



NAPA VALLEY TRANSPORTATION AUTHORITY

NOTICE IS HEREBY GIVEN that the Napa Valley Transportation Authority is issuing an

INVITATION FOR BID IFB No. 24-R03

for

ELECTRONIC TRANSIT INFORMATION DISPLAYs (eTIDs) & INSTALLATION

Date Released: February 13, 2024

Napa Valley Transportation Authority (NVTA)
625 Burnell Street
Napa, CA 94559

Proposals are due prior to 2:00 PM (PST/local), February 27, 2024

Late proposals submitted after the above time will *not* be accepted.

NVTA invites firms or individuals that possess qualifications, experience and knowledge to submit a proposal. Any contract to be awarded as a result of this IFB will be awarded without discrimination based on race, color, religion, sex, sexual orientation, race, religious creed, color, national origin, ancestry, denial of family and medical care leave, medical condition (cancer/genetic characteristics) physical handicap, disability (mental or physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation, marital status, age (40 and above). To obtain a full copy of the IFB, please contact NVTA office at (707) 259-8631 or download the document from our website at <https://www.nvta.ca.gov/procurement-opportunities>.

Release of IFB authorized by:


Kate Miller (Feb 13, 2024 15:12 PST)

Feb 13, 2024

Kate Miller, NVTA Executive Director

Date

INVITATION FOR BID

ELECTRONIC TRANSIT INFORMATION DISPLAYs (eTIDs) & INSTALLATION

Note regarding the Public Records Act:

Government Code Sections 6250 *et seq.*, the California Public Record Act, defines a public record as any writing containing information relating to the conduct of the public business. The Public Record Act provides that public records shall be disclosed upon written request and that any citizen has a right to inspect any public record unless the document is exempted from disclosure.

Be advised that any contract that eventually arises from this Invitation for Bid (IFB) is a public record in its entirety. Also, all information submitted in response to this IFB itself a public record without exception. Submission of any materials in response to this IFB constitutes a waiver by the submitting party of any claim that the information is protected from disclosure.

By submitting materials,

- (1) you are consenting to release of such materials by the County if requested under the Public Records Act without further notice to you and
- (2) you agree to indemnify and hold harmless the County for release of such information.

PROCUREMENT SCHEDULE

Issue Date	February 13, 2024
Pre-bid Conference (Virtual)	February 19, 2024, 1:00 PM (PST/local)
Deadline for Submitting Written Questions	February 20, 2024, 2:00 PM (PST/local)
Answers to Written Questions Posted	February 21, 2024
Final Addendum issued, if necessary	February 21, 2024
Deadline for Proposal Submittal	February 27, 2023, 2:00 PM (PST/local)
Award Contract	Week of February 26, 2024

NOTICE OF INVITATION FOR BIDS

1. RECEIPT OF BIDS: Sealed Bids will be received at the office of the Napa Valley Transportation Authority (NVTA) located at 625 Burnell Street, Napa, California, 94559, OR by electronic mail in PDF format to rkulick@nvta.ca.gov until 2:00PM (PST/local) on Tuesday, February 27, 2024, for the ELECTRONIC TRANSIT INFORMATION DISPLAYs (eTIDs) & INSTALLATION. Any Bids received after the specified time and date will not be considered.
2. OPENING OF BIDS: The Bids will be publicly opened and read at 2:00PM Pacific Time on Tuesday 27, 2024, at the above-mentioned office of the AGENCY. The AGENCY reserves the right to postpone the date and time for opening of Bids at any time prior to the aforesaid date and time.
3. COMPLETION OF WORK: The WORK must be completed within **NINETY DAYS (90) working days** after the commencement date stated in the Notice to Proceed.
4. DESCRIPTION OF WORK: The Napa Valley Transportation Authority (NVTA) is seeking bids from qualified contractors to add three (3) real-time electronic transportation information display (eTID) signs at the Imola Park and Ride (Imola PnR) located at 954 Golden Gate Drive, Napa, CA 94558. This facility is owned by Caltrans, but operated and maintained by NVTA. The above work shall be completed in accordance with the attached Regional Transit Wayfinding Guidelines & Standards: Version 6.0- August 1, 2019 (herein referred to as the "STANDARDS"). Relevant plans for the Imola Park and Ride with the approximate location of three (3) eTIDs are included as Exhibit B.
5. ENGINEER'S COST ESTIMATE: Installation cost for this project is approximately \$170,000.
6. SITE OF WORK: The site of the WORK is located at the Imola PnR, 954 Golden Gate Drive, and the North (Exit Ramp) & South (Entrance Way) of State Route 29/State Route 121 (W Imola Avenue) in Napa, California.
7. CONTRACTOR'S LICENSE CLASSIFICATION: In accordance with the provisions of California Public Contract Code Section 3300, the AGENCY has determined that the CONTRACTOR shall possess a valid Class C-10 license at the time that the Contract is awarded. Failure to possess the specified license shall render the Bid as non- responsive and shall act as a bar to award of the Contract to any bidder not possessing said license at the time of award.
8. REJECTION OF PROPOSALS: Bids are required for the entire work described herein including all the alternatives in the Bid schedule. A bidder will be considered non-responsive if any of the alternative bid items are omitted and will be the cause of bid rejection. The AGENCY reserves the right to reject all or any part of all bids submitted, waive informalities and irregularities, and will not, to the extent allowed by law, be bound to accept the lowest bid.
9. BIDS TO REMAIN OPEN: The Bidder shall guarantee the total bid price for a period of 90 calendar days from the date of bid opening.
10. CALIFORNIA WAGE RATE REQUIREMENTS: In accordance with the provisions of California Labor Code Sections 1770, 1773, 1773.1, 1773.6 and 1773.7 as amended, the Director of the Department of Industrial Relations has determined the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773 for the locality in which the WORK is to be performed. It shall be mandatory upon

the CONTRACTOR to whom the WORK is awarded and upon any subcontractor under the CONTRACTOR to pay not less than said specified rates to all workers employed by them in the execution of the WORK.

11. LABOR COMPLIANCE PURSUANT TO CALIFORNIA LABOR CODE § 1771.1. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirement of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
12. PAYMENT BOND: Pursuant to and in accordance with California Civil Code Section 3247, a payment (labor and materials) bond must be filed if the expenditure for the WORK is in excess of Twenty-Five Thousand Dollars (\$25,000).
13. PRE-BID CONFERENCE/SITE VISITS: [At least one box MUST be checked]

Check if NO pre-bid conference/site visit is to be held.

Mandatory pre-bid conference/site visit to be held: Prospective bidders are required to attend a mandatory pre-bid conference at _____ via web conference, details of which are provided below. This web conference will be a recorded event. Following the conference, prospective bidders are encouraged to visit the project site. Transportation to the project site will be the responsibility of prospective bidders. The purposes of the conference/site visit are to discuss the scope of the project and bidding requirements, and to acquaint bidders with Site conditions. No information communicated at the pre-bid conference/site visit may amend the project bidding requirements. Project bidding requirements may only be amended by addenda issued by authorized AGENCY officials. Following the pre-bid conference/site visit, prospective bidders may submit detailed technical questions in writing. If warranted, the AGENCY may respond to such questions by addenda.

Non-mandatory pre-bid conference/site visit to be held: Prospective bidders are invited to attend a non-mandatory pre-bid conference via web conference, details of which are provided below. This web conference will be a recorded event. Following the conference, prospective bidders are encouraged to visit the project site. Transportation to the project site will be the responsibility of prospective bidders. The purposes of the conference/ site visit are to discuss the scope of the project and bidding requirements, and to acquaint bidders with Site conditions. No information communicated at the pre-bid conference/site visit may amend the project bidding requirements. Project bidding requirements may only be amended by addenda issued by authorized AGENCY officials. Following the pre-bid conference/site visit, prospective bidders may submit detailed technical questions in writing. If warranted, the AGENCY may respond to such questions by addenda.

NVTA MAIN is inviting you to a scheduled Zoom meeting.

*Topic: IFB 24-R03 E-TIDs - Imola PnR Pre-Proposal Meeting
Time: Feb 19, 2024 01:00 PM Pacific Time (US and Canada)*

Join Zoom Meeting

<https://countyofnapa.zoom.us/j/81322830171?pwd=R1RvajUrWFQzb3l1dmwrZUtmcVFyUT09>

Meeting ID: 813 2283 0171

Passcode: 723185

One tap mobile
+16699006833,,81322830171# US (San Jose)
+16694449171,,81322830171# US

Dial by your location

- +1 669 900 6833 US (San Jose)
- +1 669 444 9171 US
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
- +1 719 359 4580 US
- +1 253 205 0468 US
- +1 301 715 8592 US (Washington DC)
- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 312 626 6799 US (Chicago)
- +1 360 209 5623 US
- +1 386 347 5053 US
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 646 931 3860 US
- +1 689 278 1000 US
- +1 929 436 2866 US (New York)

Meeting ID: 813 2283 0171

Find your local number: <https://countyofnapa.zoom.us/j/81322830171>

14. PROJECT ADMINISTRATION:

NAME	Rebecca Schenck
ADDRESS	Napa Valley Transportation Authority 625 Burnell Street, Napa, CA 94559
PHONE	707.259.8636
EMAIL	rschenck@nvta.ca.gov

All questions relative to this WORK shall be directed by electronic mail to rkulick@nvta.ca.gov prior to opening of the Bids. **Questions must be submitted by 2:00PM (PST/local), Tuesday, February 20, 2024.** The subject line for questions submitted by electronic mail should include reference to: "Questions – IFB 24-R03 eTIDs & Installation".

15. AGENCY'S RIGHTS RESERVED: The AGENCY reserves the right to reject any or all bids, to waive any minor irregularity in a bid, and to make awards to the lowest responsive, responsible bidder as it may best serve the interest of the AGENCY.

END OF NOTICE OF INVITATION FOR BID

INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS

Terms used in these Instructions to Bidders and the Notice Inviting Bids which are defined in the General Conditions have the meanings assigned to them in the General Conditions. The term "Bidder" means one who submits a Bid directly to AGENCY, as distinct from a sub-bidder, who submits a price or quote to a Bidder.

2. LOCAL BUSINESS LICENSE

All CONTRACTORS, including subcontractors, not already having a local business license for the work contemplated, will be required to secure the appropriate license before a Contract can be executed.

3. INTERPRETATIONS AND ADDENDA

3.1 All questions about the meaning or intent of the Contract Documents are to be directed to the ENGINEER. Additions, deletions, or revisions to the Contract Documents considered necessary by the ENGINEER in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the ENGINEER as having received the Contract Documents. Questions received after February 20, 2024, not be answered. Only answers to such questions issued by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

3.2 Addenda may also be issued to make other additions, deletions, or revisions to the Contract Documents.

3.3 Bidders shall make no special interpretation or inference of intent from differing formats in the Technical Specifications.

4. BID FORMS

The Bid shall be submitted on the Bid Forms provided by the AGENCY. All blanks on the Bid Forms shall be completed in ink. All names must be printed below the signatures. The Bid shall be submitted in a sealed envelope which shall be plainly marked in the upper left hand corner with the name and address of the Bidder and shall bear the words "BID FOR" followed by the title of the Contract Documents for the WORK, the name of the AGENCY, the address where Bids are to be delivered or mailed to, and the date and hour of opening of Bids.

The Bid must set forth the name and location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the WORK, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the WORK according to detailed Drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets and highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

5. CERTIFICATES

- 5.1 Bids by corporations must be executed in the corporate name by the president, a vice-president, or other corporate officer. Such Bid shall be accompanied by the enclosed Certificate of Authority to sign, attested by the secretary or assistant secretary, and with the corporate seal affixed. The corporate address and state of incorporation must appear below the signature.
- 5.2 Bids by partnerships must be executed in the partnership name and be signed by a managing partner, accompanied by the enclosed Certificate of Authority to sign, and his/her title must appear under the signature and the official address of the partnership must appear below the signature.
- 5.3 Bids by joint venture must be executed in the joint venture name and be signed by a joint venture managing partner, accompanied by the enclosed Certificate of Authority to sign, and his/her title must appear under the signature and the official address of the joint venture must appear below the signature.

6. DISQUALIFICATION OF BIDDERS

More than one Bid from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. If the AGENCY believes that any Bidder is interested in more than one Bid for the WORK contemplated, all Bids in which such Bidder is interested will be rejected. If the AGENCY believes that collusion exists among the Bidders, all Bids will be rejected. A party who has quoted prices to a bidder is not hereby disqualified from quoting prices to other Bidders, or from submitting a Bid directly for the WORK. If a Bidder is not registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 and Section 1771.1, then the Bid may be rejected as non-responsive. A bidder who is ineligible to perform work on a publicworks project pursuant to Sections 1777.1 or 1777.7 of the Labor Code is prohibited from bidding on this project.

7. COMPETENCY OF BIDDERS

In selecting the lowest responsive, responsible Bidder, consideration will be given not only to the financial standing but also to the general competency of the Bidder for the performance of the WORK covered by the Bid. To this end, each Bid shall be supported by a statement of the Bidder's experience as of recent date including: (a) all projects worked on by the Bidder over the past three (3) years including the contract amount for each project; (b) all complaints made against the Contractor's license in the past ten (10) years; and (c) all claims and lawsuits presented or filed in the last five (5) years, regardless of the form, regarding any public works project.

8. SUBMISSION OF BIDS

The Bid shall be delivered or sent electronically by the time and to the address stipulated in the Notice of Invitation for Bids. It is the Bidder's sole responsibility to see that its Bid is received in proper time and at the proper place.

9. BID SECURITY, BONDS, AND INSURANCE

Each Bid shall be accompanied by a certified or cashier's check or approved Bid Bond in the amount stated in the Notice Inviting Bids. Said check or bond shall be made payable to the AGENCY and shall be given as a guarantee that the Bidder, if awarded the WORK, will enter into an Agreement with the AGENCY and will furnish the necessary insurance certificates, Payment Bond, and Performance Bond. In case of refusal or failure to enter into said Agreement, the check or Bid Bond, as the case may be, shall be forfeited to the AGENCY. If the Bidder elects to furnish a Bid Bond as its Bid security, the Bidder shall use the Bid Bond form bound herein. Bid Bonds shall comply with the requirements applicable to payment and performance bonds in the General Conditions.

9.1 BIDDING CAPACITY

Each Bid shall be accompanied by a list of the projects currently being worked on by Bidder, their size, contract price, scheduled completion date, location, and owner. Additionally, Bidder shall provide certified evidence of its current bonding capacity.

10. DISCREPANCIES IN BIDS

In the event there is more than one Bid item in a Bid Schedule, the Bidder shall furnish a price for all Bid Items in the Schedule, and failure to do so will render the Bid non-responsive and shall cause its rejection. In the event there are unit price Bid items in a Bidding schedule and the amount indicated for a unit price Bid item does not equal the product of the unit price and quantity, the unit price shall govern, and the amount will be corrected accordingly, and the BIDDER shall be bound by said correction. In the event there is more than one Bid item in a Bid Schedule and the total indicated for the Schedule does not agree with the sum of the prices Bid on the individual items, the prices Bid on the individual items shall govern and the total for the Schedule will be corrected accordingly, and the BIDDER shall be bound by said correction.

11. MODIFICATIONS AND UNAUTHORIZED ALTERNATIVE BIDS

Unauthorized conditions, limitations, or provisions attached to the Bid shall render it informal and may cause its rejection as being non-responsive. The Bid forms shall be completed without interlineations, alterations, or erasures in the printed text. Alternative Bids will not be considered unless called for. Oral, telegraphic, or telephonic bids, or modifications will not be considered.

12. WITHDRAWAL OF BID

The Bid may be withdrawn by the Bidder by means of a written request, signed by the Bidder or its properly authorized representative. Such written request must be delivered to the place stipulated in the Notice of Invitation for Bids for receipt of Bids prior to the scheduled closing time for receipt of Bids.

13. BID PROTEST

Any Bid protest must be submitted in writing to the EXECUTIVE DIRECTOR (NVTA) before 4:00 PM (PST/local) on the fifth (5th) working day following Bid opening.

- A. The initial protest document must contain a complete statement of the basis for the bid, and all supporting documentation.
- B. The party filing the protest must have actually submitted a Bid for the WORK. A subcontractor of a party submitting a Bid for the WORK may not submit a Bid protest party may not rely on the Bid protest submitted by another Bidder, but must timely pursue its own protest.
- C. The protest must refer to the specific portion of the bid document which forms the basis for the protest.
- D. The protest must include the name, address and telephone number of the person representing the protesting party.
- E. The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest which may be adversely affected by the outcome of the protest such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
- F. The AGENCY will give the protested Bidder five (5) working days after the receipt of the protest to submit a written response. The responding Bidder shall transmit the response to the protesting Bidder concurrent with delivery to the AGENCY.
- G. The procedure and time limits set forth in this section are mandatory and are the Bidder's sole and exclusive remedy in the event of Bid protest the Bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings. A Bidder may not rely on a protest submitted by another Bidder, but must timely pursue its own protest.
- H. If the AGENCY determines that a protest is frivolous, the protesting bidder may be determined to be non-responsible and that bidder may be determined to be ineligible for future contract awards.

14. AWARD OF CONTRACT

Award of the contract, if awarded, will be made to the lowest responsive, responsible Bidder who's Bid complies with the requirements of the Contract Documents. Unless otherwise specified, any such award will be made within the period stated in the Notice of Invitation for Bids that the bids are to remain open. Unless otherwise indicated, a single award will be made for all the Bid items in an individual Bid Schedule. In the event the WORK is contained in more than one Bid Schedule, the AGENCY may award Schedules individually or in combination. In the case of two Bid Schedules which are alternative to each other, only one of such alternative schedules will be awarded. The AGENCY may condition the award upon the Bidder's timely submission of all items required by the Contract Documents, including, but not limited to the executed Agreement, performance, labor and materials, and maintenance bonds, and required certificates of insurance and endorsements.

15. RETURN OF BID SECURITY

Within 14 days after award of the contract, the AGENCY will, if requested, return the Bid securities accompanying such Bids that are not being considered in making the award. All other Bid securities will be held until the Agreement has been finally

executed. They will then be returned, if requested, to the respective bidders whose bids they accompany.

16. EXECUTION OF AGREEMENT

The Bidder to whom award is made shall execute a written Agreement with the AGENCY on the form of agreement provided, shall secure all insurance, and shall furnish all certificates and bonds required by the Contract Documents within five (5) working days after receipt of Notice of Award from the AGENCY. Failure or refusal to enter into an Agreement as herein provided or to conform to any of the stipulated requirements in connection therewith shall be just cause for annulment of the award and forfeiture of the Bid security. If the lowest responsive, responsible Bidder refuses or fails to execute the Agreement, the AGENCY may award the Contract to the second lowest responsive, responsible Bidder. If the second lowest responsive, responsible Bidder refuses or fails to execute the Agreement, the OWNER may award the contract to the third lowest responsive, responsible Bidder. On the failure or refusal of such second or third lowest Bidder to execute the Agreement, each such Bidder's Bid securities shall be likewise forfeited to the AGENCY.

17. LIQUIDATED DAMAGES

Provisions for liquidated damages are set forth in the Construction Agreement.

18. WORKERS' COMPENSATION REQUIREMENT

The Bidder should be aware that in accordance with Section 3700 of the California Labor Code it will, if awarded the Contract, be required to secure the payment of compensation to its employees and execute the Workers' Compensation Certification in the form contained in these Contract Documents.

19. NON-COLLUSION AFFIDAVIT

Bidders must execute the following affidavit and submit the same with his/her bid: see

20. MATERIALS SUPPLIERS LIST

Bidders and their subcontractors must complete the List of Materials Suppliers and Material Guarantee form provided with the Bid Forms and must submit the completed form with the Bid.

21. BUY AMERICA REQUIREMENT

THIS PROJECT IS SUBJECT TO THE "BUY AMERICA" PROVISIONS OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 AS AMENDED BY THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991.

The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.

22. PREVAILING WAGE

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the County, or Counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm> Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

The Federal minimum wage rates for this project as predetermined by the United States Secretary of Labor are set forth in the Appendices to the Special Provisions that may be examined at the offices described above where project plans, Special Provisions, and proposal forms may be seen. Addenda to modify the Federal minimum wage rates, if necessary, will be issued to holders of bid packages. Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

The Department of Industrial Relations monitors compliance with prevailing wage requirements on public works projects. Accordingly,

- No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- All contractors and subcontractors must furnish electronic certified payroll records to the Labor Commissioner.
- The prime contractor will be required to post job site notices prescribed by regulation. (See 8 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU.)

Attention is directed to the Federal minimum wage rate requirements located on the Federal website. If there is a difference between the minimum wage rates predetermined by the United States Department of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the Contractor and subcontractors must pay not less than the higher wage rate. The Department will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors must pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

In accordance with Section 22300 of the Public Contracts Code, securities may be substituted for monies withheld to ensure performance under this contract.

END OF INSTRUCTION TO BIDDERS

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SECTION I - INTRODUCTION

The Napa Valley Transportation Authority (NVTA) is seeking bids from qualified contractors to add three (3) real-time electronic transportation information display (eTID) signs at the Imola Park and Ride (PNR) located at 954 Golden Gate Dr, Napa, CA 94558. This facility is owned by Caltrans, but operated and maintained by NVTA. The above work shall be completed in accordance with the attached Regional Transit Wayfinding Guidelines & Standards: Version 6.0- August 1, 2019 (herein referred to as the “STANDARDS”). Relevant plans for the Imola Park and Ride with the approximate location of three (3) eTIDs are included as Exhibit B.

The work described requires that the Contractor be licensed by the State of California as a C10 Electrical Contractor.

The DBE Goal for this contract is 0%. Pursuant to NVTA’s adopted policies and its overall established DBE Goal of 2.6%, NVTA encourages the proposers to utilize qualified DBE sub-contractors on its projects.

Addenda to this IFB, if issued, will be sent to all prospective bidders/contractors as part of the IFB process.

The Bidder's attention is directed to Appendix A, "Bid Requirements."

Submit (1) one hard copy or an electronic copy in PDF format via email to rkulick@nvta.ca.gov with the Contractor's bid. The hard copy shall be mailed or submitted to NVTA, 625 Burnell Street, Napa, CA 94559, prior to **2:00 PM (PST/local), February 27, 2024**. Bids shall be submitted in a sealed package or electronically as a PDF file format clearly marked "**IFB No. 24-R03 – E-TIDs & INSTALLATION**" and addressed as follows:

Kate Miller
Executive
Director
Napa Valley Transportation Authority
625 Burnell Street
Napa, CA 94559

IFB No. 24-R03

Bids received after the time and date specified above will not be accepted and will be returned to the Bidder.

Any bids received prior to the time and date specified above may be withdrawn or modified by written request of the Bidder, see Instruction to Bidders. To be considered, however, the modified **bid must be received prior to 2:00 PM (PST/local), February 27, 2024**.

Unsigned bids or bids signed by an individual not authorized to bind the prospective bidder will be considered non-responsive and rejected.

Non-commitment of Agency

This IFB does not commit the NVTA to award a contract, to pay any costs incurred in the preparation of a bid in response to this request or the negotiation of a contract, or to procure or contract for services. The NVTA reserves the right to accept or reject any or all proposals received or to waive any irregularity or informality in any proposal or in the IFB procedure, and to be the sole judge of the responsibility of any proposer and of the suitability of the services to be rendered. Further, NVTA reserves the right to negotiate with any qualified proposer, or to modify or cancel in part or in its entirety the IFB if it is in the best interests of the NVTA to do so. Furthermore, a contract award may not be made based solely on price.

The prospective bidder is advised that should this IFB result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the NVTA Board of Directors.

All products used or developed in the execution of any contract resulting from this IFB will remain in the public domain at the completion of the contract.

