Amount** - Enter the total final amount for the contract.
- 8. Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted contractors/consultants.
- 10. DBE Certification Number** - Enter the DBE's Certification Identification Number.
- 11. Amount Paid While Certified** - Enter the actual dollar value of the work performed by those subcontractors/subconsultants during the time period they are certified as a DBE.
- 12. Certification/Decertification Date (Letter Attached)** - Enter either the date of the Decertification Letter sent out by the Office of Business and Economic Opportunity (OBEO) or the date of the Certification Certificate mailed out by OBEO.
- 13. Comments** - If needed, provide any additional information in this section regarding any of the above certification status changes.
- 14. Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
- 15. Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
- 16. Phone** - Enter the area code and telephone number of the person signing the form.
- 17. Date** - Enter the date the form is signed by the contractor's preparer.
- 18. Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
- 19. Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
- 20. Phone** - Enter the area code and telephone number of the person signing the form.
- 21. Date** - Enter the date the form is signed by the Local Agency Representative.

MONTHLY DBE TRUCKING VERIFICATION

The top of Form CEM-2404(F) contains boxes to put in the Contract Number, the Month of the reporting period and the Year of the reporting period.

The Form CEM-2404(F) has a column to enter the name of the Truck Owner, the DBE Cert. No. (if DBE certified) and the Name and Address of the trucking company. The Form CEM-2404(F) also requires the Truck No. and the California Highway Patrol CA No.

Form CEM-2404(F) is to be submitted prior to the 15th of each month and must show the dollar amount paid to the DBE trucking company(s) for trucking work performed by DBE certified trucks and for any fees or commissions of non DBE trucks utilized each month on the project. The amount paid to each trucking company is to be entered in the column called "Commission or Amount Paid," in accordance with the Special Provisions Section 5-1.1.X.

Payment information is derived using the following:

- 1.) 100% for the trucking services provided by the DBE using trucks it owns, operates and insures.
- 2.) 100% for the trucking services provided by the trucks leased from other DBE firms.
- 3.) The fee or commission paid to non DBEs for the lease of trucks. The Prime does not receive 100% credit for these services because they are not provided by a DBE company.

The total dollar figure of this column is to be placed in the box labeled "Total Amount Paid." The column "Date Paid" requires a date that each trucking company is paid for services rendered. The next column contains information that must be completed if a lease arrangement is applicable. Located at the bottom of the form is a space to put the name of the "Prime Contractor," their "Business Address" and their "Business Phone No."

At the bottom of the form there is a space for the Contractor or designee "Contractor Representative's Signature, Title and Date" certifying that the information provided on the form is complete and correct.

EXHIBIT 16-B SUBCONTRACTING REQUEST

CONTRACTOR NAME				COUNTY	ROUTE	
BUSINESS ADDRESS				CONTRACT NUMBER		
CITY AND STATE			ZIP CODE	FEDERAL-AID PROJECT NUMBER		
A. SUBCONTRACTOR (Name, Business Address, Phone)	B. BID ITEM NUMBER (S)	C. PERCENTAGE OF BID ITEM SUBCONTRACTED	D. SUB LISTED AT BID TIME	E. CERTIFIED DBE	F. DESCRIBE WORK WHEN LESS THAN 100% OF WORK IS SUBCONTRACTED	G. DOLLAR AMOUNT BASED ON THE BID AMOUNT
			Yes No <input type="checkbox"/> <input type="checkbox"/>	Yes No <input type="checkbox"/> <input type="checkbox"/>		
			Yes No <input type="checkbox"/> <input type="checkbox"/>	Yes No <input type="checkbox"/> <input type="checkbox"/>		
			Yes No <input type="checkbox"/> <input type="checkbox"/>	Yes No <input type="checkbox"/> <input type="checkbox"/>		
			Yes No <input type="checkbox"/> <input type="checkbox"/>	Yes No <input type="checkbox"/> <input type="checkbox"/>		
			Yes No <input type="checkbox"/> <input type="checkbox"/>	Yes No <input type="checkbox"/> <input type="checkbox"/>		
			Yes No <input type="checkbox"/> <input type="checkbox"/>	Yes No <input type="checkbox"/> <input type="checkbox"/>		

I certify that:

- The Standard Provisions for labor set forth in the contract apply to the subcontracted work.
- If applicable, Form FHWA- 1273 of the Special Provisions has been inserted in the subcontracts and should be incorporated in any lower-tier subcontract. Written contracts have been executed for the above noted subcontracted work.