PROCUREMENT SCHEDULE

Issue Date	February 13, 2024
Pre-bid Conference (Virtual)	February 19, 2024, 1:00 PM (PST/local)
Deadline for Submitting Written Questions	February 20, 2024, 2:00 PM (PST/local)
Answers to Written Questions Posted	February 21, 2024
Final Addendum issued, if necessary	February 21, 2024
Deadline for Proposal Submittal	February 27, 2023, 2:00 PM (PST/local)
Award Contract	Week of February 26, 2024

Any questions related to this IFB shall be submitted in writing to Renee Kulick, via email at rkulick@nvta.ca.gov. Response to all questions submitted will be answered in accordance with the Procurement Schedule for this IFB. **Questions shall be submitted before 2:00 PM (PST/local) on February 20, 2024.**

No oral question or inquiry about this IFB shall be accepted.

Pre-bid Conference. A non-mandatory virtual pre-bid conference will be held via Zoom on February 19, 2024, at 1:00PM (PST/local). Attendance is strongly encouraged but not required to submit a bid. To attend the meeting, please log in to the following:

NVTA MAIN is inviting you to a scheduled Zoom meeting.

Topic: IFB 24-R03 eTIDs - Imola PnR Pre-Proposal Meeting

Time: Feb 19, 2024 01:00 PM Pacific Time (US and Canada)

Join Zoom Meeting

<https://countyofnapa.zoom.us/j/81322830171?pwd=R1RvajUrWFQzb3l1dmwrZUtmcVFyUT09>

Meeting ID: 813 2283 0171

Passcode: 723185

One tap mobile

+16699006833,,81322830171# US (San Jose)

+16694449171,,81322830171# US

Dial by your location

- +1 669 900 6833 US (San Jose)*
- +1 669 444 9171 US*
- +1 253 215 8782 US (Tacoma)*
- +1 346 248 7799 US (Houston)*
- +1 719 359 4580 US*
- +1 253 205 0468 US*
- +1 301 715 8592 US (Washington DC)*
- +1 305 224 1968 US*
- +1 309 205 3325 US*
- +1 312 626 6799 US (Chicago)*
- +1 360 209 5623 US*
- +1 386 347 5053 US*
- +1 507 473 4847 US*
- +1 564 217 2000 US*
- +1 646 931 3860 US*
- +1 689 278 1000 US*
- +1 929 436 2866 US (New York)*

Meeting ID: 813 2283 0171

Find your local number: <https://countyofnapa.zoom.us/j/81322830171>

SECTION II - PROJECT DESCRIPTION AND BACKGROUND

The Napa Valley Transportation Authority (NVTA) is seeking bids from qualified contractors to add three (3) real-time electronic transportation information display (eTIDs) signs at the Imola Park and Ride (PNR) located at 954 Golden Gate Dr, Napa, CA 94558. This facility is owned by Caltrans, but operated and maintained by NVTA. The above work shall be completed in accordance with the attached Regional Transit Wayfinding Guidelines & Standards: Version 6.0- August 1, 2019 (herein referred to as the "STANDARDS") – see Exhibit A. Relevant plans for the Imola Park and Ride with the approximate location of three (3) eTIDs are included as Exhibit B

SECTION III - SCOPE OF WORK

The Contractor shall provide and perform the following:
Contractor shall perform the following scope:

Task 1. Site Visit and Site-and-Path Survey

Contractor shall visit the site with NVTA staff to determine final E-TID placement at three locations identified in Exhibit B.

Task 2. Draft Construction Documents for eTIDs

Contractor shall use the information developed in Task 1 to create Draft Construction Documents. The Construction Documents shall include the following sign types:

- One (1) Free-standing outdoor eTIDs placed in the Imola PNR parking lot. Per the STANDARDS-all recommended equipment replacement must have security features to protect against vandalism and theft and must include climate control system. These units will need to be solar powered.
- Two (2) outdoor eTIDs, one mounted to the northbound shelter and a second mounted to the southbound shelter. These units will need to be solar powered. The shelters are already installed and are 17 ft Tolar AD Bus Stop Shelters (See Exhibit C)

Contractor shall prepare a Draft Construction Documents for NVTA and Metropolitan Transportation Commission review Contractor shall revise information for the draft eTID Construction Documents based on review and feedback from NVTA and MTC.

Task 3. Final Construction Documents for eTIDS, Installation and Testing

Contractor shall develop the Final Construction Documents in response to NVTA and MTC review of Task 2. Review shall ensure consistency with PROJECT requirements as generally described in the Regional Transit Wayfinding Guidelines & Standards and more specifically defined by the STANDARDS, as well as review engineering requirements and sign location/message. The contractor will then fabricate the ETIDs and complete the installation. Finally, the contractor will confirm that the real-time information is properly and consistently displayed.

Exhibits

- A. Regional Transit Wayfinding Guidelines & Standards: Version 6.0- August 1, 2019
- B. Imola PnR eTID Plans
- C. Tolar Manufacturing Company 17' AD Bus Stop Shelters
- D. Technical and System Specifications

SECTION IV - AWARD

Award of the contract, if awarded, will be made to the lowest responsive, responsible Bidder who's Bid complies with the requirements of the Contract Documents. Unless otherwise specified, any such award will be made within the period stated in the Notice Inviting Bids that the bids are to remain open. Unless otherwise indicated, a single award will be made for all the Bid items in an individual Bid Schedule. In the event the WORK is contained in more than one Bid Schedule, the AGENCY may award Schedules individually or in combination. In the case of two Bid Schedules which are alternative to each other, only one of such alternative schedules will be awarded. The AGENCY may condition the award upon the Bidder's timely submission of all items required by the Contract Documents, including, but not limited to the executed Agreement, performance, labor and materials, and maintenance bonds, and required certificates of insurance and endorsements.

The AGENCY reserves the right to award, to the lowest responsive, responsible bidder, that will allow the most work to be completed within the AGENCY's budget.

SECTION V - NON-DISCRIMINATION

Proposers shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, religious creed, color, national origin, ancestry, denial of family and medical care leave, medical condition (cancer/genetic characteristics) physical handicap, disability (mental or physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation, marital status, age (40 and above), in the performance of NVTA contracts. Proposers and any subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

Proposers shall include the non-discrimination and compliance provisions of the above clause in all subcontracts to perform work under this contract.

SECTION VI - LEVINE ACT

Proposers will be required to disclose on the record any contribution of more than \$250 which they have made to an NVTA Board Member within the twelve-month period preceding the submittal deadline of this RFP, and within the twelve-month period preceding any subsequent procurement based on this RFP. This applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation, which is part of your team. If you have made a contribution which needs to be disclosed you must provide written notice of the date, amount and receipt of the contribution(s) to NVTA Executive Director. This information will need to be provided before the NVTA can approve any contract.

SECTION VII - DISADVANTAGED BUSINESS ENTERPRISE (DBE)

NVTA has adopted a Disadvantage Business Enterprise (DBE) Policy, pursuant to which the NVTA encourages all prime proposers to utilize qualified DBE subcontractors on NVTA Projects. NVTA promotes the direct purchase of goods from qualified DBEs by utilizing DBE vendors when such vendors are available and the price of the goods sought is reasonable, and, for professional services contracts, NVTA seeks the utilization of qualified DBEs when such DBEs are available. All prime proposers are required to report on DBE usage during the term of each contract.

For purposes of NVTA's DBE Policy, a DBE shall be a "Disadvantage Business" within the meaning of 13 CFR Part 121 and California Government Code Section 14837. In the event that the NVTA's DBE Policy conflicts with any Federal, State or other funding source's programs, policies, regulations or requirements, NVTA shall make the DBE Policy consistent with said funding source's programs, policies, regulations and requirements to the extent permissible by law. NVTA's DBE Policy is neutral as to race, ethnicity, national origin, age, sex, religion, sexual orientation and other protected classes. The DBE goal for this contract is 0%.

**SECTION VIII - INDEMNIFICATION, INSURANCE, AND BONDING
REQUIREMENTS**

Insurance and bonding requirements for this Project are set forth in the attached "Construction Agreement".

ATTACHMENT 1

BID SCHEDULE

ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL COST
1	Electronic Transit Information Displays (eTIDs) equipment and installation as described in the project specifications	1	LS		
PROJECT TOTAL LUMP SUM					

*Note: In case of error in extension of price into the total price column, the unit price will govern.

Total Amount of Bid (written in words) is: _____

_____ Dollars and

_____ Cents.

In the event of discrepancy between words and figures, the words shall prevail.

\$ _____

Figures

Address of Bidder

Signature of Bidder

City

Name of Bidder (Print)

Telephone Number of Bidder

Fax Number of Bidder

Contractor's License Number

License's Expiration Date

Addendum Acknowledgement

Addendum No. 1
Signature Acknowledging Receipt: _____ Date: _____

Addendum No. 2
Signature Acknowledging Receipt: _____ Date: _____

ATTACHMENT 2

REQUIRED SUBMITTAL FORMS

FORMS		REQUIRED FOR PRIME CONTRACTOR
Bid proposal Certificate		✓
List of Sub-Contractor /Material Suppliers		✓
Non-Collusion Disclosure		✓
Levine Act Disclosure		✓
Equal Employment Opportunity Certificate		✓
Debarment and Suspension Certification		✓
Financial Assurance		✓
Cost Proposal- Attachment 1		✓
Bid Bond		✓
Payment Bond		✓
Performance bond		✓
Maintenance Bond		✓

ATTACHMENT 3



GENERAL CONDITIONS

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NVTA GENERAL CONDITIONS

1 GENERAL CONDITIONS

1-1 DEFINITIONS

Whenever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated in this Section 1-1 which meanings are applicable to both the singular and plural thereof. If a word which is entirely in upper case in these definitions is found in lower case in the Contract Documents, then the lower case word will have its ordinary meaning.

Addenda - Written or graphic instruments issued prior to the opening of Bids which make additions, deletions, or revisions to the Contract Documents.

Agreement - The written contract between the AGENCY and the CONTRACTOR covering the WORK to be performed; other documents are attached to the Agreement and made a part thereof as provided therein.

Application for Payment - The form accepted by the ENGINEER which is to be used by the CONTRACTOR to request progress payments or final payment and which is to be accompanied by such supporting documentations as is required by the Contract Documents.

Asbestos - Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

Bid - The offer or proposal of the bidder submitted on the prescribed form setting forth the price or prices for the WORK.

Bonds - Bid, Performance, and Labor and Materials, and Maintenance Bonds and other instruments of security.

Change Order - A document recommended by the ENGINEER, which is signed by the CONTRACTOR and the AGENCY, and authorizes an addition, deletion, or revision in the WORK, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

AGENCY or alternatively NVTA— Napa Valley Transportation Authority.

Clarification - A document issued by the ENGINEER to the CONTRACTOR that clarifies the requirements(s) and/or design intent of the Contract Documents, which may not represent an addition, deletion, or revision in the WORK or an adjustment in the Contract Price or the Contract Times.

Contract Documents - The Notice Inviting Bids, Instructions to Bidders, Bid Forms (including the Bid, Bid Schedule(s), Information Required of Bidder, Bid Bond, and all required certificates, affidavits and other documentation), Agreement, Performance Bond, Labor and Materials Bond, Maintenance Bond, General Conditions, any Supplementary General Conditions, Special Provisions, Specifications, Drawings, all Addenda, and Change Orders executed pursuant to the provisions of the Contract Documents. Shop Drawings are not Contract Documents.

Contract Price - The total monies payable by the AGENCY to the CONTRACTOR under the terms and conditions of the Contract Documents.

Contract Times - The number or numbers of successive calendar days or dates stated in the Contract Documents for the completion of the WORK.

CONTRACTOR - The individual, partnership, corporation, joint-venture, or other legal entity with whom the AGENCY has executed the Agreement.

Day - A calendar day of 24 hours measured from midnight to the next midnight.

Defective Work - Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or work that has been damaged prior to the ENGINEER's recommendation of final payment.

Drawings - The drawings, plans, maps, profiles, diagrams, and other graphic representations which indicate the character, location, nature, extent, and scope of the WORK and which have been prepared by the ENGINEER and are included and/or referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.

Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

ENGINEER - The NVTA EXECUTIVE DIRECTOR or his/her designee.

Field Order - A written order issued by the ENGINEER which may or may not involve a change in the WORK.

Hazardous Waste - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 U.S.C. Section 6906) as amended from time to time.

Laws and Regulations; Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes, and/or orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Lien or Mechanic's Lien - A form of security, an interest in real property, which is held to secure the payment of an obligation. When related to public works construction, Lien or Mechanic's Lien may be called Stop Notice.

Milestone - A principal event specified in the Contract Documents relating to an intermediate completion date of a separately identifiable part of the WORK or a period of time within which the separately identifiable part of the WORK should be performed prior to completion of all the WORK.

Notice of Award - The written notice by the AGENCY to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein within the time specified, the AGENCY will enter into an Agreement.

Notice of Completion - A form signed by the ENGINEER and the CONTRACTOR recommending to the AGENCY that the WORK is Complete and fixing the date of completion. After acceptance of the WORK by the NVTA Board, the form is signed by the AGENCY and filed with the County Recorder. This filing starts the 30 day lien filing period on the WORK.

Notice to Proceed - The written notice issued by the AGENCY to the CONTRACTOR authorizing the CONTRACTOR to proceed with the WORK for the purpose for which it is intended prior to completion of all the WORK.

Partial Utilization - Use by the AGENCY of a completed part of the WORK for the purpose for which it is intended prior to completion of all the WORK.

Petroleum - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

Project - The total construction project of which the WORK to be provided under the Contract Documents may be the whole, or as part as indicated elsewhere in the Contract Documents.

Record Drawings - Drawings generated by marking a set of Drawings to reflect all of the changes that have occurred during construction of the Project.

Resident Project Representative - The authorized representative of the ENGINEER who is assigned to the Site or any part thereof.

Samples - Physical examples of materials, equipment, or workmanship that are representative of some portion of the WORK and which establish the standards by which such portion of the WORK will be judged.

Shop Drawings - All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for the CONTRACTOR and submitted by the CONTRACTOR to illustrate some portion of WORK.

Site - Lands or other areas designated in the Contract Documents as being furnished by the AGENCY for the performance of the construction, storage, or access.

Special Provisions - Specific clauses setting forth conditions or requirements peculiar to the work and supplementary to the Standard Specifications.

Specifications - The directions, provisions and requirements set forth in the Standard Specifications, Standard Plans, Technical Specifications as supplemental and modified by the special provisions.

Stop Notice - A legal remedy for subcontractors and suppliers who contribute to public works, but who are not paid for their work, which secures payment from construction funds possessed by the AGENCY. In some states, for public property, the Stop Notice remedy is designed to substitute for a mechanic's lien.

Subcontractor - An individual, partnership, corporation, joint-venture, or other legal entity having a direct contract with the CONTRACTOR or with any other subcontractor for the performance of a part of the WORK at the Site.

Supplementary General Conditions - The part of the Contract Documents which make additions, deletions, or revisions to these General Conditions.

Supplier - A manufacturer, fabricator, distributor, materialman, or vendor having a direct contract with the CONTRACTOR or with any Subcontractor to furnish materials, equipment, or product to be incorporated in the WORK by the CONTRACTOR or any Subcontractor.

Utilities - All pipelines, conduits, ducts, cables, wires, tracks, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which have been installed underground or above the ground to furnish any of the following services or materials; water, sewage, sludge, drainage, fluids, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, traffic control, or other control systems.

WORK - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. WORK is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

Working day - Any day except Saturdays, Sundays and AGENCY holidays.

You/Your - Refers to the CONTRACTOR

1-2 PRELIMINARY MATTERS

1-2.01 DELIVERY OF BONDS AND INSURANCE CERTIFICATES

When the CONTRACTOR delivers the signed Agreement to the AGENCY, the CONTRACTOR shall also deliver to the AGENCY such Bonds and insurance policies and certificates as the CONTRACTOR may be required to furnish in accordance with the Contract Documents.

1-2.02 COPIES OF DOCUMENTS

The AGENCY will furnish to the CONTRACTOR the required number of copies of the Contract Documents specified in the Supplementary General Conditions.

1-2.03 COMMENCEMENT OF CONTRACT TIMES; NOTICE TO PROCEED

The Contract Times will start to run on the commencement date stated in the Notice to Proceed.

1-2.04 STARTING THE WORK

A. The CONTRACTOR shall begin to perform the WORK on the commencement date stated in the Notice to Proceed, but no work shall be done at the Site prior to said commencement date.

B. Before undertaking each part of the WORK, the CONTRACTOR shall review the Contract Documents in accordance with Section 1-3.03.

1-2.05 PRECONSTRUCTION CONFERENCE

A. The CONTRACTOR is required to attend a preconstruction conference. This conference will be attended by the AGENCY, ENGINEER, and others as appropriate in order to discuss the WORK.

B. The CONTRACTOR's initial schedule submittals for shop drawings, obtaining permits, and Plan of Operation and CPM Schedule will be reviewed and finalized. At a minimum, the CONTRACTOR's representatives shall include its project manager, project superintendent and schedule expert. If the submittals are not finalized at the end of the meeting, additional meetings will be held so that the submittals can be finalized prior to the submittal of the first Application for Payment. No Application for Payment will be processed prior to receiving acceptable initial submittals from the CONTRACTOR.

1-3 INTENT AND USE OF CONTRACT DOCUMENTS

1-3.01 INTENT

A. The Contract Documents comprise the entire agreement between the AGENCY and the CONTRACTOR concerning the WORK. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the State of California.

B. It is the intent of the Contract Documents to describe the WORK, functionally complete, to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not called for specifically.

C. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe work, materials, or equipment such words or phrases shall be interpreted in accordance with that meaning unless a definition has been provided in Section 1-1 of the General Conditions.

1-3.02 REFERENCE TO STANDARDS

Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code shall be effective to change the duties and responsibilities of the AGENCY or the CONTRACTOR or any of their consultants, agents or employees, from those set forth in the CONTRACT Documents, nor shall it be effective to assign to AGENCY any duty or authority to direct the performance of the WORK or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

1-3.03 REVIEW OF CONTRACT DOCUMENTS

If, during the performance of the WORK, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the WORK or of any such standard, specification, manual, or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once, and CONTRACTOR shall not proceed with the work affected thereby (except in an emergency as authorized by Section 1-6.13 until a Clarification, Field Order, or Change Order to the Contract Documents has been issued.

1-3.04 ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS

A. Unless otherwise noted herein, conflicts or inconsistencies between parts of the Contract will be resolved by the ENGINEER with a Change Order or an Addendum, if required. Addenda and Change Orders bearing the most recent date shall prevail over Addenda or Change Orders bearing earlier dates. Any reference to addenda-changed specifications or drawings shall be considered to have been changed accordingly. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

- a. Change Orders/Addenda (most recent in time take precedence)
 - b. Agreement and Bond Forms
 - c. Referenced Standard Specifications
 - d. Special Provisions
 - e. Drawings
 - f. General Conditions
 - g. Federal clauses as referred or attached
 - h. Instructions to Bidders
 - i. Contractor's Bid (Bid Form)
 - j. Notice Inviting Bids
 - k. Supplementary General Conditions (if any)
 - l. Permits from other agencies as may be required by law
- B. With reference to the Drawings the order of precedence is as follows:
- a. Figures govern over scaled dimensions
 - b. Detail drawings govern over general drawings
 - c. Addenda/Change Order drawings govern over any other drawings
 - d. Drawings govern over standard drawings

1-3.05 AMENDING CONTRACT DOCUMENTS

The Contract Documents may be amended to provide for additions, deletions, and revisions in the WORK or to modify the terms and conditions thereof by a Change Order (pursuant to Section 1-10).

1-3.06 REUSE OF DOCUMENTS

Neither the CONTRACTOR, nor any Subcontractor or Supplier, nor any other person or organization performing any of the WORK under a contract with the AGENCY shall have or acquire any title to or ownership rights in any of the Drawings, Technical Specifications, or other documents used on the WORK, and they shall not reuse any of them on the extensions of the Project or any other project without written consent of AGENCY.

1-4 SITE OF THE WORK

1-4.01 AVAILABILITY OF LANDS

The AGENCY will furnish, as indicated in the Contract Documents, the lands upon which the WORK is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the AGENCY, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the CONTRACTOR exclusive occupancy of the lands or rights-of-way provided. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment; provided, that the CONTRACTOR shall not enter upon nor use any property not under the control of the AGENCY until a written temporary construction easement agreement has been executed by the CONTRACTOR and the property owner, and a copy of said easement furnished to the ENGINEER prior to said use; and the AGENCY will not be liable for any claims or damages resulting from the CONTRACTOR's trespass on or use of any such properties. The CONTRACTOR shall provide the AGENCY with a signed release from the property owner confirming that the lands have been satisfactorily restored upon completion of the WORK.

1-4.02 REPORTS OF PHYSICAL CONDITIONS

A. **Subsurface Explorations:** Reference is made to any Supplementary General Conditions for identification of those reports of explorations and tests of subsurface conditions at the Site that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. **Existing Structures:** Reference is made to any Supplementary General Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except underground Utilities referred to in Section 1-4.03 herein) which are at or contiguous to the Site that have been utilized in the preparation of the Contract Documents.

C. The AGENCY makes no representation as to the completeness of the reports or drawings referred to in Section 1-4.02 A or B above or the accuracy of any data or information contained therein. The CONTRACTOR may rely upon the accuracy of the technical data contained in such reports and drawings. However, the CONTRACTOR may not rely upon any interpretation of such technical data, including any interpolation or extrapolation thereof, or any non-technical data, interpretations, and opinions contained therein.

1-4.03 PHYSICAL CONDITIONS - UNDERGROUND UTILITIES

A. **Indicated:** The information and data indicated in the Contract Documents with respect to existing underground Utilities at or contiguous to the Site are based on information and data furnished to the AGENCY or the ENGINEER by the owners of such underground Utilities or by others. Unless it is expressly provided in any Supplementary General Conditions the AGENCY will not be responsible for the accuracy or completeness of any such information or data, and the CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all underground Utilities indicated in the Contract Documents, for coordination of the WORK with the owners of such underground Utilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the WORK, the cost of all of which are deemed to have been included in the Contract Price.

B. **Not Indicated:** If an underground Utility is uncovered or revealed at or contiguous to the Site which was not indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of, the CONTRACTOR shall identify the owner of such underground Utility and give written notice thereof to that owner and shall notify the ENGINEER.

1-4.04 DIFFERING SITE CONDITIONS

A. The CONTRACTOR shall notify the ENGINEER, in writing, of the following unforeseen conditions, hereinafter called differing Site conditions, promptly upon their discovery (but in no event later than 14 days after their discovery) and before they are disturbed:

a. Subsurface or latent physical conditions at the Site of the WORK differing materially from those indicated, described, or delineated in the Contract Documents, including those reports discussed in Sections 1-4.02, 4.03, and 4.05.

B. The ENGINEER will review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto.

C. If the ENGINEER concludes that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Section 1-10 to reflect and document the consequences of the difference.

D. In each such case, an increase or decrease in the Contract Price or an extension or shortening the Contract Times, or any combination thereof, will be allowable to the extent that they are attributable to any such difference. If the ENGINEER and the CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Sections 1-11 and 1-12.

E. The CONTRACTOR's failure to give notice of differing Site conditions within 14 days of their discovery and before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

1-4.05 HAZARDOUS MATERIALS

A. AGENCY shall be responsible for any Asbestos, Hazardous Waste, Petroleum, or Radioactive Material uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the WORK and which may present a substantial danger to persons or property exposed thereto in connection with the WORK at the Site. AGENCY will not be responsible for any such material brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

a. Upon discovery of any Asbestos, Hazardous Waste, Petroleum, or Radioactive Material, the CONTRACTOR shall immediately stop all work in any area affected thereby (except in an emergency as required by Section 1-6.13) and notify ENGINEER (and therefore confirm such notice in writing). CONTRACTOR shall not be required to resume any work in any such affected area until after AGENCY has obtained any required permits related thereto and delivered to CONTRACTOR special written notice. Such written notice will specify that such condition and any affected area is or has been rendered safe for the resumption of the work or specify any special conditions under which the work may be resumed safely. If ENGINEER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of adjustment, if any, in Contract Price or Contract Times as a result of such work stoppage or such special conditions under which work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Sections 1-11 and 1-12.

b. If, after receipt of such special written notice, CONTRACTOR does not agree to resume such WORK based on a reasonable belief it is unsafe, or does not agree to resume such WORK under special conditions, ENGINEER may order such portion of the WORK that is in connection with such hazardous condition or in such affected area to be deleted from the WORK. If ENGINEER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the WORK then either party may make a claim therefor as provided in Sections 1-11 and 1-12. AGENCY may have such deleted portion of the WORK performed by AGENCY's own forces or others in accordance with Section 1-7.

B. The provisions of Sections 1-4.02, 1-4.03, and 1-4.04 are not intended to apply to Asbestos, Petroleum, Hazardous Waste, or Radioactive Material uncovered or revealed at the Site.

1-4.06 REFERENCE POINTS

- A. The ENGINEER will provide the location and elevation of one bench mark, near or on the Site of the WORK, for use by the CONTRACTOR for alignment and elevation control. Unless otherwise specified in any Supplementary General Conditions, the CONTRACTOR shall furnish all other lines, grades, and bench marks required for proper execution of the WORK.
- B. The CONTRACTOR shall preserve or replace any and all bench marks, section corners, witness corners, stakes, and other survey marks, and in case of their removal or destruction by any party, the CONTRACTOR shall be responsible for the accurate replacement of such reference points by surveyor licensed under the applicable state codes governing land surveyors.

1-5 BONDS AND INSURANCE

1-5.01 BONDS

- A. The CONTRACTOR shall furnish Performance and Labor and Materials Bonds, each in the amount of one hundred percent (100%) of the contract price, as security for the faithful performance and payment of all the CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date of completion, except as otherwise provided by Law or Regulation or by the Contract Documents. The CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary General Conditions.
- B. The CONTRACTOR shall guarantee the WORK to be free of defects in material and workmanship for a period of one (1) year following the AGENCY's acceptance of the WORK. The CONTRACTOR shall agree to make, at the CONTRACTOR's own expense, any repairs or replacements made necessary by defects in material or workmanship which become evident within the one-year guarantee period. The CONTRACTOR's guarantee against defects required by this provision shall be secured by a Maintenance Bond, in the amount of ten percent (10%) of the contract price, which shall be delivered by the CONTRACTOR to the AGENCY prior to acceptance of the WORK. The Maintenance Bond shall remain in force for one (1) year from the date of acceptance of the contracted WORK. The CONTRACTOR shall make all repairs and replacements within the time required during the guarantee period upon receipt of written order from the ENGINEER. If the CONTRACTOR fails to make the repairs and replacements within the required time, the AGENCY may do the work and the CONTRACTOR and the CONTRACTOR's surety for the Maintenance Bond shall be liable to the AGENCY for the cost. The expiration of the Maintenance Bond during the one-year guarantee period does not operate to waive or void the one-year guarantee, as set forth herein and in Section 6.16 of these General Conditions.
- C. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- D. If the surety on any Bond furnished by the CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the WORK is located, the CONTRACTOR shall within 7 days thereafter substitute another Bond and surety, which must be acceptable to the AGENCY.
- E. All Bonds required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety companies that are duly licensed or authorized in the State of California to issue Bonds for the limits so required. Such surety companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary General Conditions.

1-5.02 INSURANCE

1-5.02A General

CONTACTOR and any subcontractor shall not commence work under this Agreement until CONTACTOR shall have obtained all insurance required under this paragraph and such insurance shall have been approved by the AGENCY Attorney as to form and carrier and the AGENCY Executive Director as to sufficiency, nor shall CONTACTOR allow any contractor or subcontractor to commence work on this contract or subcontract until all similar insurance required of the contractor and/or subcontractor shall have been so obtained and approved. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

CONTRACTOR shall procure and maintain for the duration of the contract all necessary insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, the Contractor's agents, representatives, employees or subcontractors.

1-5.02B Minimum Scope of Insurance

- A. Coverage shall be at least as broad as:
- B. Insurance Services Office Commercial General Liability coverage.
- C. Insurance Services Office form number CA covering Automobile Liability, code 1 (any auto).
- D. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- E. [Optional] Such other insurance coverages and limits as may be required by the AGENCY as follows:_____.

1-5.02C Minimum Limits of Insurance

- A. CONTRACTOR shall maintain limits no less than:
- B. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- C. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- D. Employer's Liability: Bodily Injury by Accident - \$1,000,000 each accident
 - a. Bodily Injury by Disease - \$1,000,000 policy limit
 - b. Bodily Injury by Disease - \$1,000,000 each employee

1-5.02D Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the AGENCY. At the option of the AGENCY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the AGENCY, its officers, officials, employees, and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

1-5.02E Other Insurance Provisions

The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

- A. The AGENCY, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf 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 the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the AGENCY, its officers, officials, employees, agents or volunteers.

- B. For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the AGENCY, its officers, officials, employees, agents and volunteers. Any insurance or self- insurance maintained by the AGENCY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
- C. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the AGENCY, its officers, officials, employees, agents 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. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the AGENCY.

1-5.02F Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

1-5.02G Verification of Coverage

CONTRACTOR shall furnish the AGENCY with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the AGENCY. All endorsements are to be received and approved by the AGENCY before work commences. As an alternative to the AGENCY's forms, the CONTRACTOR's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

1-6 CONTRACTOR'S RESPONSIBILITIES

1-6.01 COMMUNICATIONS

Written communications with the AGENCY shall be only through or as directed by the ENGINEER.

1-6.02 SUPERVISION AND SUPERINTENDENCE

- A. The CONTRACTOR shall supervise, inspect, and direct the WORK competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the WORK in accordance with the Contract Documents. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction and all safety precautions and programs incidental thereto. The CONTRACTOR shall be responsible to see that the completed WORK complies accurately with the Contract Documents.
- B. The CONTRACTOR shall designate in writing and keep on the Site at all times during the performance of the WORK a technically qualified, English-speaking superintendent, who is an employee of the CONTRACTOR and who shall not be replaced without written notice to the ENGINEER. The superintendent will be the CONTRACTOR's representative at the Site and shall have authority to act on behalf of the CONTRACTOR. All communications given to the superintendent shall be as binding as if given to the CONTRACTOR.
- C. The CONTRACTOR's superintendent shall be present at the Site at all times while work is in progress and shall be available by phone for emergencies 24 hours per day, 7 days per week. Failure to observe this requirement shall be considered suspension of the WORK by the CONTRACTOR until such time as such superintendent is again present at the Site.

1-6.03 LABOR, MATERIALS, AND EQUIPMENT

- A. The CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the WORK and perform construction as required by the Contract Documents. The CONTRACTOR shall furnish, erect, maintain, and remove the construction plant and any required temporary works. The CONTRACTOR shall at all times maintain good discipline and order at the Site. Except in connection with the safety or protection of persons or the WORK or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all work at the Site shall be performed during regular working hours, and the CONTRACTOR will not permit overtime work or the performance of work on Saturday, Sunday, or any federally observed holiday without the AGENCY's written consent. The CONTRACTOR shall apply for this consent through the ENGINEER in writing a minimum of 24 hours in advance.
- B. Except as otherwise provided in this Section, the CONTRACTOR shall receive no additional compensation for overtime work, i.e., work in excess of 8 hours in any one calendar day or hours in any one calendar week, even though such overtime work may be required under emergency conditions and may be ordered by the ENGINEER in writing. Additional compensation will be paid to the CONTRACTOR for overtime work only in the event extra work is ordered by the ENGINEER and the Change Order specifically authorizes the use of overtime work and then only to such extent as overtime wages are regularly being paid by the CONTRACTOR for overtime work of a similar nature in the same locality.
- C. All increased costs of inspection and testing performed during overtime work by the CONTRACTOR which is allowed solely for the convenience of the CONTRACTOR shall be borne by the CONTRACTOR. The AGENCY has the authority to deduct the cost of all such inspection and testing from any partial payments otherwise due to the CONTRACTOR.
- D. Unless otherwise specified in the Contract Documents, the CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, lubricants, power, light, heat, telephone, water, sanitary facilities, and all other facilities, consumables, and incidentals necessary for the furnishing, performance, testing, start-up, and completion of the WORK.
- E. All materials and equipment incorporated into the WORK shall be of specified quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of the AGENCY. If required by the ENGINEER, the CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provisions of any such instructions will be effective to assign to the AGENCY or any of its consultants, agents, or employees, any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 1-9.09 C.
- F. The work, unless otherwise permitted or approved by the ENGINEER, shall be completed with the incorporated use of equipment, materials, and/or products where such are specified. Substitutions and equal alternatives will be permitted as provided in this section; however, neither the request for substitution nor the offer of alternatives shall in any way by their submittal obligate the AGENCY to assent to any request or offer. Failure of the CONTRACTOR awarded the work to either submit requests for substitutions or to offer alternatives within the required times provided in this General Condition will be considered as evidence that the work shall be accomplished with trade-named equipment, materials, and/or products as identified in the Specifications and/or the Drawings.
- G. Unless otherwise provided elsewhere in the Contract, all equipment, materials, and/or products incorporated into the work shall be new and, where not specified, shall be of the highest quality of the respective kinds for the intended use, and all workmanship shall meet or exceed applicable construction industry standards and practices. If equipment, materials, and/or products are designated by listing named manufacturers of particular equipment, materials, and/or products

followed by the words "or equal," then the CONTRACTOR may furnish the named equipment, materials, and/or products or any equal equipment, materials, and/or products. The first-named manufacturer of particular equipment, materials, and/or products is the basis for the design shown on the Project Drawings. A subsequently named manufacturer or particular equipment, materials, and/or products has been determined to be an acceptable substitution but may require modifications in the Project's design and its ultimate construction to accommodate its use. If such subsequently named items are selected by the CONTRACTOR for incorporation into the work, the CONTRACTOR shall assume all costs required for modifications to the equipment, materials, and/or products, and Project design and construction as may be required for said items' use. Substitutions for an unnamed "equal" item of material shall be permitted upon compliance of the procedures set forth in Paragraph I of this section. If a CONTRACTOR makes use of an unnamed "equal" product as a substitute for a specifically named material or product, the CONTRACTOR shall assume all costs required to make the necessary revisions or modifications to accommodate the use of said unnamed product.

- H. Before beginning the work and within thirty-five (35) calendar days after award of the Contract, the CONTRACTOR shall submit a List of Materials to the ENGINEER for review. The List shall include all items of equipment, materials, and/or products to be incorporated into the work and the names of suppliers with whom purchase orders have been placed. The names on the List shall be arranged in the same order as in the specifications, and shall contain sufficient data to identify precisely the items of equipment, materials, and/or products the CONTRACTOR proposes to furnish. The List shall include Specifications or Drawing references. Once the submission is determined to be acceptable to the ENGINEER, it shall be returned to the CONTRACTOR.
- I. Substitution for those equipment, materials, and/or products specified shall only be permitted when the proposed unnamed "equal" product or material to be furnished is both equal in quality and utility and after the CONTRACTOR has complied with the following provisions: (1) All substitutions shall be reviewed by the ENGINEER. (2) The ENGINEER must approve such substitution in writing prior to its incorporation into the work. (3) Unless otherwise authorized in writing by the AGENCY, the CONTRACTOR shall, within thirty-five (35) calendar days of award and prior to placing any purchase orders, but at least thirty (30) calendar days before it requires approval of any such alternative item, submit to the AGENCY sufficient data, drawings, samples, literature, or other detailed information as will demonstrate to the ENGINEER that the proposed substitute is equal in quality and utility to the equipment, materials and/or products specified.
 - a. Within thirty (30) calendar days following receipt of all requested information from the CONTRACTOR, the ENGINEER will determine whether the proposed alternative is equal in quality and utility and meets the requirements of the Contract and will inform the CONTRACTOR in writing of such determination. The burden of substantiating the quality and utility of alternatives shall be upon the CONTRACTOR, and the CONTRACTOR shall furnish all necessary information requested and required by the ENGINEER. The ENGINEER will be the sole judge as to the quality and utility of alternative equipment, materials, and/or products, and the ENGINEER's decision shall be final. An acceptance by the ENGINEER of a substitution shall not relieve the CONTRACTOR from complying with the requirements of the Drawings and Specifications. Acceptance by the ENGINEER shall not relieve the CONTRACTOR from full responsibility for the efficiency, sufficiency, and quality and performance of the substitute equipment, materials, and/or products, in the same manner and degree as the equipment, materials, and/or products specified by name.
 - b. Failure of the CONTRACTOR to submit proposed substitutions for review in the manner described above and within the time prescribed shall be sufficient cause for rejection by the AGENCY of any other proposed substitutions.
 - c. In determining whether a proposed product is equal in quality and utility, the ENGINEER is not restricted to such basic issues as performance and durability, but may consider any other issues that the ENGINEER, in the discretion of the ENGINEER, deems appropriate. Said issues may, but are not required to include, nor are they limited to, such additional factors as comparable performance, reliability, efficiency of operation, ease of operation, adaptability, ease of maintenance, capital costs, life-cycle costs, operational

characteristics, costs of training personnel, maintenance history, warranties, problems created by the resulting overall warranty system, availability of qualified service, availability of parts, the history of any supplier and compatibility with existing facilities.

- d. No one factor or group of factors, including such issues as savings on capital costs, shall be determinative of whether the proposed product or material is equal in quality and utility. The decision of the ENGINEER shall be based on those factors deemed by the ENGINEER to be relevant and any data, drawings, samples, literature, or other detailed information furnished by the CONTRACTOR with respect to the proposed substitution. Each decision as to whether a product or material is equal in quality and utility shall be made by the ENGINEER on a case-by-case basis.
- e. The CONTRACTOR shall be responsible for any and all costs, including consultant costs, incurred by the AGENCY with respect to the proposed substitution that exceed the costs inherent in the normal and reasonable review of drawings and other standard data, information, and documents concerning any proposed substitution. The CONTRACTOR shall be responsible for this cost, regardless of whether or not the substitution is approved by the ENGINEER.
- J. Unless otherwise provided in the Contract, the title and interest in the right to the use of all water, and the title to all soil, stone, gravel, sand, minerals, timber, and all other materials developed or obtained within the Project limits from operations by the CONTRACTOR or any of its subcontractors, of any of their representatives or employees, and the right to use or dispose of the same are hereby expressly reserved in the AGENCY; and neither the CONTRACTOR nor any of its subcontractors, nor any of their representatives or employees, shall have any right, title, or interest in or to any part thereof.
- K. All material used under the Contract after it has been attached or affixed to the work or soil and after partial payment has been made therefore shall become the property of the AGENCY.
- L. In the event that any Indian relics or items possessing archaeological or historical value are discovered by the CONTRACTOR or any of its subcontractors or any of their representatives or employees, the CONTRACTOR shall immediately notify the ENGINEER and await the ENGINEER's decision before proceeding with any work. The CONTRACTOR shall have no property right in such relics and items.
- M. The CONTRACTOR shall be satisfied as to the quantity of acceptable materials or products which may be produced or obtained at local sources, and the AGENCY will not assume any responsibility as to the quantities or quality of acceptable materials or products available.
- N. The CONTRACTOR, with the permission of the ENGINEER, may use in the proposed construction such stone, gravel, sand, or other material suitable in the opinion of the ENGINEER as may be found in excavation.
- O. Existing equipment, materials, and/or products to be salvaged shall remain the property of the AGENCY. Salvage to be reinstalled in the work shall be refurbished as required before reinstallation. Other work to be salvaged shall be carefully removed and handled in such a manner as to avoid damage and shall be delivered to storage at a location designated by the ENGINEER.

1-6.04 SCHEDULE

The CONTRACTOR shall comply with the schedule requirements in the Special Provisions or as otherwise provided in the Contract Documents.

1-6.05 SUBSTITUTES OR "OR EQUAL" ITEMS

The CONTRACTOR shall submit proposed substitutes or "or equal" items in accordance with the Bidding Requirements. No request for substitution of an "or equal" item will be considered by the ENGINEER after award of the Contract, except as provided in Paragraph 1-6.03.I herein.

1-6.06 CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS

The CONTRACTOR shall be responsible to the AGENCY for the acts and omissions of its Subcontractors, Suppliers, and their employees to the same extent as CONTRACTOR is responsible for the acts and omissions of its own employees. Nothing contained in this Section shall create any contractual relationship between any Subcontractor and the AGENCY nor relieve the CONTRACTOR of any liability or obligation under the Contract Documents. The CONTRACTOR shall include these General Conditions and the Supplementary General Conditions as part of all its subcontract and supply agreements.

1-6.07 PERMITS

Unless otherwise provided in any Supplementary General Conditions, the CONTRACTOR shall obtain and pay for all constructions permits and licenses from the agencies having jurisdiction, including the furnishing of insurance and bonds if required by such agencies. The enforcement of such requirements shall not be made the basis for claims for additional compensation by CONTRACTOR. When necessary, the AGENCY will assist the CONTRACTOR, in obtaining such permits and licenses. The CONTRACTOR shall pay all charges of utility owners for inspection or connections to the WORK.

1-6.08 PATENT FEES AND ROYALTIES

The CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the WORK or the incorporation in the WORK of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the WORK and if to the actual knowledge of the ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed by the ENGINEER in the Contract Documents. The CONTRACTOR's indemnification obligation under this Section 1-6.08 A. for all claims and liabilities arising out of any infringement of patent rights or copyrights incident to the use in the performance of the WORK or resulting from the incorporation in the WORK of any invention, design, process, product or device not specified in the Contract Documents shall be in accordance with Section 1-6.17 of these General Conditions.

1-6.09 LAWS AND REGULATIONS

The CONTRACTOR shall observe and comply with all Laws and Regulations which in any manner affect those engaged or employed on the WORK, the materials used in the WORK, or the conduct of the WORK including, but not limited to, all applicable safety Laws and Regulations. If any discrepancy or inconsistency should be discovered between the Contract Documents and any such Laws or Regulations, the CONTRACTOR shall report the same in writing to the ENGINEER. Any particular Law or Regulation specified or referred to elsewhere in the Contract Documents shall not in any way limit the obligation of the CONTRACTOR to comply with all other provisions of federal, state, and local laws and regulations. The CONTRACTOR's indemnification obligations for all claims or liability arising from violation of any such law, ordinance, code, order, or regulation, whether by CONTRACTOR or by its employees, Subcontractors or Suppliers shall be in accordance with Section 1-6.16 of these General Conditions.

1-6.10 TAXES

The CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by the CONTRACTOR in accordance with the laws and regulations of the place of the Project which are applicable during the performance of the WORK.

1-6.11 USE OF PREMISES

The CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site, the land and areas identified in and permitted by the Contract Documents, and the other land and areas permitted by Laws and Regulations, rights-of-way, permits, and easements. The CONTRACTOR shall assume full liability and responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the WORK. Should any claim be made against the AGENCY by any such owner or occupant because of the performance of the WORK, the CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim through litigation at the CONTRACTOR's sole

liability expense. The CONTRACTOR's indemnification obligations for all claims and liability, arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any such owner or occupant against the AGENCY, its consultants, sub consultants, and the officers, directors, employees and agents of each and any of them to the extent caused by or based upon the CONTRACTOR's performance of the WORK shall be in accordance with Section 1-6.17 of these General Conditions.

1-6.12 SAFETY AND PROTECTION

- A. The CONTRACTOR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the WORK. The CONTRACTOR shall be responsible for the direction and control of the work assigned and for assuring that all workers on the project understand the hazards of the work involved and the safe work procedures required for each job. The CONTRACTOR shall assure that its subcontractors of all tiers shall, without expense to the AGENCY, comply with this safety responsibility. No work shall proceed until each worker and subcontractor understands the scope of the work and all safety rules and work procedures to be followed. The CONTRACTOR shall not allow a new employee or new subcontractor to begin work on AGENCY projects without a full and proper safety orientation. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage to prevent damage, injury or loss to:
 - a. All persons at the Site and other persons and organizations who may be affected thereby;
 - b. All the WORK and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - c. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of the performance of the WORK.
- B. The CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property or to the protection of persons or property from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and utilities when prosecution of the WORK may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. CONTRACTOR'S duties and responsibilities for safety and for protection of the WORK shall continue until such time as all the WORK is completed and ENGINEER has issued a notice to the CONTRACTOR in accordance with Paragraph 1-14.07 B. that the WORK is acceptable.
- C. The CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- D. Materials that contain hazardous substances or mixtures may be required on the WORK. A Material Safety Data Sheet shall be made available at the Site by the CONTRACTOR for every hazardous product used.
- E. Material usage shall strictly conform to OSHA safety requirements and all manufacturer's warnings and application instructions listed on the Material Safety Data Sheet and on the product container label.
- F. The CONTRACTOR shall be responsible for the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- G. The CONTRACTOR shall notify the ENGINEER if it considers a specified product or its intended use to be unsafe. This notification must be given to the ENGINEER prior to the product being ordered, or if provided by some other party, prior to the product being incorporated in the WORK.
- H. Before starting work, the CONTRACTOR shall submit a written safety program to the AGENCY. The objective of the safety program shall be accident prevention. Such program shall include, but not be limited to, the following:

- a. An organization chart and accompanying narrative which describes the responsibility for employee and public safety of those individuals who control each phase of operations and set forth in writing the policies and procedures to be followed by all personnel. The chart shall also show the CONTRACTOR's internal lines of communication (including subcontractors) for the program.
- b. A specific program for communication between the CONTRACTOR and AGENCY on safety matters. The CONTRACTOR shall also designate one person with whom official contact can be made by the AGENCY on safety matters.
- c. Evidence that the CONTRACTOR has become thoroughly familiar with the potential hazards of the work and applicable federal and state regulations.
- d. Specific safety procedures and guidelines for conduct of the Work.
- e. The AGENCY's review, comment upon, and/or acceptance of the CONTRACTOR's safety program and/or plan does not in any way negate the responsibilities of the CONTRACTOR for safety or place any responsibility upon the AGENCY for such safety. Such review comment and/or acceptance shall not be construed as limiting in any manner the CONTRACTOR's obligation to undertake any action which may be necessary or required to establish and maintain safe working conditions at the site.
- f. Contractor will follow County of Napa, State of California and Center of Disease Control (CDC) specific COVID-19 safety procedures and guidelines for the entire duration of the CONTRACT.

1-6.13 EMERGENCIES

In emergencies affecting the safety or protection of persons or the WORK or property at the Site or adjacent thereto, CONTRACTOR, without special instruction or authorization from ENGINEER, is obligated to immediately act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the WORK or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Change Order will be issued to document the consequences of such action.

1-6.14 SUBMITTALS

- A. After checking and verifying all field measurements and after complying with applicable procedures specified in the Special Provisions, the CONTRACTOR shall submit to the ENGINEER for review all Shop Drawings and details of all structural and reinforcing steel, equipment, electrical controls, structural fabrications, pipe, pipe joints, special pipe sections, and other appurtenances in accordance with the accepted schedule of Shop Drawing submittals specified in the Special Provisions or as otherwise provided in the Contract Documents.
- B. The ENGINEER'S review will be only to determine if the items covered by the submittals will, after installation or incorporation in the WORK, generally conform to the Contract Documents and with the design concept of the completed Project. The ENGINEER's favorable review shall be obtained before any such items are manufactured or used in the work. The favorable review of Drawings by the ENGINEER shall apply in general design only and shall in no way relieve the CONTRACTOR from responsibility for errors or omissions contained therein. Favorable review by the ENGINEER shall not relieve the CONTRACTOR of its obligation to meet safety requirements and all other requirements of law. The ENGINEER will start reviewing the CONTRACTOR's submittals only after the Notice to Proceed is issued by the AGENCY with the exception of some unusual long lead items which may require submittals prior to issuing the Notice to Proceed.
- C. The CONTRACTOR shall also submit to the ENGINEER for review all Samples in accordance with the accepted schedule of Sample submittals specified in the Special Provisions or as otherwise provided in the Contract Documents.