Contractor's Signature	Date
------------------------	------

This section is to be completed by the resident engineer.

- | | | |
|---|----|--|
| 1. Total of bid items | \$ | |
| 2. Contractor must perform with own forces (line 1 X contract req. %) _____ | \$ | |
| 3. Bid items previously subcontracted (taken from previously approved 16-B) | \$ | |
| 4. Bid items subcontracted (this request) | \$ | |
| 5. Total bid items subcontracted (line 3 plus 4) | \$ | |
| 6. Balance of work contractor to perform (line 1 minus 5) | \$ | |

Approved	
RESIDENT ENGINEER'S SIGNATURE	DATE

Copy Distribution : Original-Contractor Copy- Resident Engineer Copy- OBEO- smallbusinessadvocate@dopt.ca.gov or fax to (916) 324-1949

INSTRUCTIONS FOR COMPLETING SUBCONTRACTING REQUEST FORM**All first-tier subcontractors must be included on a subcontractor request.**

Before subcontracting work starts, the contractor will submit an original CEM-1201 for approval according to the Standard Specifications. After approval, the RE returns the original to the contractor and complete the remaining distribution as listed on the bottom of the form.

D. If subcontractor was listed at bid time per the Fair Practices Act, check yes, otherwise check no.

E. If subcontractor is a certified DBE contractor, check yes, otherwise check no.

F and G. When a portion of an item is subcontracted, describe the portion and show the percentage of the bid item and value.

G. When an entire item is subcontracted, show the full bid item value.

THIS FORM IS NOT TO BE USED FOR SUBSTITUTIONS OF SUBCONTRACTORS AND UDBE, DVBE OR SMALL BUSINESS ENTITIES.

<https://sam.gov>, under CA20220018

Contract No. #21-J-02
21-J-03
21-J-04

Federal Requirements
00 72 01

GENERAL BUILDING
JOB ORDER CONTRACTS

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EXHIBIT 9-F: DISADVANTAGED BUSINESS ENTERPRISE (DBE) RUNNING TALLY OF PAYMENTS

Save this form using the following naming convention, [yyyymm][Prime's DUNS Number]-[ss].xlsx. [ss] is two digit sequential numbering, applicable when consultant or contractor has more than one 9-F form to complete per pay period. For example, a valid saved file could read: 202001-123456789-01.xlsx. Prime contractors/consultants are required to submit this form no later than the 10th of the following month, after submitting an invoice for reimbursement that includes a payment to a DBE. If no payments have been made, do not submit the form. Email this form to Business.Support.Unit@dot.ca.gov with a copy to their local administering agencies. **Do not submit this form with the invoice, it will not be processed.**

(1) Reporting Period (mm-yyyy)	(2) Federal Aid Project Number	(3) Caltrans District	(4) Local Agency					
(5) Contract Number	(6) Total Contract Award Amount (\$)	(7) DBE Goal Percentage (%)	(8) DBE Committed Percentage (%)					
(9) Prime Contractor/Consultant DUNS Number	(10) Business Name	(11) Amount Prime Invoiced This Period (\$)	(12) Amount Paid to Prime To Date (\$)					
(14) DBE Subcontractor/Subconsultant Name	(15) DBE Cert. Number	(16) Contract Type	(17) Date of Payment	(18) Amount of This Payment	(19) Amount Paid To Date	(20) Amount Committed To This DBE	(21) Comments	(13) Prime Certified DBE?
		Totals		\$0	\$0	\$0		

List all DBEs regardless of tier, whether or not the firms were originally listed in Exhibit 10-02 or 15-G as a DBE commitment. If the actual DBE utilization was different than that approved at the time of award, provide comments in box (21). All payments reported, including payments to contractor/consultant, are for the date listed. Select the most appropriate contract type (Agent, Consultant, Joint Venture, Manufacturer, Prime, Regular Dealer, Subcontractor, Truck/Haul, Service Provider) for the DBE from dropdown list.

By executing this 9-F, Contractor/Consultant represents and warrants, under penalty of perjury, that: Contractor/Consultant contracted with the Disadvantaged Business Enterprise companies (DBEs) as set forth in their awarded bid on Contract number _____ Contractor/Consultant paid the full amounts listed on their 9-F to the DBEs set forth in Contractor's awarded bid, without reduction or offset.