- D. Before submittal of each Shop Drawing or Sample, the CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the WORK and the Contract Documents. The CONTRACTOR shall provide submittals in accordance with the requirements of the Special Provisions or as otherwise provided in the Contract Documents.
- E. Shop-drawing submittal and coordination are the responsibility of the prime contractor; this responsibility shall not be delegated in whole or in part to subcontractors or suppliers. Any designation of work "by others," shown on Shop Drawings, shall mean that the work will be the responsibility of the CONTRACTOR rather than the subcontractor or supplier who has prepared the Shop Drawings.
- F. Submittals shall be prepared in such form that data can be identified with the applicable Specification paragraph. The data shall demonstrate clearly compliance with the Drawings and Specifications and shall relate to the specific equipment to be furnished. Where manufacturer's standard drawings are employed, they shall be marked clearly to show what portions of the data are applicable to this Project.
- G. Review of shop-drawing submittals by the ENGINEER has as its primary objective the completion for the AGENCY of a Project in full conformance with the Drawings and Specifications, unmarred by field corrections, and within the time provided. In addition to this primary objective, shop-drawing review as a secondary objective will assist the CONTRACTOR in its procurement of equipment that will meet all requirements of the Drawings and Specifications, will fit the structures detailed on the Drawings, will be complete with respect to piping, electrical, and control connections, will have the proper functional characteristics, and will become an integral part of a complete operating facility. Acceptance of Shop Drawings and submittals does not constitute a change order to the Contract requirements.
- H. Where the CONTRACTOR is required by these Specifications to make submittals, they shall be submitted to the ENGINEER with a letter of transmittal via electronic copies (pdf or other suitable format) to all parties needing to review. All required physical samples shall be delivered separately to the ENGINEER and will be retained by the ENGINEER. Unless specifically requested for a hardcopy by the ENGINEER, all submittals shall be submitted electronically.
- I. Within fifteen (15) calendar days of receipt by the ENGINEER of each of the CONTRACTOR's submissions and all appurtenant data required for their review, the appropriate number of copies will be returned to the CONTRACTOR with one of the following notations:
 - a. Reviewed, No exceptions taken
 - b. Reviewed as noted
 - c. Revise and Resubmit or
 - d. Rejected.
- J. When submittals are favorably reviewed, the ENGINEER will retain three (3) copies and will return all other copies to the CONTRACTOR. When submittals are not favorably reviewed, the ENGINEER will retain only two (2) copies and will return all others to the CONTRACTOR. It is considered reasonable that the CONTRACTOR shall make a complete and acceptable submission to the ENGINEER at least by the second submission of data. The AGENCY reserves the right to deduct monies from payments due the CONTRACTOR to cover additional costs of the ENGINEER's review beyond the second submission.
- K. Favorable review by the ENGINEER will not constitute acceptance by the ENGINEER of any responsibility for the accuracy, coordination, and completeness of the Shop Drawings or the items of equipment represented on the Drawings. Accuracy, coordination, and completeness of Shop Drawings shall be the sole responsibility of the CONTRACTOR, including responsibility to back check comments, corrections, and modifications from the ENGINEER's review before fabrication.

Supplemental, specific requirements for Shop Drawings and details are contained in the applicable technical sections of these Specifications.

- L. Copies of schedules and Shop Drawings submitted to the ENGINEER for review shall be such as to provide three (3) copies for the ENGINEER's files, and such additional copies as the CONTRACTOR may desire for its own office files and/or for distribution by it to subcontractors or vendors. Exceptions will be noted in specific sections of Specifications. All Shop Drawings and supporting data, catalogs, and schedules shall be submitted as the instruments of the CONTRACTOR, who shall be responsible for their accuracy and completeness. These submittals may be prepared by the CONTRACTOR, subcontractors, or suppliers, but the CONTRACTOR shall ascertain that submittals meet all of the requirements of the Contract, while conforming to structural, space, and access conditions at the point of installation. The CONTRACTOR shall check all submittals before submitting them to the ENGINEER.
- M. CONTRACTOR may propose an electronic/online submittal system which the ENGINEER is familiar with. If the ENGINEER is agreeable to the electronic submittal system a process shall be agreed upon. The number days required for review by Engineer shall not change.
- N. The ENGINEER shall check and review schedules, drawings, etc., submitted by the CONTRACTOR only for general design conformance with the concept of the Project and compliance with the Contract. Shop Drawings shall not be used to order products' fabrication or delivery for construction or installation unless submitted to and favorably reviewed by the ENGINEER. Acceptance by the ENGINEER of any drawings, method of work, or any information regarding materials and equipment the CONTRACTOR proposes to furnish shall not relieve the CONTRACTOR of its responsibility for any errors therein and shall not be regarded as an assumption of risks or liability by the Design ENGINEER or the AGENCY, or any officer or employee thereof, and the CONTRACTOR shall have no recourse against the AGENCY under the Contract on account of the failure or partial failure or inefficiency or insufficiency of any plan or method of work or material and equipment so accepted. Such acceptance shall be considered to mean merely that the ENGINEER has no objection to the CONTRACTOR using, upon its own full responsibility, the plan or method of work proposed or furnishing the materials and equipment proposed.

1-6.15 CONTINUING THE WORK

The CONTRACTOR shall carry on the WORK and adhere to the progress schedule during all disputes or disagreements with the AGENCY. No WORK shall be delayed or postponed pending resolution of any disputes or disagreements, except as the CONTRACTOR and the AGENCY may otherwise agree in writing.

1-6.16 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE

- A. CONTRACTOR warrants and guarantees that all WORK will be in accordance with the Contract Documents and will not be defective. The CONTRACTOR represents that the WORK performed pursuant to the Contract shall be of the quality specified or of the highest quality if no quality is specified, and shall conform to the Contract Documents. The CONTRACTOR warrants all equipment, material, products, and workmanship furnished and all work performed under the Contract against defects for a period of one (1) year after final acceptance regardless of whether the same were furnished or performed by the CONTRACTOR or by any of its subcontractors or suppliers of any tier.
- B. The CONTRACTOR shall make, at its own expense, all repairs and/or replacements necessitated by defects in the equipment, materials, and/or products and in the workmanship provided by the CONTRACTOR or any of its subcontractors that become evident within the warranty period.
- C. Upon receipt of written notice from the AGENCY of any breach of warranty during the applicable warranty period, the affected item shall be redesigned, repaired, or replaced by the CONTRACTOR and the CONTRACTOR shall perform such tests as the AGENCY may require to verify that such redesign, repair, and replacement comply with the requirements of the Contract. The AGENCY shall have the right to operate and use such equipment, materials, and/or products until they can, without damage to the AGENCY, be taken out of service for correction or replacement by the

CONTRACTOR. As to the redesigned, repaired, or replaced work, the CONTRACTOR warrants such redesigned, repaired, or replaced work against defective design, equipment, materials, products, and workmanship for a period of one (1) year from and after the date of satisfactory completion of such redesigned, repaired, or replaced work. The AGENCY reserves the right to require that the CONTRACTOR performs such repair or replacement work.

- D. The AGENCY also reserves the right to make such repairs or replacements, if, within seven (7) calendar days after the mailing of a notice in writing to the CONTRACTOR and Surety, the CONTRACTOR shall neglect to make or undertake with due diligence the aforesaid repairs or replacements and that Surety within seven (7) calendar days after mailing of a notice in writing of such negligence of the CONTRACTOR shall neglect to make or undertake with due diligence the aforesaid repairs or replacements itself, provided, however, that in the case of an emergency where in the opinion of the AGENCY delay would cause hazard to health or serious loss or damage, repair may be made without notice being sent to the CONTRACTOR or Surety, and the CONTRACTOR shall pay the cost thereof.
- E. All costs including workforce and materials incidental to such redesign, repair, replacement, and testing, including the removal, replacement, and reinstallation of equipment necessary to gain access and all other costs incurred as the result of a breach of warranty shall be borne by the CONTRACTOR whether performed by the AGENCY or the CONTRACTOR.
- F. Nothing in this section shall be construed to limit, relieve, or release the CONTRACTOR, subcontractor's, and equipment, materials, and/or products suppliers, and other service providers' liability to the AGENCY for damages sustained as the result of latent defects in the workmanship, equipment, materials, and/or products done and/or furnished by the CONTRACTOR, its subcontractors, suppliers and/or other service providers.
- G. The Performance Bond shall extend for a period of one (1) year after acceptance of the Contract by the AGENCY and shall cover the CONTRACTOR's obligations resulting from the warranty requirements herein specified.
- H. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:
 - a. Abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, or Suppliers, or other individual or entity for whom CONTRACTOR is responsible;
 - b. Normal wear and tear under normal usage.
- I. CONTRACTOR's obligation to perform and complete the WORK in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of WORK that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the WORK in accordance with the Contract Documents:
 - a. Observations by ENGINEER;
 - b. Recommendation by ENGINEER or payment by AGENCY of any progress or final payment;
 - c. The issuance of a Certificate of Completion by the AGENCY;
 - d. Use or occupancy of the WORK or any part thereof by the AGENCY;
 - e. Any acceptance by AGENCY or any failure to do so;
 - f. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice or acceptability by ENGINEER pursuant to Paragraph 1-14.07B;
 - g. Any inspection, test, or approval by others; or
 - h. Any correction of Defective Work by AGENCY.

1-6.17 INDEMNIFICATION

- A. To the fullest extent permitted by law, the Contractor shall indemnify, defend with counsel acceptable to AGENCY, and hold harmless AGENCY, its officers, officials, employees, agents, and volunteers from and against any and all losses, claims, demands, damages, costs, expenses, attorney's fees, or liability of every nature arising out of or in any way connected with the

performance or attempted performance of the provisions of this Contract, caused in whole or in part by any negligent or willful act or omission of the Contractor, its officers, employees, or agents, or anyone directly or indirectly acting on behalf of the Contractor, regardless of whether caused in part by a party indemnified hereunder. Nothing contained in the foregoing indemnity provisions shall be construed to require the Contractor to indemnify the indemnified party in contravention of Section 2782 of the Civil Code for the active or sole negligence or willful misconduct of that indemnified party.

- B. To the fullest extent permitted by law, the Contractor's duty to defend shall extend, without limitation, to any suit or action founded upon any losses, claims, demands, damages, costs, expenses, attorney's fees, or liability of every nature arising out of or in any way connected with the performance or attempted performance of the provisions hereof, or in any way arising out of or connected with this Contract.
- C. The defense and indemnity obligations expressly extend to and include any and all claims, demands, damages, costs, expenses, or liability occasioned as a result of damages to adjacent property caused by the conduct of the Work.
- D. The defense and indemnity obligations expressly extend to and include any and all claims, demands, damages, costs, expenses, or liability occasioned as a result of the violation by the Contractor, the Contractor's agents, employees, or independent contractors, Subcontractors or suppliers of any provisions of federal, State or local law, including applicable administrative regulations.
- E. The defense and indemnity obligations also expressly extend to and include any claims, demands, damages, costs, expenses, or liability occasioned by injury to or death of any person, or any property damage to property owned by any person while on or about the site or as a result of the Work, whether such persons are on or about the site by right or not, whenever the Work is alleged to have been a contributing cause in any degree whatsoever.
- F. In claims against any person or entity herein indemnified that are made by an employee of the Contractor or an employee of any of the Contractor's agents, independent contractors, Subcontractors or suppliers, a person indirectly employed by the Contractor or by any of the Contractor's agents, independent contractors, Subcontractors or suppliers, or anyone for whose acts the Contractor or any of the Contractor's agents, independent contractors, Subcontractors or suppliers may be liable, the defense and/or indemnification obligation herein shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or the Contractor's agents, independent contractors, Subcontractors or suppliers under workers' compensation acts, disability acts, or other employee benefit acts.
- G. The indemnification obligations herein shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- H. The indemnities set forth herein shall not be limited by the insurance requirements set forth in the Contract Documents.
- I. The indemnification requirements herein set forth shall extend to claims occurring after this Contract is terminated as well as while it is in force.
- J. In the event the Contractor enters into any agreement with the owners of any adjacent property to enter upon or adjacent to such property for the purpose of performing this Contract, the Contractor shall fully indemnify, defend and save harmless such person, firm, or corporation, State or other governmental agency which owns or has any interest in the adjacent property. The form and content of the indemnification agreement shall be approved by AGENCY prior to commencement of any work on or about such property. The Contractor also shall indemnify AGENCY and other indemnities identified in this Section as provided in the Contract. These provisions shall be in addition to any other requirements of the owners of adjacent property.
- K. Pursuant to California Public Contract Code Section 9201, AGENCY shall timely notify Contractor of receipt of any third-party claim relating to this Contract.

1-6.18 CONTRACTOR'S DAILY REPORTS

The CONTRACTOR shall complete a daily report indicating location worked, total manpower for each construction trade, major equipment on Site, each Subcontractor's manpower and equipment, weather conditions, and other related information involved in the performance of the WORK. These components will be decided by the ENGINEER.

1-6.19 CONTRACT DOCUMENTS AND RECORD DRAWINGS

1. The CONTRACTOR shall keep on the work site a copy of the Contract Documents and shall at all times give the ENGINEER access thereto. Any drawings included in the Specifications shall be regarded as part thereto and of the Contract. Anything mentioned in these Specifications and not shown on the Project Drawings or shown on the Project Drawings and not mentioned in these Specifications, shall be of like effect as though shown or mentioned in both. The ENGINEER will furnish from time to time such detail drawings, plans, profiles, and information as he may consider necessary for the CONTRACTOR's guidance. It shall be the duty of the CONTRACTOR to see that the provisions of the Contract Documents are complied with in detail irrespective of the inspection given the work during its progress by the ENGINEER. Any failure on the part of the CONTRACTOR to observe the requirements contained in the Contract Documents will be sufficient cause for the rejection of the work at any time before its acceptance.
2. The CONTRACTOR shall maintain, at the jobsite, one record set of Drawings in good order and clearly marked to show any deviations which have been made from the Drawings, including concealed construction and utility features which are revealed during the course of construction. Marked prints shall be updated at least once each week and shall be available to the ENGINEER for review as to currency prior to developing partial payment estimates. Upon completion of the work, the marked set of prints shall be delivered to the ENGINEER.
3. In the case of those drawings which depict the detail requirement for equipment to be assembled and wired in the factory, such as motor control centers and the like, the Record Drawings shall be updated by indicating those portions which are superseded by change order drawings or final shop drawings, and by including appropriate reference information describing the change orders by number and the shop drawings by manufacturer, drawing, and revision numbers.
4. Requests for partial payments will not be approved if the updated set of Drawings is not in good order or is not kept current. Request for final payment or bond release will not be approved until the complete and correct Record Drawings are delivered to the ENGINEER.

1-6.20 CLEAN UP

The CONTRACTOR shall, at all times, keep the premises, occupied by it in relation to this Contract, in a neat, clean, and safe condition and at all times provide reasonable access thereto. The CONTRACTOR shall, as a minimum, conduct daily inspections to verify that requirements of this Section are being met.

- A. During the progress of the WORK, the CONTRACTOR shall:
 - a. Retain all stored items in an orderly arrangement allowing maximum access, not impeding drainage or traffic, and providing the required protection of material.
 - b. Provide adequate storage of all items awaiting removal from the jobsite, observing all requirements for fire protection and protection of the environment.
 - c. Remove any accumulation of scrap, debris, waste material, and other items not required for construction of this work.
 - d. Dispose of existing materials and equipment to be demolished and removed and all trash such as broken concrete, wood blocking, shipping containers, etc., resulting from the contract work off the premises occupied by the CONTRACTOR, including AGENCY property, at the CONTRACTOR's expense. AGENCY-leased dumpsters and other disposal containers on AGENCY's property, unless specifically provided by the CONTRACTOR, shall not be used by the CONTRACTOR.
 - e. Maintain all excavation, embankments, haul roads, permanent access roads, Plant site, waste disposal areas, borrow areas, and all other work areas within contract work limits free from dust, as determined by the ENGINEER. Industry-accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light

bituminous treatment, or similar methods, will be permitted. No separate payment will be made to the CONTRACTOR for dust control.

- B. If the CONTRACTOR fails to comply with any of the foregoing, the AGENCY will transmit written notification of noncompliance. If, within five (5) calendar days of the written notification, the CONTRACTOR fails to comply, cleanup may be undertaken by the AGENCY at the expense of the CONTRACTOR.
- C. Upon completion of any portion of any WORK, the CONTRACTOR shall promptly remove all of its equipment, temporary structures, and surplus construction and other materials not to be used at or near the same location during later stages of work. Upon completion of any WORK and before final inspection is made, the CONTRACTOR shall unless otherwise specifically directed by the ENGINEER:
 - a. Remove from the job site all plant, buildings, tools, surplus materials, equipment, forms, rubbish, scrap, debris, and waste
 - b. Clean all paved areas on the site. Completely remove all resultant debris.
 - c. Visually inspect all interior surfaces, and remove all traces of soil, waste material, smudges, and other foreign matter. Remove all traces of splashed materials from adjacent surfaces. Remove all paint droppings, spots, stains, and dirt from finished surfaces. Use only approved cleaning materials and equipment.
 - d. Restore any improved area used for the CONTRACTOR's work or material storage to its condition at the time the CONTRACTOR moved onto the site or to the satisfaction of the ENGINEER.
 - e. Schedule final cleaning and improvement restoration to enable the AGENCY to accept a completely clean and restored project.

1-6.21 STORM WATER POLLUTION PREVENTION

1-6.21A General

- A. Prevention - The CONTRACTOR shall prevent the pollution of storm drain systems and creeks on or near the construction project site(s) resulting from the construction operation. The CONTRACTOR shall keep pollution out of storm drains by reducing the possibility of accidental discharge of materials and wastes, by reducing erosion and sedimentation, and by any action as required. The CONTRACTOR shall train all employees and subcontractors on the storm water pollution prevention requirements contained in these Specifications and ensure that all employees and subcontractors are aware of the consequences as described in this section 1-6.21. The CONTRACTOR shall include appropriate subcontract provisions to ensure that these requirements are met by all subcontractors.
- B. Notification - If the CONTRACTOR causes or permits the spillage or overflow of any sewage, oil, or petroleum product, hazardous substance, contaminant, or waste that may result in the fluid or substance being discharged directly or indirectly into any storm drains, creeks, wetlands, or other manmade or natural waterways the CONTRACTOR shall notify the AGENCY as soon as possible to the extent notification can be provided without substantially impeding cleanup or other emergency measures. In no event shall such notification be later than one hour after knowledge of the occurrence.
- C. Cleanup - Immediately upon gaining knowledge of such spillage, overflow, or discharge, the CONTRACTOR shall eliminate the cause of the spillage, overflow, or discharge and take action to minimize any damages. The CONTRACTOR shall also immediately implement a cleanup program. The cleanup, including sampling and testing required by regulatory agencies to determine the nature and level of contamination shall be performed and completed to the satisfaction of the various regulatory agencies involved and the AGENCY, at the expense of the CONTRACTOR. Any fines, penalties, and/or subsequent actions imposed upon the AGENCY and/or the CONTRACTOR by regulatory agencies related to the spillage, overflow, or discharge and any subsequent monitoring, testing, and reporting, as required by regulatory agencies, shall also be at the expense of the CONTRACTOR. The CONTRACTOR shall keep a stockpile of spill cleanup materials, such

as rags or absorbents, readily accessible on site. The quantity of cleanup materials shall be appropriate in consideration of the risk of an occurrence of a spill, overflow or discharge.

1-6.21B Management of Nonhazardous Material and/or Waste

- A. Designated Area - The CONTRACTOR shall propose designated areas of the project site, for approval by the ENGINEER, suitable for material delivery, storage, and waste collection that to the maximum extent practicable are near construction entrances and away from catch basins, gutters, drainage courses, and creeks.
- B. Backfill or Excavated Material - The CONTRACTOR shall not allow backfill or excavated material to enter the storm drains or creeks. When rain is forecast within 24 hours or during wet weather, the CONTRACTOR may be required to cover such material with a tarpaulin and to surround the material with sand bags.
- C. Street Sweeping - At least once per week or more frequently as directed by the ENGINEER, the CONTRACTOR shall clean and sweep roadways and on-site paved areas of all materials attributed to or involved in the work. The CONTRACTOR shall not use water to flush down streets in place of street sweeping.
- D. Disposal - At the end of each working day, the CONTRACTOR shall collect all scrap, debris, and waste material, and dispose of such materials properly. The materials may be stored in the CONTRACTOR's yard in stockpiles or placed in dumpsters. The CONTRACTOR shall inspect dumpsters for leaks and replace or repair dumpsters that leak. The CONTRACTOR shall not discharge water from cleaning dumpsters on site. The CONTRACTOR shall arrange for regular waste collection before dumpsters overflow.

1-6.21C Management of Hazardous Material and/or Waste

- A. Storage - The CONTRACTOR shall label and store all hazardous materials, such as pesticides, paints, thinners, solvents, and fuels, and all hazardous wastes, such as waste oil and antifreeze in accordance with all applicable state and federal regulations. The CONTRACTOR shall store all hazardous materials and all hazardous wastes in accordance with secondary containment regulations. All such materials and wastes shall be covered, as needed, to avoid rainwater becoming polluted with hazardous constituents which could result in potential management of collected rain water as a hazardous waste. The CONTRACTOR shall keep an accurate, up-to-date inventory, including Material Safety Data Sheets (MSDSs), of hazardous materials and hazardous wastes stored on site.
- B. Usage - When rain is forecast within 24 hours or during wet weather, the CONTRACTOR shall refrain from applying chemicals in outside areas. The CONTRACTOR shall follow material manufacturer's instructions regarding uses, protective equipment, ventilation, flammability, and mixing of chemicals. The CONTRACTOR shall post warning signs in areas treated with chemicals.
- C. Disposal - The CONTRACTOR shall arrange for regular hazardous waste collection to comply with time limits on storage of hazardous wastes. The CONTRACTOR shall dispose of hazardous waste in accordance with all applicable local, state and federal regulations. The CONTRACTOR shall not wash any spilled material into streets, gutters, storm drains, or creeks and shall not bury spilled hazardous materials. The CONTRACTOR shall report any hazardous materials spill to the AGENCY in accordance with Section 1-6.21A above.

1-6.21D Vehicle/Equipment Cleaning, Maintenance, and Fueling

- A. General - The CONTRACTOR shall inspect vehicles and equipment arriving on site for leaking fluids and shall promptly repair leaking vehicles and equipment. Drip pans shall be used to catch leaks until repairs are made. The CONTRACTOR shall comply with federal, state, and AGENCY requirements for aboveground storage tanks.

- B. Cleaning - The CONTRACTOR shall perform vehicle or equipment cleaning with water only in a designated, bermed area that will not allow rinse water to run off site into streets, gutters, storm drains, or creeks. Soaps, solvents, degreasers, steam-cleaning equipment, or equivalent methods shall not be allowed.
- C. Maintenance and Fueling - The CONTRACTOR shall perform maintenance and fueling of vehicles or equipment in areas that will not allow run-on of storm water or runoff of spills to storm drains and provide for confined clean-up. Examples are working in bermed areas or utilizing drip pans. The CONTRACTOR shall not contaminate the soils or groundwater with such maintenance and fueling activities.
- D. The CONTRACTOR shall use secondary containment, such as a drip pan, to catch leaks or spills any time that vehicle or equipment fluids are dispensed, changed, or poured, and shall clean up leaks and spills of vehicle or equipment fluids immediately and dispose of the waste and cleanup materials as hazardous waste, as described in Section 1-6.21C above.

1-6.21E Dewatering Operations

- A. Sediment Control - The CONTRACTOR shall route water through a control measure, such as a sediment trap, sediment basin, or Baker tank, to remove settleable solids prior to discharge to the storm drain system. Straw bales shall be placed in front of storm drain inlets as required. Filtration of the water following the control measure may be required on a case-by-case basis. Approval of the control measure shall be obtained in advance from the ENGINEER. If the ENGINEER determines that the dewatering operation would not generate an appreciable amount of settleable solids, the control measure requirement above may be waived.
- B. Contaminated Groundwater - If the project is within an area of known groundwater contamination or if contamination is found, water from dewatering operations shall be tested prior to discharge. If the water quality meets Regional Water Quality Control Board (RWQCB) standards, it may be discharged to a storm drain or creek. Otherwise, the water shall be hauled off site for proper disposal.

1-6.21F Paving or Oiling Operations

- A. When rain is forecast within 24 hours or during wet weather, the ENGINEER may prevent the CONTRACTOR from paving or oiling the street. The ENGINEER may direct the CONTRACTOR to protect drainage courses by using control measures, such as earth dike, straw bale, and sand bag, to divert runoff or trap and filter sediment.
- B. The CONTRACTOR shall prevent saw-cut slurry from entering catch basins and storm drains by limiting the area over which the slurry may spread.
- C. The CONTRACTOR shall cover catch basins and manholes when paving or applying seal coat, tack coat, slurry seal, or fog seal.
- D. The CONTRACTOR shall not sweep or wash down excess sand (placed as part of a sand seal or to absorb excess oil) into gutters, storm drains, or creeks. The CONTRACTOR shall either collect the sand and return it to the stockpile or dispose of it in a trash container.

1-6.21G Concrete, Grout, and Mortar Waste Management

- A. Concrete Truck/Equipment Washout - The CONTRACTOR shall not wash out concrete trucks or equipment into streets, gutters, storm drains, or creeks. The CONTRACTOR shall perform washout of concrete trucks or equipment off site or in a designated area on site where the water will flow onto dirt or into a temporary pit in a dirt area. The CONTRACTOR shall let the water percolate into the soil and dispose of the hardened concrete in a trash container. If a suitable dirt area is not available, the CONTRACTOR shall collect the wash water and remove it off site.
- B. Exposed Aggregate Concrete Wash Water - The CONTRACTOR shall avoid creating runoff by draining water from washing of exposed aggregate concrete to a dirt area. If a suitable dirt area is not available, the CONTRACTOR shall filter the wash water through straw bales or equivalent material before discharging to a storm drain. The CONTRACTOR shall collect sweepings from exposed aggregate concrete for disposal.

1-6.21H Paint Disposal and Clean-up

A. Disposal of Unused Paint - The CONTRACTOR shall carefully use, store and dispose of paint, solvents, chemicals, and waste materials in compliance with all applicable state and federal regulations. The CONTRACTOR shall not dispose of paint to sanitary sewer systems or storm drains. The CONTRACTOR shall utilize other recycling and disposal services as follows:

- a. "Recycling Centers" and "Waste Disposals" as may be listed in the yellow pages.
- b. Local household hazardous waste facility if appropriate.

The CONTRACTOR may dispose of small amounts of leftover latex (water-based) paint by applying the paint to the surface of an item to be discarded and allowing it to dry thoroughly, then disposing of it in a dumpster.

The CONTRACTOR shall store these materials and conduct cleaning of painting equipment and tools in a designated area that will not allow run-on of storm water or runoff of spills. The CONTRACTOR shall not allow wash water from cleaning of painting equipment and tools into streets, gutters, storm drains, or creeks.

B. Disposal of Paint Clean-up Waste - The CONTRACTOR shall remove as much excess paint as possible from brushes, rollers, and equipment before starting cleanup.

- a. The CONTRACTOR shall not discharge cleaning wastes from oil- based paints, buckets, brushes or tools to the sanitary sewer system. The CONTRACTOR shall retain a certified waste hauler to recycle or to dispose of cleaning wastes from oil-based paints at the CONTRACTOR's expense.

- b. The CONTRACTOR may discharge very small amounts of cleaning wastes from brushes, rollers, buckets, and tools contaminated with latex (water-based) paints to the sanitary sewer system provided they do not contain additives with pollutants of concern (e.g., mercury, tributyltin). Brushes, rollers, and tools containing latex paints may be washed over a sink with plenty of water. Buckets containing latex paints shall first be emptied into the original can or discarded as specified in paragraph 1 above. Should excessive amounts of paint or solvent be found in the wastewater discharged, the CONTRACTOR may be subject to enforcement action by the AGENCY in accordance with the AGENCY Codes.

- c. The CONTRACTOR shall not discharge any of these paint clean- up wastes to storm drains, streets, gutters, or creeks.

C. Waste Disposal - The CONTRACTOR shall dispose of waste thinner, solvent, and sludge from cleaning of equipment and tools as hazardous waste, as described in this Section 1-6.21H. The CONTRACTOR shall dispose of excess thinners, solvents, and oil- and water-based paint as hazardous waste.

1-6.21I Contaminated Soil

If the project is within an area of known soil contamination or evidence of soil contamination is found, the CONTRACTOR shall comply with the requirements of all applicable local, state and federal regulations.

1-7 OTHER WORK

1-7.01 RELATED WORK AT SITE

A. The AGENCY may perform other work related to the Project at the Site by the AGENCY's own forces, have other work performed by utility owners, or let other direct contracts for such other work. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to the CONTRACTOR prior to starting any such other work.

B. The CONTRACTOR shall afford each person who is performing the other work (including the AGENCY's employees) proper and safe access to the Site and a reasonable opportunity for the

introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the WORK with theirs. The CONTRACTOR shall do all cutting, fitting, and patching of the WORK that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. The CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will not only cut or alter their work with the written consent of the ENGINEER and the others whose work will be affected.

- C. If the proper execution or results of any part of the CONTRACTOR's work depends upon such other work by another, the CONTRACTOR shall inspect and report to the ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for such proper execution and results. The CONTRACTOR's failure to report such delays, defects, or deficiencies will constitute an acceptance of the other work as fit and proper for integration with the CONTRACTOR's work except for latent or nonapparent defects and deficiencies in the other work.

1-7.02 COORDINATION

If the AGENCY contracts with others for the performance of other work at the Site, AGENCY will have sole authority and responsibility in respect of such coordination, unless otherwise provided in the Supplementary General Conditions.

1-8 AGENCY'S RESPONSIBILITIES

1-8.01 COMMUNICATIONS

Except as may be otherwise provided in these General Conditions or the Supplementary General Conditions, the AGENCY will issue all its communications to the CONTRACTOR through the ENGINEER.

1-8.02 PAYMENTS

The AGENCY will make payments to the CONTRACTOR as provided in Section 1-14.

1-8.03 LANDS, EASEMENTS, AND SURVEYS

The AGENCY's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Sections 1-4.01 and 1-4.06.

1-8.04 REPORTS AND DRAWINGS

The AGENCY will identify and make available to the CONTRACTOR copies of reports of physical conditions at the Site and drawings of existing structures which have been utilized in preparing the Contract Documents as set forth in Section 1-4.02.

1-8.05 CHANGE ORDERS

The AGENCY will execute Change Orders as indicated in Section 1-10.

1-8.06 INSPECTIONS AND TESTS

The AGENCY'S responsibility for inspections and tests is set forth in Section 1-13.03.

1-8.07 SUSPENSION OF WORK

The AGENCY's right to stop work or suspend work is set forth in Sections 1-13.04 and 1-15.01.

1-8.08 TERMINATION OF AGREEMENT

The AGENCY's right to terminate services of the CONTRACTOR is set forth in Sections 1-15.02 and 1-15.03.

1-8.09 LIMITATION ON AGENCY'S RESPONSIBILITIES

The AGENCY shall not supervise, direct or have control or authority over, nor be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and

Regulations applicable to the furnishing or performance of the WORK. AGENCY will not be responsible for CONTRACTOR's failure to perform or furnish the WORK in accordance with the Contract Documents.

1-8.10 UNDISCLOSED HAZARDOUS ENVIRONMENTAL CONDITIONS

AGENCY's responsibility in respect to an undisclosed hazardous environmental condition is set forth in Section 1-4.05.

1-9 ENGINEER'S STATUS DURING CONSTRUCTION

1-9.01 AGENCY'S REPRESENTATIVE

The ENGINEER will be the AGENCY'S representative during the construction period. The ENGINEER shall decide any and all questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the work; all questions which arise as to the interpretation of the plans and specifications, the proposal and the contract documents therefor; all questions as to the acceptable fulfillment of the contract on the part of the CONTRACTOR; and all questions as to claim and compensation.

1-9.02 OBSERVATIONS ON THE SITE

The ENGINEER will make observations on the Site during construction to monitor the progress and quality of the WORK and to determine, in general, if the WORK is proceeding in accordance with the Contract Documents. The ENGINEER will not be required to make exhaustive or continuous inspections to check the quality or quantity of the WORK.

1-9.03 PROJECT REPRESENTATION

The ENGINEER may furnish a Resident Project Representative to assist in observing the performance of the WORK. The duties, responsibilities, and limitations of authority of any such Resident Project Representative will be as provided in the Supplementary General Conditions.

1-9.04 CLARIFICATIONS

The ENGINEER will issue with reasonable promptness such written Clarifications of the requirements of the Contract Documents as the ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

1-9.05 AUTHORIZED VARIATIONS IN WORK

The ENGINEER may authorize variations in the WORK from the requirements of the Contract Documents. These may be accomplished by a Field Order and will require the CONTRACTOR to perform the WORK involved in a manner that minimizes the impact to the WORK and the Contract Times. If the CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Times, the CONTRACTOR may make a claim therefor as provided in Sections 1-11 or 1-12.

1-9.06 REJECTING DEFECTIVE WORK

The ENGINEER will have authority to reject Defective Work and will also have authority to require special inspection or testing of the WORK as provided in Section 1-13.

1-9.07 CONTRACTOR SUBMITTALS, CHANGE ORDERS, AND PAYMENTS

- A. In accordance with the procedures set forth in the General Conditions and Special provisions, the ENGINEER will review all CONTRACTOR submittals.
- B. The ENGINEER's responsibilities for Change Orders are set forth in Sections 1-10, 1-11, and 1-12.
- C. The ENGINEER's responsibilities for Applications for payment are set forth in Section 1-14.

1-9.08 DECISIONS ON DISPUTES

The ENGINEER will be the initial interpreter of the requirements of the Contract Documents and of the acceptability of the WORK thereunder. Claims, disputes, and other matters relating to the acceptability of the WORK and interpretation of the requirements of the Contract Document pertaining to the performance of the work shall be determined by the ENGINEER. Any claims in respect to changes in the Contract Price

or Contract Times shall be resolved in accordance with the requirements set forth in Sections 1-10, 1-11, and 1-12.

1-9.09 LIMITATIONS ON ENGINEER'S RESPONSIBILITIES

- A. Neither the ENGINEER's authority to act under this Section 1-9 or other provisions of the Contract Documents nor any decision made by the ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the ENGINEER to the CONTRACTOR, any Subcontractor, any Supplier, any surety for any of them, or any other person or organization performing any of the WORK.
- B. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as reviewed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory," or adjectives of like effect or import are used to describe a requirement, direction, review, or judgment will be solely to evaluate the WORK for compliance with the requirements of the Contract Documents, and conformance with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective shall not be effective to assign to the ENGINEER any duty or authority to supervise or direct the performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of Section 1-9.09C.
- C. The ENGINEER will not supervise, direct, control, or have authority over or be responsible for the CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the CONTRACTOR to comply with Laws and Regulations applicable to the performance of the WORK. The ENGINEER will not be responsible for the CONTRACTOR's failure to perform the WORK in accordance with the Contract Documents. The ENGINEER will not be responsible for the acts or omissions of the CONTRACTOR nor of any Subcontractor, Supplier, or any other person or organization performing any of the WORK.

1-10 CHANGES IN THE WORK

1-10.01 GENERAL

- A. Without invalidating the Agreement and without notice to any surety, the AGENCY may at any time or from time to time, order additions, deletions, or revisions in the WORK. Such additions, deletions or revisions will be authorized by a Change Order or Field Order. Upon receipt of any such document, CONTRACTOR shall promptly proceed to implement the additions, deletions, or revisions in the WORK in accordance with the applicable conditions of the Contract Documents.
- B. The CONTRACTOR shall not be entitled to an increase in the contract Price nor an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented by Change Order, except in the case of an emergency and except in the case of uncovering work as provided in Sections 1-13.03.F and G.
- C. The AGENCY and the CONTRACTOR shall execute appropriate Change Orders covering:
 - a. Changes in the WORK which are ordered by the AGENCY pursuant to Section 1-10.01A.;
 - b. Changes required because of acceptance of Defective Work under Section 1-13.06; and
 - c. Changes in the Contract Price or Contract Times which are agreed to by the parties under Sections 1-11 and/or 1-12, respectively.
- D. If notice of any change in the WORK is required to be given to a surety, the giving of any such notice shall be the CONTRACTOR's responsibility. If the change in the WORK affects the Contract Price, the AGENCY may require an adjustment to the amount of any applicable Bond and the amount of each applicable Bond shall be adjusted accordingly.
- E. If the AGENCY and CONTRACTOR agree as to the extent, if any, of an increase in the Contract Price or an extension or shortening of the Contract Times that should be allowed as a result of a Field Order, the CONTRACTOR shall proceed so as to minimize the impact on and delays to the WORK pending the issuance of a Change Order.

- F. If the AGENCY and the CONTRACTOR are unable to agree as to the extent, if any, of an increase in the Contract Price or an extension or shortening of the Contract Times that should be allowed as a result of a Field Order, the ENGINEER can direct the CONTRACTOR to proceed on the basis of time and materials so as to minimize the impact on and delays to the WORK, and the CONTRACTOR may make a claim as provided in Sections 1-11 and 1-12.

1-10.02 ALLOWABLE QUANTITY VARIATIONS

- A. In the event of an increase or decrease in the quantity of any bid item under a unit price contract, the total amount of work actually done or materials or equipment furnished will be paid for according to the unit price established for such work under the Contract Documents, wherever such unit price has been established; provided, that an adjustment in the Contract Price may be made for changes which result in an increase or decrease in excess of 25 percent of the estimated quantity of any unit price bid item of the WORK.
- B. In the event a part of the WORK is to be entirely eliminated and no lump sum or unit price is named in the Contract Documents to cover such eliminated work, the price of the eliminated work shall be agreed upon by the AGENCY and the CONTRACTOR by Change Order.

1-11 CHANGE OF CONTRACT PRICE

1-11.01 GENERAL

- A. The Contract Price constitutes the total compensation payable to the CONTRACTOR FOR PERFORMING THE work. All duties, responsibilities, and obligations assigned to or undertaken by the CONTRACTOR to complete the WORK shall be at its expense without change in the Contract Price.
- B. The Contract Price may only be changed by a Change Order. The value of any work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:
 - a. Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.
 - b. By mutual acceptance of a lump sum, which may include an allowance for overhead and profit not necessarily in accordance with Section 1-11.04; or
 - c. On the basis of the cost of work (determined as provided in Section 1-11.03) plus the CONTRACTOR's overhead and profit (determined as provided in Section 1-11.04).
- C. Any claim for an increase in the Contract Price shall be based on written notice delivered by the CONTRACTOR to the ENGINEER promptly (but in no event later than 10 days) after the start of the event giving rise to the claim and shall state the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within 60 days after the start of such event (unless the ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR's written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CONTRACTOR is entitled as a result of such event. All claims for adjustment in the Contract Price will be determined by the ENGINEER. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this Paragraph C.

1-11.02 COSTS RELATING TO WEATHER

The CONTRACTOR shall have no claims against the AGENCY for damages for any injury to work, materials, or equipment, resulting from the action of the elements. If, however, in the opinion of the ENGINEER, the CONTRACTOR has made all reasonable efforts to protect the materials, equipment, and work, the CONTRACTOR may be granted a reasonable extension of Contract Times to make proper repairs, renewals, and replacements of the work, materials, or equipment.

1-11.03 COST OF WORK (BASED ON TIME AND MATERIALS)

- A. **General:** The term "cost of work" means the sum of all costs necessarily incurred and paid by the CONTRACTOR for labor, materials, and equipment in the proper performance of extra work. Except as otherwise may be agreed to in writing by the AGENCY, such costs shall be in amounts

no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Section 1-11.05.

- B. **Labor:** The costs of labor will be the actual cost for wages prevailing for each craft or type of workers performing the extra work at the time the extra work is done, plus employer payments of payroll taxes, workers compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Labor costs for equipment operators and helpers will be paid only when such costs are not included in the invoice for equipment rental. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to extra work shall be paid. Nondirect labor costs including superintendence shall be considered part of the markup set out in Section 1-11.04.
- C. **Materials:** Materials must be specifically authorized by the ENGINEER. The cost of materials reported shall be at invoice or lowest current price at which materials are locally available and delivered to the Site in the quantities involved, plus the cost of freight, delivery and storage, subject to the following:
- a. All trade discounts and rebaters shall accrue to the AGENCY, and the CONTRACTOR shall make provisions so that they may be obtained;
 - b. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the ENGINEER. Except for actual costs incurred in the handling of such materials, markup will not be allowed;
 - c. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on extra work items or the current wholesale price for such materials delivered to the Site, whichever price is lower; and
 - d. If in the opinion of the ENGINEER the cost of material is excessive, or the CONTRACTOR does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the Site less trade discount. The AGENCY reserves the right to furnish materials for the extra work and no claim will be allowed by the CONTRACTOR for costs and profit on such materials.
- D. **Equipment:** The CONTRACTOR will be paid for the use of equipment at the rental rate listed for such equipment specified in the current California Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates." Such rental rate will be used to compute payments for equipment whether the equipment is under the CONTRACTOR's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment will be the rate resulting in the least total cost to the AGENCY for the total period of use. If it is deemed necessary by the CONTRACTOR to use equipment not listed in the above-referenced publication, an equitable rental rate for the equipment will be established by the ENGINEER. The CONTRACTOR may furnish cost data which might assist the ENGINEER in the establishment of the rental rate. Payment for equipment shall be subject to the following:
- a. All equipment shall, in the opinion of the ENGINEER, be in good working condition and suitable for the purpose for which the equipment is to be used;
 - b. Before construction equipment is used on the extra work, the CONTRACTOR shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the ENGINEER, in duplicate, a description of the equipment and its identifying number;
 - c. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer;
 - d. Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore.

- E. **Equipment Rental Time:** The rental time to be paid for equipment on the Site will be the time the equipment is in productive operation on the extra work being performed and, in addition, will include the time required to move the equipment to the location of the extra work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the extra work, even though located at the Site of the extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made for loading and transporting costs when the equipment is used at the Site of the extra work on other than the extra work. Rental time will not be allowed while equipment is inoperative due to breakdowns. The rental time of equipment on the work Site will be computed subject to the following:
- a. When hourly rates are listed, any part of an hour less than 30 minutes of operation will be considered to be half-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation;
 - b. When daily rates are listed, any part of a day less than 4 hours operation will be considered to be half-day of operation. When owner-operated equipment is used to perform extra work to be paid for on a time and materials basis, the CONTRACTOR will be paid for the equipment and operator, as set forth in Paragraphs c, d, and e, following;
 - c. Payment for the equipment will be made in accordance with the provisions in Section 1-11.03D, herein;
 - d. Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the CONTRACTOR to other workers operating similar equipment already on the Site, or in the absence of such labor, established by collective bargaining agreements for the type of workmen and location of the extra work, whether or not the operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein accordance with the provisions of Section 1-11.03B, herein, which surcharge shall constitute full compensation for payments imposed by state and federal laws and all other payments made to or on behalf of workers other than actual wages; and
 - e. To the direct cost of equipment rental and labor, computed as provided herein, will be added the allowances for equipment rental and labor as provided in Section 1-11.04, herein.
- F. **Special Services:** Special work or services are defined as that work characterized by extraordinary complexity, sophistication, innovation, or a combination of the foregoing attributes which are unique to the construction industry. The ENGINEER will make estimates for payment for special services and may consider the following:
- a. When the ENGINEER and the CONTRACTOR, determine that a special service or work is required which cannot be performed by the forces of the CONTRACTOR or those of any of its Subcontractors, the special service or work may be performed by an entity especially skilled in the work to be performed. After validation of invoices and determination of market values by the ENGINEER, invoices for special services or work based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs;
 - b. When the CONTRACTOR is required to perform work necessitating special fabrication or matching process in a fabrication or a machine shop facility away from the Site, the charges for that portion of the work performed at the off-site facility may, by agreement, be accepted as a special service and accordingly, the invoices for the work may be accepted without detailed itemization; and
 - c. All invoices for special services will be adjusted by deducting all trade discounts. In lieu of the allowances for overhead and profit specified in Section 1-11.04, herein, an allowance of 15 percent will be added to invoices for special services.
- G. **Sureties;** All work performed hereunder shall be subject to all provisions of the Contract Documents and the CONTRACTOR's sureties shall be bound with reference thereto as under the original Agreement. Copies of all amendments to Bonds or supplemental Bonds shall be submitted to the AGENCY for review prior to the performance of any work hereunder.

1-11.04 CONTRACTOR'S OVERHEAD AND PROFIT

- A. Extra work ordered on the basis of time and materials will be paid for at the actual necessary cost as determined by the ENGINEER, plus allowances for overhead and profit. No additional mark-ups and/or surcharges will be added to the cost. The allowance for overhead and profit will include full compensation for superintendence, taxes, field office expense, extended overhead, home office overhead, and all other items of expense or cost not included in the cost of labor, materials, or equipment provided for under Section 1-11.03. The allowance for overhead and profit will be made in accordance with the following schedule:

Overhead and Profit Allowance

Labor20 percent

Materials 15 percent

Equipment 15 percent

To the sum of the costs and markups provided for in this Section, an additional 2 percent of the sum will be added as compensation for Bonds and insurance.

- B. It is understood that labor, materials, and equipment for extra work may be furnished by the CONTRACTOR or by the Subcontractor on behalf of the CONTRACTOR. When all or any part of the extra work is performed by a Subcontractor, the allowance specified herein will be applied to the labor, materials, and equipment costs of the Subcontractor, to which the CONTRACTOR may add 5 percent of the Subcontractor's total cost for the extra work. Regardless of the number of hierarchical tiers of Subcontractors, the 5 percent increase above the Subcontractor's total cost which includes the allowances for overhead and profit specified herein may be applied one time only.

1-11.05 EXCLUDED COSTS

The term "cost of the work" shall not include any of the following:

- A. Payroll costs and other compensation of CONTRACTOR's officers, executives, proprietors, partners, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR whether at the Site or in CONTRACTOR's principal or a branch office for general administration of the WORK all of which are to be considered administrative costs covered by the CONTRACTOR's allowance for overhead and profit;
- B. Non-direct labor costs, including superintendence, shall be considered part of the markup for overhead and profit, and no additional payment will be allowed for such;
- C. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site;
- D. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the WORK and charges against CONTRACTOR for delinquent payments;
- E. Cost of premiums for all Bonds and for all insurance whether or no CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except as provided by Section 1-11.04 above);
- F. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damages to property; and
- G. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in Section 1-11.04.

1-11.06 CONTRACTOR'S EXTRA WORK REPORT

In order to be paid for extra work, the CONTRACTOR must submit a daily extra work report on the form furnished by the ENGINEER. The form must be completely filled out based on the provisions of Sections 1-11.03 through 1-11.05 and signed by the CONTRACTOR and ENGINEER at the end of each work day. Failure to complete the form and obtain appropriate signatures by the next working day after the extra work of the previous day was completed will result in CONTRACTOR's costs for extra work being disallowed.