(22) Prime Contractor/Consultant Manager's Name (Print)	(23) Business Phone Number	(24) Date
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COPY DISTRIBUTION: Original - Prime Contractor/Consultant, Copy - E-mail: Business.Support.Unit@dot.ca.gov; Copy: Local Administering Agency

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats.
For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Exhibit 9-F Instructions

I. Purpose:

Title 49 of the Code of Federal Regulations (CFR), Part 26.37(c) requires recipients of federal-aid funding to "provide a running tally of actual attainments, including a means of comparing these attainments to commitments." This requirement does not apply to projects that do not have any federal funding.

II. Policy:

- A. To comply with 49 CFR 26.37(c), the prime contractors/consultants must complete the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments and email it to business.support.unit@dot.ca.gov and their local administering agencies after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month. Submission of this Exhibit is required until all DBE subcontracting or material supply activity on the entire project is completed.
- B. Save this form using the following naming convention, [yyyymm]-[Prime's DUNS Number]-[ss].xlsx. [ss] is two digit sequential numbering, applicable when consultant or contractor has more than one 9-F form to complete per pay period. For example, a valid saved file could read: 202001-123456789-01.xlsx

III. Instructions:

- (1) **Reporting Period (mm-yyyy):** Indicate the month and year of payments being reported.
 - (2) **Federal Aid Project Number:** Enter the 7 digit federal-aid project number of the lead project on the contract. E.g. 5002(123) is a valid Federal-Aid Project Number.
 - (3) **Caltrans District:** Enter the appropriate Caltrans District number as 1 through 12.
 - (4) **Local Agency:** List the local agency's name.
 - (5) **Contract Number:** List the local agency assigned contract agreement number.
 - (6) **Total Contract Award Amount (\$):** Enter the total current contract award amount of the project.
 - (7) **DBE Goal Percentage (%):** Enter the contract DBE goal percentage as it appears on the project advertisement.
 - (8) **DBE Committed Percentage (%):** Enter percentage of the Prime contract committed to DBE firms.
 - (9) **Prime Contractor/Consultant DUNS Number:** Enter the unique nine-digit Data Universal Numbering System (DUNS) that Contractors/Consultants should have in order to participate in Federally-funded contracts.
 - (10) **Business Name:** List the name for the prime contractor/consultant as identified in Procedure 9 above.
 - (11) **Amount Prime's Invoice This Period (\$):** Enter the total invoice amount that prime submitted for reimbursement this period.
 - (12) **Amount Paid to Prime To Date (\$):** Enter the total payment that is paid to the Prime to date.
 - (13) **Prime certified DBE:** Enter "Yes" if Prime Contractor/Consultant is certified DBE and "No" otherwise.
DBE Prime contractor needs to fill in from procedure (14) to (21) for payments to DBE Subcontractors and DBE Prime's self-performing.
- Note:** For Procedures (14) through (21) below, insert rows as needed to list all DBEs included on Exhibits 10-O2 or 15-G, and any other DBEs that were utilized regardless of tier.
- (14) **DBE Firm name:** List the DBE's firm name.
 - (15) **DBE Cert. Number:** List the DBE's certification number as listed in the California Unified Certification Program (CUCP) database.
 - (16) **Contract Type:** Select the most appropriate Subcontractor's contract type (Agent, Consultant, Joint Venture, Manufacturer, Prime, Regular Dealer, Subcontractor, Truck/Haul, Service Provider from dropdown list.)
 - (17) **Date of Payment:** List current check date when a check is issued to the DBE for work performed by the DBE.
 - (18) **Amount of This Payment:** List the total amount paid to the DBE this period.
 - (19) **Amount Paid to Date:** List the total amount paid to this DBE to date. This should be a total of past payments plus payment for the current work just invoiced to the Local Agency.
 - (20) **Amount Committed to This DBE Firm:** Copy the information from the agency signed Exhibit 10-O2 or 15-G. If the listed DBE was not originally committed to, type "0."
 - (21) **Comments:** Add appropriate notes if a DBE subcontract was terminated, a DBE subcontract was added, if change orders impacted the DBE's payments (include good faith efforts the prime contractor/consultant implemented), if task orders weren't issued, etc.
 - (22) **Prime Contractor/Consultant Manager's Name:** Enter the manager's name of the prime contractor/consultant of the project.
 - (23) **Business Phone Number:** Enter the manager's business phone number of the prime contractor/consultant.
 - (24) **Date:** Provide the date this form was prepared.
 - (25) **Copy Distribution:** The prime contractor/consultant will need to maintain a copy with the contract file (electronic and/or paper). The prime contractor/consultant will need to e-mail this form as provided in the Section II. Policy, paragraphs A as stated above. Local agency will need to keep a copy with the contract file.