1-12 CHANGE OF CONTRACT TIMES

1-12.01 GENERAL

- A. The Contract Times may only be changed by a Change Order. Any claim for an extension of the Contract Times shall be based on written notice delivered by the CONTRACTOR to the ENGINEER promptly (but in no event later than 10 days) after the start of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within 30 days after the start of such event (unless the ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR's written statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR is entitled as a result of said event. All claims for adjustment in the Contract Times will be determined by the ENGINEER. No claim for an adjustment in the Contract Times will be valid if not submitted in accordance with the requirements of this Paragraph 1-12.01 A. An increase in Contract Times does not mean that the CONTRACTOR is due an increase in Contract Price. Only compensable time extensions will result in an increase in Contract Price.
- B. All time limits stated in the Contract Documents are of the essence of the Agreement.
- C. When CONTRACTOR is prevented from completing any part of the WORK within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost on the critical path of the WORK due to such delay, if a claim is made therefor as provided in Paragraph 1-12.01.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by AGENCY; acts or neglect of those performing other work as contemplated by Section 1-7; and fires, floods, epidemics, abnormal weather conditions, or acts of God. Delays attributable to and within the control of any Subcontractor or Supplier shall be deemed to be delays within the control of the CONTRACTOR.
- D. In no event will AGENCY be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for any increase in the Contract Price or other damages arising out of or resulting from the following:
 - a. Delays caused by or within the control of CONTRACTOR; or
 - b. Delays beyond the control of both AGENCY and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by those performing other work as contemplated by Section 1-7.

1-12.02 EXTENSIONS OF CONTRACT TIMES FOR DELAY DUE TO WEATHER

- A. The CONTRACTOR's construction schedule shall anticipate delay due to unusually severe weather. The number of days of anticipated delay is set forth in the Supplementary General Conditions.
- B. Contract Times may be extended by the ENGINEER because of delays in excess of the anticipated delay. The CONTRACTOR shall, within 10 days of the beginning of any such delay, notify the ENGINEER in writing and request an extension of Contract Times. The ENGINEER will ascertain the facts and the extent of the delay and extend the Contract Times when, in its judgment, the findings of the fact justify such an extension.

1-13 INSPECTIONS AND TESTS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

1-13.01 NOTICE OF DEFECTIVE WORK

Prompt notice of Defective Work known to the ENGINEER will be given to the CONTRACTOR. All Defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Section 1-13. Defective Work may be rejected even if approved by prior inspection.

1-13.02 ACCESS TO WORK

ENGINEER and other representatives and personnel of AGENCY, independent testing laboratories, and governmental agencies with jurisdictional interests shall have access to the WORK at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

1-13.03 INSPECTIONS AND TESTS

- A. The CONTRACTOR shall give the ENGINEER not less than 24 hours' notice of readiness of the WORK for all required inspections, tests, or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. The AGENCY shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - a. For inspection, tests, or approvals covered by Paragraphs 11-13.03C and 11-13.03D below;
 - b. That costs incurred in connection with tests or inspections conducted pursuant to Paragraph 1-13.03G. shall be paid as provided in said Paragraph 1-13.03G; and
 - c. As otherwise provided in the Contract Documents.
- C. If Laws and Regulations of any public body having jurisdiction require any WORK (or any part thereof) to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals; pay all costs in connection therewith; and furnish the ENGINEER the required certificates of inspection or approval.
- D. The CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the ENGINEER's acceptance of materials or equipment to be incorporated in the WORK or acceptance of materials, mix designs, or equipment submitted for approval prior to the CONTRACTOR's purchase thereof for incorporation in the WORK. Such inspections, tests, or approvals shall be performed by organizations acceptable to the ENGINEER.
- E. The ENGINEER will make, or have made, such inspections and tests as the ENGINEER deems necessary to see that the WORK is being accomplished in accordance with the requirements of the Contract Documents. Unless otherwise specified in any Supplementary General Conditions, the cost of such inspection and testing will be borne by the AGENCY. In the event such inspections or tests reveal non-compliance with the requirements of the Contract Documents, the CONTRACTOR shall bear the cost of corrective measures deemed necessary by the ENGINEER, as well as the cost of subsequent reinspection and retesting. Neither observations by the ENGINEER nor inspections, tests, or approvals by others shall relieve the CONTRACTOR from the CONTRACTOR's obligation to perform the WORK in accordance with the Contract Documents.
- F. If any WORK (including the work of others) that is to be inspected, tested, or approved is covered without written concurrence of the ENGINEER, it must, if requested by the ENGINEER, be uncovered for observation. Such uncovering shall be at the CONTRACTOR's expense unless the CONTRACTOR has given the ENGINEER not less than 24 hours notice of the CONTRACTOR's intention to perform such test or to cover the same and the ENGINEER has not acted with reasonable promptness in response to such notice.
- G. If any WORK is covered contrary to the written request of the ENGINEER, it must, if requested by the ENGINEER, be uncovered for the ENGINEER's observation and recovered at the CONTRACTOR's expense. If the ENGINEER considers it necessary or advisable that covered WORK be observed by the ENGINEER or inspected or tested by others, the CONTRACTOR, at the ENGINEER's request shall uncover, expose, or otherwise make available for observation, inspection, or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, material, and equipment. If it is found that such work is Defective

Work, the CONTRACTOR shall bear all direct, indirect, and consequential costs and damages of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction, including but not limited to, fees and charges of engineers, architects, attorneys, and other professionals. However, if such work is not found to be Defective Work, the CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, the CONTRACTOR may make a claim therefor as provided in Sections 1-11 and 1-12.

- H. No acceptance of equipment, materials, or work shall be construed to result from such inspections by the ENGINEER. Any inspections or tests or waivers thereof shall not relieve the CONTRACTOR of its responsibility for meeting the requirement of the Contract.

1-13.04 AGENCY MAY STOP THE WORK

If Defective Work is identified, the ENGINEER may order the CONTRACTOR to stop performance of the WORK, or any portion thereof, until the cause for such order has been eliminated; however, this right of the ENGINEER to stop the WORK shall not give rise to any duty on the part of the ENGINEER to exercise this right for the benefit of the CONTRACTOR or any other party.

1-13.05 CORRECTION OR REMOVAL OF DEFECTIVE WORK

If required by the ENGINEER, the CONTRACTOR shall promptly either correct all Defective Work, whether or not fabricated, installed, or completed, or, if the work has been rejected by the ENGINEER, remove it from the Site and replace it with non-defective WORK. The CONTRACTOR shall bear all direct, indirect, and consequential costs and damages of such correction or removal, including but not limited to fees and charges of engineers, architects, attorneys, and other professionals made necessary thereby.

1-13.06 ACCEPTANCE OF DEFECTIVE WORK

If, instead of requiring correction or removal and replacement of Defective Work, the AGENCY prefers to accept the Defective Work, the AGENCY may do so. The CONTRACTOR shall bear all direct, indirect, and consequential costs attributable to the AGENCY's evaluation of and determination to accept such Defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK, and the AGENCY shall be entitled to an appropriate decrease in the Contract Price.

1-13.07 AGENCY MAY CORRECT DEFECTIVE WORK

- A. If the CONTRACTOR fails within a reasonable time after written notice from the ENGINEER to correct Defective Work, or to remove and replace Defective Work as required by the ENGINEER in accordance with Paragraph 1-13.05A., or if the CONTRACTOR fails to perform the WORK in accordance with the Contract Documents, or if the CONTRACTOR fails to comply with any other provision of the Contract Documents, the AGENCY may, after seven days written notice to the CONTRACTOR, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this paragraph, the AGENCY shall proceed with corrective and remedial action. In connection with such corrective and remedial action, the AGENCY may exclude the CONTRACTOR from all or part of the Site, take possession of all or part of the WORK, and suspend the CONTRACTOR's services related thereto and incorporate in the WORK all materials and equipment for which the AGENCY has paid the CONTRACTOR whether stored at the Site or elsewhere. The CONTRACTOR shall provide the AGENCY and its ENGINEER, access to the Site to enable AGENCY to exercise the rights and remedies under this paragraph.
- C. All direct, indirect, and consequential cost and damages incurred by the AGENCY in exercising the rights and remedies under this paragraph will be charged against the CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the WORK; and the AGENCY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, the AGENCY may make a claim therefor as provided in Section 1-11. Such claim will include, but not be limited to, all

costs of repair or replacement of work of others, destroyed or damaged by correction, removal, or replacement of CONTRACTOR's Defective Work and all direct, indirect, and consequential damages associated therewith.

- D. The CONTRACTOR shall not be allowed an extension of Contract Times (or Milestones) because of any delay in the performance of the WORK attributable to the exercise by AGENCY of AGENCY's rights and remedies under this paragraph.

1-13.08 CORRECTION PERIOD

- A. The correction period for Defective Work shall be the longer of:
 - a. One year after the date of final acceptance;
 - b. Such time as may be prescribed by Laws and Regulations;
 - c. Such time as specified by the terms of any applicable special guarantee required by the Contract Documents; or
 - d. Such time as specified by any specific provision of the Contract Documents.
- B. If, during the correction period as defined in Paragraph 1-13.08A above, any work is found to be Defective Work, the AGENCY shall have the same remedies as set forth in Sections 1-13.05, 1-13.06, and 1-13.07 above.
- C. Where Defective Work (and damage to other work resulting therefrom) has been corrected, removed, or replaced under this paragraph, the correction period hereunder with respect to such work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

1-14 PAYMENTS TO CONTRACTOR AND COMPLETION

1-14.01 SCHEDULE OF VALUES (LUMP SUM PRICE BREAKDOWN)

The schedule of values or lump sum price breakdown established as provided in the General Conditions shall serve as the basis for progress payments and shall be incorporated into a form of "Application for Payment acceptable to the ENGINEER.

1-14.02 UNIT PRICE BID SCHEDULE

Progress payments on account of unit price work will be based on the number of units completed.

1-14.03 APPLICATION FOR PROGRESS PAYMENT

- A. Unless otherwise prescribed by law, on the 25th of each month, the CONTRACTOR shall submit to the ENGINEER for review, the Application for Payment filled out and signed by the CONTRACTOR covering the WORK completed as of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents.
- B. The Application for Payment shall identify, as a subtotal, the amount of the CONTRACTOR total earnings to date; plus the value of materials stored at the Site which have not yet been incorporated in the WORK; and less a deductive adjustment for materials installed which were not previously incorporated in the WORK, but for which payment was allowed under the provisions for payment for materials stored at the Site, but not yet incorporated in the WORK.
- C. The net payment due the CONTRACTOR shall be the above-mentioned subtotal from which shall be deducted the amount of retainage specified in the Supplementary General Conditions and the total amount of all previous payments made to the CONTRACTOR.
- D. The value of materials stored at the Site shall be an amount equal to the specified percent of the value of such materials as set forth in any Supplementary General Conditions. Said amount shall be based upon the value of all acceptable materials and equipment not incorporated in the WORK but delivered and suitably stored at the Site or at another location agreed to in writing; provided, each such individual item has a value of more than \$5,000 and will become a permanent part of the WORK. The Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the CONTRACTOR has received the materials and equipment free

and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the AGENCY's interest therein, all of which will be satisfactory to the AGENCY.

- E. A **Five percent (5%)** retention of payment amount shall be held by the AGENCY from the amount of each Application for Payment.
- F. **OPTIONAL:** Partial payments for mobilization/demobilization costs shall be as follows:
 - a. Thirty-five percent (35%) of the amount bid for mobilization/ demobilization or 1.75 percent of the original Contract Price, whichever is less, shall be paid in each of the first two progress payments.
 - b. The balance of the amount bid for mobilization/demobilization shall be paid upon completion of all WORK on the project.

1-14.04 CONTRACTOR'S WARRANTY OF TITLE

The CONTRACTOR warrants and guarantees that title to all WORK, materials, and equipment covered by an Application for Payment, whether incorporated in the WORK or not, will pass to the AGENCY no later than the time of payment, free and clear of all Liens.

1-14.05 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

- A. The ENGINEER will, within 7 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the application to the AGENCY, or return the application to the CONTRACTOR indicating in writing the ENGINEER'S REASONS FOR REFUSING TO RECOMMEND PAYMENT. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the application. If the ENGINEER still disagrees with a portion of the application, it will submit the application recommending the undisputed portion of the application to the AGENCY for payment and provide reasons for recommending non-payment of the disputed amount. Thirty days after presentation of the Application for Payment with the ENGINEER'S recommendation, the amount recommended will (subject to the provisions of Paragraph 1-14.05B.) become due and when due will be paid by the AGENCY to the CONTRACTOR.
- B. The ENGINEER, in its discretion, may refuse to recommend the whole or any part of any payment. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect AGENCY from loss because:
 - a. The work is Defective Work or the completed WORK has been damaged requiring correction or replacement.
 - b. The Contract Price has been reduced by written amendment or Change Order.
 - c. The AGENCY has been required to correct Defective Work or complete WORK in accordance with Section 1-13.07.
 - d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in Sections 1-15.01 through 15.04 inclusive.
 - e. Third party claims filed or reasonable evidence indicating probable filing of such claims; or
 - f. Failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment; or
 - g. Reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum; or
 - h. Failure of the Contractor to submit an acceptable construction schedule or failure to update the schedule; or
 - i. Damage to the AGENCY or another contractor; or
 - j. Reasonable evidence that the work will not be completed within the time provided for in the Contract; or Contractor's failure or inability to obtain or maintain insurance coverage and bonds as required by the Contract throughout the course of the job; or
 - k. Persistent failure to carry out the work in accordance with the Contract; or

for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to the AGENCY) of all Liens arising out of or filed in connection with the WORK.

1-14.09 FINAL PAYMENT AND ACCEPTANCE

- A. If, on the basis of the ENGINEER's observation of the WORK during construction and final inspection, and the ENGINEER's review of the final Application for Payment and accompanying documentation, all as required by the Contract Documents, the ENGINEER is satisfied that the WORK has been completed and the CONTRACTOR's other obligations under the Contract Documents have been fulfilled, the ENGINEER will, within 14 days after receipt of the final Application for Payment, indicate in writing the ENGINEER's recommendation of payment and present the application to the AGENCY for payment.
- B. After acceptance of the WORK by the NVTA Board, the AGENCY will make final payment to the CONTRACTOR of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including the following items:
 - a. Liquidated damages, as applicable;
 - b. Amounts withheld by AGENCY under Paragraph 1-14.05B. and C. which have not been released; and
 - c. In accordance with Section 1-17.06, one-and-one-half times the value of outstanding items of correction work or punch list items yet uncompleted or uncorrected, as applicable. All such work shall be completed or corrected to the satisfaction of the ENGINEER as required by the Contract Documents, otherwise the CONTRACTOR does hereby waive any and all claims to all monies withheld by the AGENCY to cover the value of all such uncompleted or uncorrected items.
- C. Prior to final payment by the AGENCY, the CONTRACTOR must provide the AGENCY a fully-executed Conditional Waiver and Release Upon Final Payment in accordance with California Civil Code Section 3262.

1-15 SUSPENSION OF WORK AND TERMINATION

1-15.01 SUSPENSION OF WORK BY AGENCY

The AGENCY may, at any time and without cause, suspend the WORK or any portion thereof for a period of not more than 90 days by notice in writing to the CONTRACTOR. The CONTRACTOR shall resume the WORK on receipt of a notice of resumption of work. The CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both directly attributable to any suspension if the CONTRACTOR makes an approval claim therefor as provided in Sections 1-11 and 1-12.

1-15.02 TERMINATION OF AGREEMENT BY ENGINEER FOR DEFAULT

- A. In the event of default by the CONTRACTOR, the ENGINEER may give seven days written notice to the CONTRACTOR and the CONTRACTOR's surety of AGENCY's intent to terminate the Agreement and provide the CONTRACTOR an opportunity to remedy the conditions constituting the default within a specified period of time. It will be considered a default by the CONTRACTOR whenever CONTRACTOR shall:
 - a. Declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors;
 - b. Disregard or violate the Laws or Regulations of any public body having jurisdiction;
 - c. Fail to provide materials or workmanship meeting the requirements of the Contract Documents;
 - d. Disregard or violate provisions of the Contract Documents or ENGINEER's instructions;
 - e. Fail to prosecute the WORK according to the approved progress schedule;
 - f. Fail to provide a qualified superintendent, competent workmen, or materials or equipment meeting the requirements of the Contract Documents;
 - g. Disregard the authority of the ENGINEER; or
 - h. Assign or subcontract any part of the work without the ENGINEER's consent.
- B. If the CONTRACTOR fails to remedy the conditions constituting default within the time allowed, the ENGINEER may then issue the notice of termination.

- C. In the event the Agreement is terminated in accordance with Paragraph 1-15.02A., herein, the AGENCY may take possession of the WORK and may complete the WORK by whatever method or means the AGENCY may select. The cost of completing the WORK will be deducted from the balance which would have been due the CONTRACTOR had the Agreement not been terminated and the WORK completed in accordance with the Contract Documents. If such cost exceeds the balance which would have been due, the CONTRACTOR shall pay the excess amount to the AGENCY. If such cost is less than the balance which would have been due, the CONTRACTOR shall not have claim to the difference.

1-15.03 TERMINATION OF AGREEMENT BY AGENCY FOR CONVENIENCE

- A. Upon seven days' written notice to the CONTRACTOR, the AGENCY may, without cause and without prejudice to any other right or remedy of the AGENCY, elect to terminate the Agreement. In such case, the CONTRACTOR shall be paid (without duplication of any items):
 - a. For completed and acceptable WORK executed in accordance with the Contract Documents, prior to the effective date of termination, including fair and reasonable sums for overhead and profit of such WORK;
 - b. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted WORK, plus fair and reasonable sums or overhead and profit on such expenses;
 - c. For all reasonable claims, costs, losses, and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - d. For reasonable expenses directly attributable to termination.
- B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

1-15.04 TERMINATION OF AGREEMENT BY CONTRACTOR

- A. The CONTRACTOR may terminate the Agreement upon 14 days written notice to the ENGINEER whenever:
 - a. The WORK has been suspended under the provisions of Section 1-15.01, herein, for more than 90 consecutive days through no fault or negligence of the CONTRACTOR, and notice to resume work or to terminate the Agreement has not been received from the ENGINEER within this time period; or
 - b. The AGENCY should fail to pay the CONTRACTOR any monies due him in accordance with the terms of the Contract Documents and within 60 days after presentation to the ENGINEER by the CONTRACTOR of a request therefor, unless within said 14-day period the AGENCY shall have remedied the condition upon which the payment delay was based.
- B. In the event of such termination, the CONTRACTOR shall have no claims against the AGENCY except for those claims specifically enumerated in Section 1-15.03, herein, and as determined in accordance with the requirements of said paragraph.

1-16 GENERAL TERMS

1-16.01 GIVING NOTICE

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

1-16.02 TITLE TO MATERIALS FOUND ON THE WORK

The AGENCY reserves the right to retain title to all soils, stone, sand, gravel, and other materials developed and obtained from excavations and other operations connected with the WORK. Unless otherwise specified in the Contract Documents, neither the CONTRACTOR nor any Subcontractor shall have any right, title, or

interest in or to any such materials. The CONTRACTOR will be permitted to use in the WORK, without charge, any such materials which meet the requirements of the Contract Documents.

1-16.03 RIGHT TO AUDIT

If the CONTRACTOR submits a claim to the ENGINEER for additional compensation, the AGENCY shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the CONTRACTOR's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discovery and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the CONTRACTOR's plant or such parts thereof, as may be or have been engaged in the performance of the WORK. The CONTRACTOR further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the AGENCY deems desirable during the CONTRACTOR's normal business hours at the office of the CONTRACTOR. The CONTRACTOR shall make available to the ENGINEER for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the ENGINEER.

1-16.04 SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties, and guaranties made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the WORK or termination or completion of the Agreement.

1-16.05 CONTROLLING LAW

This Agreement is to be governed by the law of the state in which the Project is located.

1-16.06 SEVERABILITY

If any term or provision of this Agreement is declared invalid or unenforceable by any court of lawful jurisdiction, the remaining terms and provisions of the Agreement shall not be affected thereby and shall remain in full force and effect.

1-16.07 WAIVER

The waiver by the AGENCY of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by the AGENCY which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by CONTRACTOR or any term, covenant, condition of this Agreement or of any applicable law or ordinance.

1-17 CALIFORNIA STATE REQUIREMENTS

1-17.01 STATE WAGE DETERMINATIONS

- A. As required by Section 1770 and following, of the California Labor Code, the CONTRACTOR shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages available file at the office of the AGENCY Clerk, which copies shall be made available to any interested party on request. The CONTRACTOR shall post a copy of such determination at each job site.
- B. In accordance with Section 1775 of the California Labor Code, the CONTRACTOR shall, as a penalty to the AGENCY, forfeit not more than **\$200.00** for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her.

1-17.02 WORKERS' COMPENSATION

- A. In accordance with the provisions of Section 3700 of the California Labor Code, the CONTRACTOR shall secure the payment of compensation to its employees.
- B. Prior to beginning work under the Contract, the CONTRACTOR shall sign and file with the ENGINEER the following certification:

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

- C. Notwithstanding the foregoing provisions, before the Contract is executed on behalf of the AGENCY, a bidder to whom a contract has been awarded shall furnish satisfactory evidence that it has secured in the manner required and provided by law the payment of workers' compensation.

1-17.03 APPRENTICES ON PUBLIC WORKS

The CONTRACTOR shall comply with all applicable provisions of Section 1777.5 of the California Labor Code relating to employment of apprentices on public works.

1-17.04 WORKING HOURS

The CONTRACTOR shall comply with all applicable provisions of Section 1810 to 1815, inclusive, of the California Labor Code relating to working hours. The CONTRACTOR shall, as a penalty to the AGENCY, forfeit \$25.00 for each worker employed in the execution of the Contract by the CONTRACTOR or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of 8 hours at not less than 1-1/2 times the basic rate of pay.

1-17.05 CONTRACTOR NOT RESPONSIBLE FOR DAMAGE RESULTING FROM CERTAIN ACTS OF GOD

As provided in Section 7105 of the California Public Contract Code, the CONTRACTOR shall not be responsible for the cost of repairing or restoring damage to the WORK which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the WORK damaged was built in accordance with accepted and applicable building standards and the plans and specifications of the AGENCY. The CONTRACTOR shall obtain insurance to indemnify the AGENCY for any damage to the WORK caused by an act of God if the insurance premium is a separate bid item in the bidding schedule for the WORK. For purposes of this Section, the term "acts of God" shall include only the following occurrences or conditions and effects: earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves.

1-17.06 NOTICE OF COMPLETION

In accordance with the Sections 3086 and 3093 of the California Civil Code, within 10 days after date of acceptance of the WORK by THE NVTA BOARD the ENGINEER will file, in the County Recorder's office, a Notice of Completion of the WORK.

1-17.07 UNPAID CLAIMS

If, at any time prior to the expiration of the period for service of a stop notice, there is served upon the AGENCY a stop notice as provided in Sections 3179 and 3210 of the California Civil Code, the AGENCY shall, until the discharge thereof, withhold from the monies under its control so much of said monies due or to become due to the CONTRACTOR under this Contract as shall be sufficient to answer the claim stated in such stop notice and to provide for the reasonable cost of any litigation thereunder; provided, that if the ENGINEER shall, in its discretion, permit CONTRACTOR to file with the ENGINEER the bond referred to in Section 3196 of the Civil Code of the State of California, said monies shall not thereafter be withheld on account of such stop notice.

1-17.08 RETAINAGE FROM MONTHLY PAYMENTS

- A. Pursuant to Section 22300 of the California Public Contract Code, the CONTRACTOR may substitute securities for any money withheld by the AGENCY to insure performance under the Contract. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the AGENCY or with a state or federally chartered bank in California as to the escrow agent, who shall return such securities to the CONTRACTOR upon satisfactory completion of the Contract.
- B. Alternatively, the CONTRACTOR may request and the AGENCY shall make payment of retentions earned directly to the escrow agent at the expense of the CONTRACTOR. At the expense of the CONTRACTOR, the CONTRACTOR may direct the investment of the payments into securities and the CONTRACTOR shall receive the interest earned on the investments upon the same terms provided in Section 22300 of the Public Contract Code securities deposited by the CONTRACTOR. The CONTRACTOR shall be responsible for paying all fees for the expenses incurred by the escrow agent in administering the escrow account and all expenses of the AGENCY. These expenses and payment terms shall be determined by the AGENCY's Finance Director or his/her designee and the escrow agent. Upon satisfactory completion of the Contract, the CONTRACTOR shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the AGENCY, pursuant to the terms of Section 22300 of the Public Contract Code. The CONTRACTOR shall pay to each subcontractor, not later than 20 days of receipt of the 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.
- C. Securities eligible for investment under Section 22300 shall be limited to those listed in Section 16430 of the Government Code and to bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the CONTRACTOR and the AGENCY.

1-17.09 PUBLIC WORKS CONTRACTS; ASSIGNMENT TO AWARDING BODY

In accordance with Section 7103.5 of the California Public Contract Code, the CONTRACTOR and Subcontractors shall conform to the following requirements. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the CONTRACTOR or subcontractor offers and agrees to assign to the AGENCY all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the CONTRACTOR, without further acknowledgment by the parties.

1-17.10 PAYROLL RECORDS; RETENTION; INSPECTION; NONCOMPLIANCE PENALTIES; RULES AND REGULATIONS

- A. In accordance with Section 1776 of the California Labor Code the CONTRACTOR and each Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.
- B. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the CONTRACTOR on the following basis:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request as well as

submitted electronically online to the Department of Industrial Relations Labor Commissioner: <https://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>.

- b. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - c. A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the CONTRACTOR, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the CONTRACTOR.
- C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.
- D. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the CONTRACTOR awarded the contract or performing the contract shall not be marked or obliterated.
- E. The CONTRACTOR shall inform the ENGINEER of the location of the records including the street address, AGENCY and County, and shall, within 5 working days, provide a notice of change of location and address.
- F. The CONTRACTOR shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the CONTRACTOR must comply with this Section. In the event that the CONTRACTOR fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

1-17.11 CULTURAL RESOURCES

The CONTRACTOR's attention is directed to the provisions of the Clean Water Grant Program Bulletin 76A which augments the National Historic Preservation Act of 1966 (16 U.S.C. 470) as specified under Section 01560 - Temporary Environmental Controls, of the General Conditions.

1-17.12 PROTECTION OF WORKERS IN TRENCH EXCAVATIONS

- A. As required by Section 6705 of the California Labor Code and in addition thereto, whenever work under the Contract involves the excavation of any trench or trenches 5 feet or more in depth, the CONTRACTOR shall submit for acceptance by the ENGINEER, to whom authority to accept has been delegated, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation, of such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Occupational Safety and Health, the plan shall be prepared by a registered civil or structural engineer employed by the CONTRACTOR, and all costs therefore shall be included in the price named in the Contract for completion of the WORK as set forth in the Contract Documents. Nothing in this Section shall be deemed to allow the use of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this Section shall be construed to impose tort liability on the AGENCY or any of its officers, agents, representatives, or employees.

- B. Excavation shall not start until the CONTRACTOR has obtained a permit from the California Division of Industrial Safety and has posted it at the site.

1-17.13 CONCRETE FORMS, FALSEWORK, AND SHORING

The CONTRACTOR shall comply fully with the requirements of Section 1717 of the Construction Safety Orders, State of California, Department of Industrial Relations, regarding the design of concrete forms, falsework and shoring, and the inspection of same prior to placement of concrete. Where the said Section 1717 requires the services of a civil engineer registered in the State of California to approve design calculations and working drawings of the falsework or shoring system, or to inspect such system prior to placement of concrete, the CONTRACTOR shall employ a registered civil engineer for these purposes, and all costs therefore shall be included in the price named in the Contract for completion of the WORK as set forth in the Contract Documents.

1-17.14 REMOVAL, RELOCATION, OR PROTECTION OF EXISTING UTILITIES

- A. In accordance with the provisions with the provisions of Section 4215 of the California Government Code, the AGENCY shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the site of any construction project that is a subject of the Contract, if such utilities are not identified by the AGENCY in the plans and specifications made a part of the invitation for bids. The AGENCY will compensate CONTRACTOR for the costs of locating, repairing damage not due to the failure of the CONTRACTOR to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work.
- B. The CONTRACTOR shall not be assessed liquidated damages for delay in completion of the project, when such delay was caused by the failure of the public agency or the owner of the utility to provide for removal or relocation of such utility facilities. Nothing herein shall be deemed to require the public agency to indicate the presence of existing service laterals or appurtenances when the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of construction; provided however, nothing herein shall relieve the public agency from identifying main or trunklines in the plans and specifications.
- C. If the CONTRACTOR while performing the Contract discovers utility facilities not identified by the public agency in the Contract Documents it shall immediately notify the public agency and utility in writing.
- D. The public utility, where they are the owner, shall have the sole discretion to perform such repairs or relocation work or permit the CONTRACTOR to do such repairs or relocation work at a reasonable price.

1-17.15 CONTRACTOR LICENSE REQUIREMENTS

- A. In accordance with Section 7028.15 of the California Business and Professions Code:
- B. It is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor within this state without having a license therefor, except in any of the following cases:
 - a. The person is particularly exempted from this chapter.
 - b. The bid is submitted on a state project governed by Section 10164 of the Public Contract Code or any local agency project governed by Section 20103.5 of the Public Contract Code.
- C. If a person has previously been convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contract work, or four thousand five hundred dollars (\$4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.
- D. In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purpose of this subdivision means the

aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

- E. This section shall not apply to a joint venture license, as required by Section 7029.1 of the California Business and Professions Code. However, at the time of making a bid as a joint venture, each person submitting the bid shall be subject to this section with respect to his or her individual licensure.
- F. This section shall not affect the right or ability of a licensed architect, land surveyor, or registered professional engineer to form joint ventures with licensed contractors to render services within the scope of their respective practices.
- G. Unless one of the foregoing exceptions applies, a bid submitted to a public agency by a contractor who is not licensed in accordance with this chapter shall be considered nonresponsive and shall be rejected by the public agency. Unless one of the foregoing exceptions applies, a local public agency shall, before awarding a contract or issuing a purchase order, verify that the contractor was properly licensed when the contractor submitted the bid. Notwithstanding any other provision of law, unless one of the foregoing exceptions applies, the registrar may issue a citation to any public officer or employee of a public entity who knowingly awards a contract or issues a purchase order to a contractor who is not licensed pursuant to this chapter. The amount of civil penalties, appeal, and finality of such citations shall be subject to Sections 7028.7 and 7028.13 inclusive of the California Business and Professions Code. Any contract awarded to, or any purchase order issued to, a contractor who is not licensed pursuant to this chapter is void.
- H. Any compliance or noncompliance with subdivision (G) of this paragraph shall not invalidate any contract or bid awarded by a public agency during which time that subdivision was in effect.
- I. A public employee or officer shall not be subject to a citation pursuant to this section if the public employee, officer, or employing agency made an inquiry to the board for the purposes of verifying the license status of any person or contractor and the board failed to respond to the inquiry within three business days. For the purposes of this section, a telephone response by the board shall be deemed sufficient.

1-17.16 DIGGING TRENCHES OR EXCAVATIONS; NOTICE ON DISCOVERY OF HAZARDOUS WASTE OR OTHER UNUSUAL CONDITIONS; INVESTIGATIONS; CHANGE ORDERS; EFFECT ON CONTRACT

If this Contract involves digging trenches or other excavations that extend deeper than four feet below the surface, the following shall apply:

- A. The CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the ENGINEER in writing, of any:
 - a. 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.
 - b. Subsurface or latent physical conditions at the site differing from those indicated.
 - c. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
 - d. The ENGINEER shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR'S cost of, or the time required for, performance of any part of the work shall issue a change order the procedures described in the Contract.
 - e. In the event that a dispute arises between the ENGINEER and the CONTRACTOR whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the CONTRACTOR'S cost of, or time required for, performance of any part of the work, the CONTRACTOR shall not be excused from any scheduled completion date

provided for by the Contract, but shall proceed with all work to be performed under the Contract. The CONTRACTOR shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

1-17.17 RETENTION PROCEEDS; WITHHOLDING; DISBURSEMENT

In accordance with Section 7107 of the Public Contract Code with respects to all contracts entered into on or after January 1, 1993 relating to the construction of any public work of improvement the following shall apply:

- A. The retention proceeds withheld from any payment by the AGENCY from the original CONTRACTOR, or by the original CONTRACTOR from any subcontractor, shall be subject to this Section 1-17.17.
- B. Within 60 days after the date of completion of the WORK, including any punch-list WORK, the retention withheld by the AGENCY shall be released. In the event of a dispute between the ENGINEER and the original CONTRACTOR, the AGENCY may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For the purposes of this paragraph, "completion" means any of the following:
 - a. The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the AGENCY, accompanied by cessation of labor on the work of improvement.
 - b. The acceptance by the NVTA Board of the work of improvement.
 - c. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the CONTRACTOR.
 - d. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the ENGINEER files for record a notice of cessation or a notice of completion.
- C. Subject to Section 1-17.17, within 10 days from the time that all or any portion of the retention proceeds are received by the original CONTRACTOR, the original CONTRACTOR shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original CONTRACTOR is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.
- D. The original CONTRACTOR may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original CONTRACTOR. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.
- E. In the event that retention payments are not made within the time periods required by this paragraph 17.18, the AGENCY or original CONTRACTOR shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.
- F. Any attempted waiver of the provisions of this section shall be void as against the public policy of this state.

1-17.18 TIMELY PROGRESS PAYMENTS; INTEREST; PAYMENT REQUESTS

- A. If the AGENCY fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from the CONTRACTOR, the AGENCY shall pay interest to the CONTRACTOR equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

- B. Upon receipt of a payment request, the ENGINEER shall act in accordance with both of the following:
 - a. Each payment request shall be reviewed by the ENGINEER as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
 - b. 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 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.
- C. The number of days available to the AGENCY to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of days by which the AGENCY exceeds the seven-day requirement set forth above.
- D. For purposes of this paragraph:
 - a. A "progress payment" includes all payments due the CONTRACTOR, except that portion of the final payment designated by the contract as retention earnings.
 - b. A payment request shall be considered properly executed if funds are available for payment of the payment request, and payments is not delayed due to an audit inquiry by the financial officer of the AGENCY.

1-17.19 PREFERENCE FOR MATERIAL

In accordance with Section 3400 of the California Public Contract Code, the CONTRACTOR will be provided a period prior to award of the contract for submission of data substantiating a request for a substitution of "as equal" item.

1-17.20 RESOLUTION OF CONSTRUCTION CLAIMS

- A. In accordance with Section 20104 et Seq. of the California Public Contract Code. This paragraph applies to all claims of \$375,000 or less which arise between the CONTRACTOR and the AGENCY under this Contract for:
 - a. A time extension;
 - b. Payment of money or damages arising from work done by or on behalf of, the CONTRACTOR pursuant to this CONTRACT and payment of which is not otherwise expressly provided for or the CONTRACTOR is not otherwise entitled to; or
 - c. An amount the payment of which is disputed by the ENGINEER.
- B. For any claim set out under Paragraph A above, the following requirements apply:
 - a. The claim shall be in writing and include the documents necessary to substantiate the claim and be accompanied by the following certification:

"CONTRACT PROVISION REQUIRING PERSONAL CERTIFICATION OF ALL CLAIMS:

I, _____, BEING THE _____ (MUST BE AN OFFICER) OF _____ (GENERAL CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE AGENCY IS LIABLE; AND, FURTHER THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 12650, ET SEQ. PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES."

Claims must be filed on or before the date of final payment. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by Contract for the filing of claims.

The claim must include an actual cost documentation, including hours of work performed, equipment operation costs, and labor and overhead costs, which should be established at a standard percentage. Any overhead costs listed when paid, shall provide full and complete payment for any and all overhead, including jobsite overhead, home office overhead, as well as additional costs arising from disruption, resequencing or acceleration. A notice of POTENTIAL CLAIM shall be submitted in advance of the performance of any work, regardless of type, in which the CONTRACTOR may claim an additional cost. CONTRACTOR shall provide prompt notification of any disagreement in quantities of work performed along with a detailed accounting by means of a schedule update demonstrating any delays incurred.

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

If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the ENGINEER and the CONTRACTOR.

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

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

If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the ENGINEER and the CONTRACTOR.

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

- d. If the CONTRACTOR disputes the ENGINEER's written response, or the ENGINEER fails to respond within the time prescribed, the CONTRACTOR may notify the ENGINEER, in writing, either within 15 days of receipt of the ENGINEER's response or within 15 days of the ENGINEER's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the ENGINEER shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- e. Following the meet and confer conference, if the claim or any portion remains in dispute, the CONTRACTOR may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time CONTRACTOR submits its written claim pursuant to subdivision (a) until the time the claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

ATTACHMENT 4



CONSTRUCTION AGREEMENT

NVTA AGREEMENT NO. 24-CXX

CONSTRUCTION CONTRACT
(CUCCAC)

THIS AGREEMENT, is made and entered into as of this _____ day of _____, 2024 by and between the NAPA VALLEY TRANSPORTATION AUTHORITY, hereinafter referred to as "NVTA", and _____, doing business as a Corporation in the State of California, whose mailing address is _____, hereinafter referred to as "CONTRACTOR";

TERMS

ARTICLE I. In consideration of the payments and covenants hereinafter mentioned, to be made and performed by NVTA, CONTRACTOR shall, at CONTRACTOR's own cost and expense, do all the work and furnish all materials, except such as are specified herein to be furnished by NVTA, necessary to install and complete in a good, workmanlike and substantial manner and to the satisfaction of the NVTA Board, that construction project known as _____, which shall be constructed in the County of Napa, California, in accordance with Special Provisions described in Exhibit A and the 2022 Standard Specifications of the State of California Department of Transportation ("Standard Specifications"). The Special Provisions and Standard Specifications are incorporated by reference as if set forth herein.

ARTICLE II. NVTA hereby promises and agrees with CONTRACTOR to employ, and does hereby employ, CONTRACTOR to provide the materials and to do the work according to the terms and conditions herein contained for the prices hereinafter set forth, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth herein, and both parties hereby agree, for themselves, their heirs, executors, administrators, successors and assigns, to full performance of the covenants contained herein.

ARTICLE III. CONTRACTOR agrees to receive and accept the following price as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this Contract; for all loss and damage, arising out of the nature of such work, from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the Board of Supervisors of the NVTA, and for all risks of every description connected with the work; for all expenses incurred by or in consequence of the suspension or discontinuance of work; and for well and faithfully completing the work and the whole thereof in the manner and according to the Special Provisions in Exhibit "A", the Standard Specifications, under them, to wit:

TITLE OF JOB

<p align="center">LUMP SUM BASE BID</p> <p>NAME OF PROJECT W/ SUMMARY OF SERVICES TO BE PROVIDED - shall include: All labor, material, and product (inclusive all fees and charges and warranty) for work described in Exhibit A.</p>	<p align="center">\$</p>
<p align="center">LUMP SUM BASE BID TOTAL WRITTEN: XX</p>	

IN WITNESS WHEREOF, this Contract has been approved by NVTA and CONTRACTOR as of the date first set forth on page 1 of this Contract.

Napa Valley Transportation Authority

By _____
Name and Title

CONTRACTOR

By _____
Name and Title

Approved as to Form I
By: _____ NVTA General Counsel
Date: _____

NOTE: Signature of those executing for the CONTRACTOR must be acknowledged by Notary Public.

EXHIBIT "A"

SPECIAL PROVISIONS

1. LOCATION

2. DESCRIPTION OF WORK

Work generally consist of, but is not limited to:

- XXXXXXXXX;
- XXXXXXXXX

3. DEFINITIONS AND TERMS: The following terms when used in this Exhibit A or in the Standard Specifications shall have the following meanings when used in this Contract:

Contractor. The person or entity described as "CONTRACTOR" in the preamble to this Contract.

NVTA. The Napa Valley Transportation Authority

Department of Transportation . The Board of the Napa Valley Transportation Authority

Department. The Napa Valley Transportation Authority.

Director of Transportation. The NVTA Executive Director.

Engineer or County Engineer. The NVTA Executive Director, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

Laboratory. The established laboratory of the Materials and Research Department of Transportation of the State of California or laboratories authorized by the Engineer to test materials and work involved in the contract.

Owner. The Napa Valley Transportation Authority

State of California. The Napa Valley Transportation Authority.

Standard Specifications. The 2018 edition of the Standard Specifications of the State of California, Department of Transportation. Any reference therein to the State of California or a State agency, office or officer shall be interpreted to refer to the NVTA or its corresponding agency, office or officer acting under this contract.

4. CONTRACT DOCUMENTS

The Contract Documents shall include the Contract main text, this Exhibit "A" (Special Provisions), Notice to Contractors, the Proposal, the performance bond, the labor and materials bonds, the attached plans, the Standard Specifications of the State of California, Department of Transportation, dated May 2018, insofar as same may apply, and pertinent portions of other documents included by reference thereto in the Special Provisions or the Contract pages.

5. TIME OF COMPLETION

The CONTRACTOR shall begin work within five (5) working days after receiving notice that the contract has been executed and approved and shall diligently prosecute the same to completion before the expiration of five (5) working days after receiving notice that the contract has been executed and approved. The number of working days shall include the lead time for delivery of materials.

8. PREVAILING WAGES

In accordance with the provisions of Section 1774 of the Labor Code of the State of California, the Board of NVTAs has ascertained from the Director of Industrial Relations the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) applicable to the work to be done under this Contract. These rates of wages are on file and may be seen at the NVTAs, 625 Burnell Street, Napa, California, 94559.

9. PAYROLL RECORDS

Special Attention is directed to the provisions of Section 7-1.01A(3) of the Standard Specifications. A copy of all payrolls shall be submitted weekly to the Engineer. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Department or on any form with identical wording. The CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

10. AWARD AND EXECUTION OF THE CONTRACT (Bonds)

CONTRACTOR shall furnish a faithful Performance Bond in an amount equal to one hundred percent (100%) of the contract price of the work contemplated and the laborer's and material's man payment bond as required by Section 9550 of the Civilian Code in an amount equal to one hundred percent (100%) of the contract price of the work contemplated. (NOT REQUIRED FOR WORK UNDER

\$25,000)

11. SCOPE OF WORK

Attention is directed to Section 4 of the Standard Specifications.

CONTRACTOR shall accomplish complete installation of the required facilities as described in the Description of Work, above, including all items required to make the work in operating condition to the approval of the Engineer. All references to plans and specifications in the Standard Specifications shall apply to the Description of Work and attached plans.

12. CONTROL OF THE WORK

Attention is directed to Section 5 of the Standard Specifications.

Deviations from the Description of Work and attached plans shall be approved by the Engineer and all changes shall be by written permission only.

13. LEGAL RELATION AND RESPONSIBILITY

Attention is directed to Section 7 of the Standard Specifications.

- (a) Prevailing Wages. In-lieu of the prevailing wage rates being set forth in the Notice to Contractors as provided in Standard Specifications Section 7-1.01 A(2) "Prevailing Wages", see Section 8 and 9 of these Special Provisions.
- (b) Public Safety.
 - (1) Safety Devices. Furnishing and maintenance of safety devices shall be the responsibility of the CONTRACTOR at all times. The CONTRACTOR shall respond promptly to correct improper conditions or inoperative devices. Failure to inspect and maintain all necessary safety devices in proper operating condition when in use, or failure to respond promptly to notification of improperly operating equipment, will be sufficient cause for suspension of the contract until such defects are corrected or termination as otherwise provided in this Contract.
 - (2) Material Safety Data Sheets (MSDS) – The CONTRACTOR shall provide MSDS for each product used on site upon request by the Engineer.
 - (3) Safety Standards; Suspension of Contract for Unsafe Equipment. The CONTRACTOR shall comply with all the applicable provisions of the United States Department of Labor Occupational Safety and Health Act (OSHA), State of California Division of Industrial Safety, Title 8, Safety Orders (Cal-OSHA), the Federal Aviation Administration (FAA) and any other applicable codes and regulations. If, in the opinion of

the Engineer, any operation or piece of equipment that is observed by the Engineer appears to be unsafe, the Engineer may immediately halt that portion of the work until the hazard is corrected to the satisfaction of the Engineer and no time extension or additional compensation shall be granted for the time lost due to said halting of the work.

(c) Acceptance of Contract. Attention is directed to Section 7-1.17 of the Standard Specifications. Acceptance will consist of the execution and filing with the County Recorder of a Notice of Completion as defined in Civil Code section 3093. Should it become necessary due to developed conditions to occupy any portion of the work before the contract is fully completed, such occupancy shall not constitute acceptance.

(d) Hold Harmless/Indemnification. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify NVTA and the officers, agents, employees and volunteers of NVTA from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of NVTA or its officers, agents, employees or volunteers. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(e) Insurance. CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(1) Workers' Compensation insurance. If and to the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement; including but not limited to, coverage for workers' compensation, employer's liability and a waiver of subrogation, and shall provide NVTA with certification of all such coverages upon request by NVTA's Risk Manager.

(2) Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to transact business in the State of California and having a A.M. Best rating of A VII or better:

- (i) General Liability. Commercial or comprehensive general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement.
- (ii) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with Contractor's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.
- (3) Certificates. All insurance coverages referenced in (2), above, shall be evidenced by one or more certificates of coverage which shall be filed by CONTRACTOR with NVTA prior to commencement of performance of any of CONTRACTOR's duties; shall be kept current during the term of this Agreement; shall provide that NVTA shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the insurance coverage referenced in (2)(i), the certificate of insurance or endorsements attached thereto shall also name NVTA, its officers, employees, agents and volunteers as additional insureds; that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of NVTA shall pertain only to liability for activities of CONTRACTOR under this Agreement; and shall provide that the insurance provided is primary coverage to NVTA with respect to any insurance or self-insurance programs maintained by NVTA. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request of the Department or the NVTA's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.
- (4) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be approved by, NVTA's Risk Manager, which approval shall not be denied unless the NVTA's Risk

Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by NVTA's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects NVTA, its officers, employees, agents, and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

14. PROSECUTION AND PROGRESS

Attention is directed to Section 8 of the Standard Specifications, and to the following:

- (a) Progress Schedule. The CONTRACTOR, promptly after being awarded the contract, shall prepare and submit for the owner's and engineer's information a contractor's construction schedule for the work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the work and project or when requested in writing by the Engineer, shall be related to the entire project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the work.
- (b) Schedule of Submittals. The CONTRACTOR shall prepare and keep current, for the Engineer's approval, a schedule of submittals which is coordinated with the contractor's construction schedule and allows the Engineer reasonable time to review submittals.
- (c) Current Progress Schedule. The CONTRACTOR shall perform the work in general accordance with the most recent schedules submitted to the Owner and Engineer. Attention is directed to Section 8 of the Standard Specifications, and to the following:
 - (a) Progress Schedule. The CONTRACTOR, promptly after being awarded the contract, shall prepare and submit for the Owner's and Engineer's information a Contractor's construction schedule for the work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the work and project or when requested in writing by the Engineer, shall be related to the entire project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the work.
 - (b) Schedule Of Submittals. The CONTRACTOR shall prepare and keep current, for the Engineer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Engineer reasonable time to review submittals.

(c) Current Progress Schedule. The CONTRACTOR shall perform the work in general accordance with the most recent schedules submitted to the Owner and Engineer. Termination of Contract. In-lieu of the provisions of Section 8-1.08 of the Standard Specifications the following shall apply.

(d) **Termination for Cause.** If CONTRACTOR fails to fulfill in a timely and proper manner contractor's obligations under this Agreement or otherwise breaches this Agreement and fails to cure such failure or breach within five (5) days of receipt of written notice from the Engineer describing the nature of the breach, the Engineer may, in addition to any other remedies the NVTa may have, terminate this Agreement by giving at least five (5) days

prior written notice by mail or personal delivery to the CONTRACTOR at the address noted in the Preamble to this Contract. Notwithstanding the foregoing, the Engineer may terminate this Contract immediately and without prior written notice of either default or termination if the Engineer determines that such is necessary to prevent an imminent danger to public health and safety, but the Engineer shall give written notice of the reasons for such action to Contractor within five (5) days after the action or as soon thereafter as possible, if risks to public health and safety preclude giving such notice with that time.

(e) **Termination for Convenience.** Notwithstanding any other provision of this AGREEMENT, NVTa may, at any time, and without cause, terminate this AGREEMENT in whole or in part, upon not less than seven (7) days' written notice to CONTRACTOR. Such termination shall be effected by delivery to CONTRACTOR of a notice of termination specifying the effective date of the termination and the extent of the work to be terminated. CONTRACTOR shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by NVTa shall pay CONTRACTOR for the work completed prior to the effective date of the termination, and such payment shall be CONTRACTOR's sole remedy under this AGREEMENT. Under no circumstances will CONTRACTOR be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this paragraph. CONTRACTOR shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a notice of termination, and shall require subcontractors to insert the same condition in any lower tier subcontracts.

15. MEASUREMENT AND PAYMENT

Attention is directed to Section 9 of the Standard Specifications.

(a) Force Account Payment.

In-lieu of the first paragraph of Section 9-1.03A(3) "Equipment Rental", the following shall apply:

Equipment rental rates shall be those rental rates applicable on contracts

advertised by the State of California, Department of Transportation on the effective date of this contract.

- (b) Partial payment. In-lieu of Section 9-1.06, Paragraph 3 of the Standard Specifications the NVTA will retain five percent (5%) of the value of all work done and five percent (5%) of the value of the materials so estimated to have been furnished and delivered and unused or furnished and stored as aforesaid as part security for the fulfillment of the contract by the Contractor to the extent not inconsistent with Public Contract Code Section 20104.50

Public Contract Code Section 22300. Performance retentions; provision for substitute security; escrow agreement

- (a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract; however, substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (> 7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the CONTRACTOR. Upon satisfactory completion of the contract, the securities shall be returned to the CONTRACTOR.
- (b) Alternatively, the CONTRACTOR may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the CONTRACTOR. At the expense of the CONTRACTOR, the CONTRACTOR may direct the investment of the payments into securities and the CONTRACTOR shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the CONTRACTOR. Upon satisfactory completion of the contract, the CONTRACTOR shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.
- (c) Securities eligible for investment under this section shall include those listed in > Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the CONTRACTOR and the public agency. The CONTRACTOR shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract. For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

- (d) (1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.
- (2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid.
- (3) No contractor shall require any subcontractor to waive any provision of this section.
- (e) The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.
- (f) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

_____ This Escrow Agreement is made and entered into by and
 _____ between: _____
 _____ whose address _____
 _____ is _____
 _____ hereinafter _____
 _____ called "Owner," _____
 _____ whose address is _____
 hereinafter called " Contractor" and whose address is
 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 _____ 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 the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities

shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

- (2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
- (3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that 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.
- (4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.
- (5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.
- (6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.
- (7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.
- (8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
- (9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
- (10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner: _____

Title

Name

Signature

Address

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.

NVTA
“Owner”

Title

Name

Signature

Contractor

Title

Name

Signature

Public Contract Code Section 20104.50 Timely progress payments; legislative intent; interest; payment requests

- (a) (1) It is the intent of the Legislature in enacting this section to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.
- (2) It is the intent of the Legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local government, must set a standard of prompt payment that any business in the private sector which may contract for services should look towards for guidance.
- (b) Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.
- (c) Upon receipt of a payment request, each local agency shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request 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 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.
- (d) The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (c).
- (e) For purposes of this article:
 - (1) A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.
 - (2) A "progress payment" includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings.
 - (3) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.
- (f) Each local agency shall require that this article, or summary thereof, be set forth in the terms of any contract subject to this article.

(c) Claims. All claims under this contract shall be subject to the following statutory requirements:

Public Contract Code Section 20104 Application of article; provisions included in plans and specifications

- (a)(1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
- (2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
- (b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.
- (2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or

the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
- (d) This article applies only to contracts entered into on or after January 1, 1991.

Public Contract Code Section 20104.2 Claims; requirements, tort claims excluded

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

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim.

Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

- (b)(1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
 - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
 - (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information whichever is greater.
- (c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claim within 60 days of receipt of the claim, or may request in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
 - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
 - (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation. or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
- (d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the

local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

- (e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- (f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

Public Contract Code Section 20104.4 Civil action procedures; meditation and arbitration: trial de novo: witness

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

- (a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
- (b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
- (2) Notwithstanding any other provision of law, upon stipulation of parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay

not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

- (3) In addition to Chapter 2.5 (commencing with Section 1141.10) Title 3 of Part 3 of the Code of Civil Procedure, any party who receiving an arbitration award requests a trial de novo but does obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other arising out of the trial de novo.
- (c) The court may, upon request by any party, order any witnesses participate in the mediation or arbitration process.

Public Contract Code Section 20104.6 Payment of portion of claim which is undisputed; of interest on arbitration award or judgment

- (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
- (b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.
- (d) Final Payment. Payment will be made in accordance with the provisions of Section 9-1.07 of the Standard Specifications provided however that in no event will the final payment be made within 35 calendar days after the filing of Notice of Completion.

16. MISCELLANEOUS PROVISIONS

- (a) Licenses and Permits. Any and all licenses and permits required shall be provided by the Contractor and he shall abide by any and all Federal, State, and County laws and rules affecting the work and shall maintain all required protection for property, employees, and the public and insurance in connection with same, for all of which he shall bear necessary expense.
- (b) Building Laws, etc. The Contractor shall conform to and abide by all County and State Building, Labor, Sanitary and Electrical Codes, Ordinances, Laws, Rules, and Regulations. Such laws and regulations shall be considered a part of this Exhibit "A" as if set forth herein in full and the work and materials shall be in accordance therewith.
- (c) Guarantees. All work performed and equipment or material furnished shall be guaranteed for one (1) year from date of acceptance against any inherent or developed defects of materials or workmanship in manufacture or installations. All guarantees normally provided by manufacturers of equipment or material installed under this project shall be furnished to the NVTA and shall remain in force for their normal life.

- (d) Ownership of Plans and Specifications. All drawings, specifications, and copies thereof provided to CONTRACTOR by the NVTA shall remain the property of the NVTA and they shall not be used by the CONTRACTOR or its subcontractors on other work.
- (e) Addenda. Any addenda or notices issued during the time of bidding and forming a part of the documents provided to the Bidder for the preparation of his bid, shall be covered in the bid and shall be made a part of the contract. The Bidder shall acknowledge receipt of addenda in the space provided in the Proposal.
- (f) Cooperation – The CONTRACTOR shall cooperate with the occupants of the existing facilities adjacent to the project and coordinate the work in such a manner as to minimize the disruption to the existing facilities.
- (g) Disposition Of Removed Materials – The CONTRACTOR shall be responsible for the disposal of all surplus excavation materials off the site. The CONTRACTOR shall not dispose of any materials from demolition or removal by sale, gift or in any manner whatsoever, to the general public at the site. Disposal operations shall comply with all applicable laws and ordinances and must be approved by the Engineer.
- (h) Clean-Up – Clean-up shall be performed to prevent accidents to personnel, protect all work in place, and to effect completion of the project in an orderly manner. Excess debris shall be removed from the work area immediately so as not to clutter the existing facilities.

17. OWNER'S RIGHT TO DO WORK

The NVTA as Owner reserves the right to let other contracts in connection with this work. The CONTRACTOR shall afford other contractors on the job site reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the contractor's work depends for proper execution or results upon work of any other contractor, the CONTRACTOR shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for proper execution and results. His failure to so inspect and report shall constitute his acceptance of other contractors' work as fit and proper for reception of his work, except as to defects which may develop in other contractors' work after execution of his work.

To ensure proper execution of his subsequent work, the CONTRACTOR shall measure and inspect work already in place and shall at once report to the Engineer any discrepancy between executed work and contract documents.

The Contractor shall ascertain to his own satisfaction the scope of the project and nature of any other contracts that have been or may be awarded by owner in

prosecution of the project to the end that the Contractor may perform this contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to the Contractor exclusive occupancy at the site 17 of project. The Contractor shall not cause any unnecessary hindrance or delay to any other Contractors working on project. If simultaneous execution of any contract for the project is likely to cause interference with performance of some other contract or contracts, the owner shall decide which Contractor shall cease work temporarily and which Contractor then shall continue or whether work can be coordinated so that the Contractors may proceed simultaneously.

18. EQUAL OPPORTUNITY EMPLOYMENT

During the performance of the contract, the CONTRACTOR shall comply with all applicable laws, ordinances, regulations, and codes, including but not limited to, the following:

- (a) Non-Discrimination. During the performance of the work required by the Contract, the CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), nor shall they discriminate unlawfully against any employee or applicant for employment because of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or use of family care leave. The CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, the Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Contract subcontracts to the Contractor work required of the NVT A by the State of California pursuant to agreement between the NVT A and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and the Contractor and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. The Contractor shall abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of the Contractor performing any of the work under the Contract have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. The Contractor shall

make the required documentation available upon request to the NVTA for inspection.

(c) Inclusion in Subcontracts. To the extent any of the work to be performed by Contractor under the Contract is subcontracted to a third party, the Contractor shall include the provisions of (a) and (b), above, in all such subcontracts as obligations of the subcontractor.

19. NVTA POLICIES ON WASTE, HARASSMENT, DRUG/ALCOHOL-FREE, VIOLENCE-FREE WORKPLACE.

Contractor hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. Contractor also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by NVTA employees or contractors.

- (a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.
- (b) NVTA "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective November 18, 2015.
- (c) NVTA Drug and Alcohol Policy adopted by resolution of the Board of Directors on November 18, 2015.
- (d) Napa NVTA Information Technology Use and Security Policy. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the NVTA computer network shall sign and have on file with NVTA's ITS Department prior to receiving such access the certification attached to said Policy.
- (e) NVTA Workplace Violence Policy dated October 17, 2018.

20. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS.

Before starting each portion of the work, the Contractor shall carefully study and compare the Contract Documents relative to that portion of the work, shall take field measurements of any existing conditions related to that portion of the work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the contractor shall be reported promptly to the Engineer as a request for information in such form as

the Engineer may require.

Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Engineer, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. *(Reserved)*

21. SUPERVISION AND CONSTRUCTION PROCEDURES

- (a) Supervision and Direction Of Work. The Contractor shall supervise and direct the work, using the contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the work under the contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences, or procedures may not be safe, the Contractor shall give timely written notice to the Engineer and shall not proceed with that portion of the work without further written instructions from the Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.
- (b) Responsibility Of Work. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, subcontractors, and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its subcontractors.
- (c) Subsequent Work. The Contractor shall be responsible for inspection of portions of work already performed to determine that such portions are in proper condition to receive subsequent work.
- (d) Superintendent. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

SIGNATURE PAGE IMMEDIATELY FOLLOWS

IN WITNESS WHEREOF, the parties hereto have signed the Agreement on the date set forth opposite their names.

CONTRACTOR:

(Must be signed by two officers of the corporation in compliance with Corporations Code section 313.)

Date

Tax I.D. Number

Signature

Signature

Print Name

Print Name

Title

Title

NVTA, A California Joint Powers Agency:

Date

ATTEST:

Clerk

APPROVED AS TO FORM:

General Counsel

EXHIBIT A

INSURANCE

NOTE: The word "Contractor" in this Exhibit refers to either "Contractor" or "Contractor" as the term is used in the Agreement/Contract to which this Exhibit is attached.

B. During the term of this Agreement, Contractor shall maintain in full force and effect at all times during the term of the contract, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

General liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.

- a. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- b. Claims-made coverage is not acceptable.
- c. The limits of liability shall not be less than:
Each occurrence: One Million Dollars (\$1,000,000)
Products & Completed Operations: One Million Dollars (\$1,000,000)
Personal & Advertising Injury: One Million Dollars (\$1,000,000)
- d. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
- e. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.
- f. If the Contractor maintains higher limits than the minimums shown above, NVTA requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to NVTA.

2. Automobile Liability:

Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.

1. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).
2. The limits of liability per accident shall not be less than:
Combined Single Limit One Million Dollars (\$1,000,000)
If Automobile Liability coverage, as required above, is provided by the Commercial General Liability form, the General Liability policy shall include an endorsement providing automobile liability as required above.

3. Workers' Compensation

- a. Workers' Compensation Insurance, with coverage as required by the State of California (unless the Contractor is a qualified self-insurer with the State of California), and Employer's Liability coverage.
- b. Employer's Liability Coverage with a limit not less than \$1,000,000 per accident for bodily injury and disease.
- c. Contractor shall sign and file with NVTA department responsible for this Agreement/Contract the Worker's Compensation Certificate contained in the Project Manual.

4. Insurance Required in the Supplementary Conditions

Contractor shall be required to comply with all conditions as stipulated in the Standard Construction Specifications, any supplementary conditions and any special provisions as applicable.

5. Professional Liability Insurance

If required errors and omissions, malpractice or professional liability insurance with coverage of not less than \$1,000,000 per claim.

6. Other Insurance Provisions

- a. The Contractor's General Liability and Automobile Liability policies shall contain, or be endorsed to contain, the following provisions:
NVTA, its officials, employees, agents and volunteers shall be covered and specifically named as additional insureds on a separate endorsement as respects liability arising out of activities performed by or on behalf 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 the Contractor in a form acceptable to NVTA's Attorney.
- b. The Endorsement requirement may be satisfied with express provisions in the insurance policy(ies) which identifies any person or entity required to be included as an insured under the policy. A copy of the declarations page identifying the policy number, and pertinent provisions in the policy providing additional insured coverage shall be provided to NVTA.
- c. The policy shall contain no special limitations on the scope of coverage afforded to NVTA, its officials, employees, agents or volunteers.
- d. For any claims related to the project, the Contractor's General Liability and Automobile insurance coverage shall be primary insurance in their coverage of NVTA and its officers, officials, employees, agents, or volunteers, and any insurance or self-insurance maintained by NVTA, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- e. Any failure to comply with reporting or other provisions of the policies on the part of the Contractor, including breaches of warranties, shall not affect coverage provided to NVTA, its officers, officials, employees, agents or volunteers.
- f. The Contractor's Workers Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against NVTA, its officers, officials, employees, agents, and volunteers.
- g. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after 30 days prior written notice by certified mail has been given to NVTA. Ten days prior written notice by certified mail shall be given to NVTA in the event of cancellation due to nonpayment of premium.

7. Acceptability of Insurers

- a. Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
- b. The Contractor shall furnish NVTA with Certificates of Insurance and endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this section, the Standard Specifications, Special Provisions and/or any Supplementary Conditions. The Contractor shall furnish complete, certified copies of all required insurance policies, including original endorsements specifically required hereunder if requested.
- c. The Contractor shall report, by telephone to the Project Manager within 24 hours, and also report in writing to NVTA within 48 hours, after Contractor or any Subcontractors or agents have knowledge of, any accident or occurrence involving death of or serious injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000) to property of NVTA or others, arising out of any work done by or on behalf of the Contractor as part of the contract.

Such report shall contain:

- i. the date and time of the occurrence,
 - ii. the names and addresses of all persons involved, and
 - iii. a description of the accident or occurrence and the nature and extent of the injury or damage.
- d. NVTA, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
 - e. If the Contractor fails to procure or maintain insurance as required by this section, the Standard Specifications, and any Supplementary Conditions, or fails to furnish NVTA with proof of such insurance, NVTA, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by NVTA shall be deducted and retained from any sums due the Contractor under the contract.
 - f. Failure of NVTA to obtain such insurance shall in no way relieve the Contractor from any of its responsibilities under the contract.
 - g. The making of progress payments to the Contractor shall not be construed as relieving the Contractor or its Subcontractors of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by NVTA.
 - h. The failure of NVTA to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
 - i. In the event Contractor carries Excess Liability Coverage, the Excess Liability Coverage shall apply to any and all claims related to the project on a primary and non-contributory basis, and NVTA's insurance or self-insurance coverage shall be excess to the Contractor's Excess Liability Coverage.

EXHIBIT B

Required Federal-Aid Contract Language
(For Local Assistance Construction Projects)
(Includes Form FHWA-1273 from Bid Documents)

EXHIBIT C

Minimum Wage Rates

(Federal and State Prevailing Wage Rates from Bid Documents)

BIDS PROPOSAL

PROPOSAL

To the Board of Directors of the Napa Valley Transportation Authority (NVTA):

The undersigned declares that he/she has carefully examined the location of the proposed work, that he/she has examined the plans and specifications, and read the accompanying instructions to bidders, and hereby proposes to furnish all materials and do all the work required to complete the said work in accordance with said plans, specifications, and special provisions for the unit or lump sum prices set forth in the attached Bid Schedule.

It is understood and agreed that the undersigned shall complete the work of the contract within the time provided for in the Contract Documents and Specifications governing said work.

If awarded the contract, the undersigned hereby agrees to sign said contract and to furnish the necessary bonds, insurance certificates and agreements within five (5) working days after receipt of Notice of Award of said contract from the AGENCY.

The undersigned has examined the location of the proposed work and is familiar with the plans, specifications and other contract documents and the local conditions at the place where the work is to be done.

The undersigned has checked carefully all the figures on the attached Bid Schedule and understands that the AGENCY will not be responsible for any errors or omissions on the part of the undersigned in making up the bid.

Enclosed find bidder's bond, certified check, or cashier's check no. _____ of the _____ (Company) (Bank) for _____ Dollars (\$_____).

This project requires a Class A California State Contractor's License.

Contractor's License No. _____ License Class _____

Expiration Date of Contractor's License _____

This project requires registration with the California State Department of Industrial Relations.

Public Works Contractor Registration No. _____

Registration Date _____ Expiration Date _____

A bid submitted to a public agency by a contractor who is not licensed and not registered shall be considered non-responsive and shall be rejected by the public agency. The undersigned contractor declares that the contractor's license number, public work contractor registration number, and expiration dates stated herein are made under penalty of perjury under the laws of the State of California.

Contractor: _____

Signed by: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Dated this _____ day of _____, 20_____.

END OF PROPOSAL

LIST OF SUBCONTRACTORS

Pursuant to Section 4100 to 4113 of the Public Contract Code, and NVTA instructions , each bidder shall complete and submit this form with his bid in accordance with the following instructions.

1. For each subcontract item to be performed by a subcontractor, the following shall be indicated herein: the name of the subcontractor, the portion of work to be performed, each subcontractor’s license number, and the location of the place of business.
2. Only one subcontractor shall be listed for each craft unless there is an alternate bid in which case a different subcontractor, when so designated, may be listed for the alternate work.
3. **All fields must be completed as specified or the bid proposal may be rejected as non-responsive.**

Name of Subcontractor	Portion of Contract (i.e. Electrical, Striping, etc.)	Subcontractor License Number	DIR Registration Number1	Dollar Amount of Work to Be Performed	Location of Business (City and State)

All general contractors and subcontractors must be registered with DIR in conformance with Labor Code Section 1725.5 and 1771.1. By requesting the DIR registration numbers of all subcontractors, bidders are put on notice that if they list a subcontractor without a DIR registration number at the time of bid opening, the County, in its sole discretion, may find the failure intentional and find the bid non-responsive. DIR registration number lookup is available online at <https://efiling.dir.ca.gov/PWCR/Search>

NON-COLLUSION SUBMITTED WITH BID

BIDDER'S AFFIDAVIT OF NON-COLLUSION SUBMITTED WITH BID

_____, [Contractor] hereby declares that:

He or she is _____ [title/position] of _____

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

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

Executed on _____ at _____

(DATE)

(PLACE)

SIGNATURE

Public Contract Code section 7106

Code of Civil Procedure section 2015.5

END OF BIDDER'S AFFIDAVIT OF NON-COLLUSION SUBMITTED WITH BID

BIDDER'S AFFIDAVIT OF LEVIN ACT DISCLOSURE STATEMENT

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract. Please refer to the attachment for the complete statutory language.

Current members of the NVTa Board of Directors are:

Leon Garcia
Liz Alessio
Paul Dohring
Tom Collette

Mark Joseph
Scott Sedgley
Anna Chouteau

Donald Williams
Alfredo Pedroza
Margie Mohler

Kevin Eisenberg
Ryan Gregory
Eric Knight

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any NVTa Director(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

___ YES ___ NO

If yes, please identify the Director(s): _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any NVTa Director(s) in the three months following the award of the contract?

___ YES ___ NO

If yes, please identify the Director(s): _____

Answering yes to either of the two questions above does not preclude NVTa from awarding a contract to your firm. It does, however, preclude the identified Director(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

California Government Code Section 84308

(a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

(5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

(d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

(e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

For more information, contact the Fair Political Practices Commission, 1102 Q St #3000, Sacramento, CA 95811, (916) 322-5660.

END OF BIDDER'S AFFIDAVIT OF LEVIN ACT DISCLOSURE STATEMENT SUBMITTED WITH BID

BIDDER'S EQUAL EMPLOYEMENT OPPORTUNITY CERTIFICATION

The bidder _____,

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

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

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

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

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

Executed on _____ at _____
(DATE) (PLACE)

SIGNATURE

END OF BIDDER'S CERTIFICATION OF EQUAL EMPLOYMENT OPPORTUNITY SUBMITTED WITH BID

PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has __ , has not __ been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided. The above Statement is part of the Bid. Signing this Bid on the signature portion thereof shall also constitute signature of this Statement. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

PUBLIC CONTRACT CODE 10232 STATEMENT

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

Note: The above Statement and Questionnaire are part of the Bid. Signing this Bid on the signature portion thereof shall also constitute signature of this Statement and Questionnaire. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

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

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

Yes _____ No _____

If the answer is yes, explain the circumstances in the following space or use an attachment.

DEBARMENT AND SUSPENSION CERTIFICATION

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

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

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

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

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

(SIGNATURE OF BIDDER'S AUTHORIZED PERSON)

Name and Title of the BIDDER's Authorized Person

END OF BIDDER'S CERTIFICATION FOR PUBLIC CONTRACT CODE 10285.1, 10232, 10162 AND DEBARMENT AND SUSPENSION SUBMITTED WITH BID

QUESTIONNAIRE AND FINANCIAL ASSURANCE STATEMENT

The following statements as to experience and financial qualifications of the Bidder are submitted in conjunction with the proposal as a part thereof, and the truthfulness and accuracy of the information is guaranteed by the Bidder.

The Bidder has been engaged in the contracting business under the present business for _____ years. Experience in work of a nature similar to that covered in the proposal extends over a period of _____ years.

The Bidder, as a contractor, has never failed to satisfactorily complete a contract awarded to contractor, except as follows:

List all claims and lawsuits presented or filed in the last five (5) years, regardless of the form, regarding any public works project:

The following contracts for work have been completed in the last three (5) years for the persons, firm or authority indicated and to whom reference is made:

Year	Type of Work-Size, Length and Contract Amount	Location and For Whom Performed
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

The following complaints have been made against the Bidder's contractor's license within the past ten (10) years:

Date: _____ Nature of Complaint: _____

Reference is hereby made to the following bank or banks as to the financial responsibility of the bidder:

NAME OF BANK

ADDRESS

Reference is hereby made to the following surety companies as to the financial responsibility and general reliability of the bidder:

NAME OF SURETY COMPANY:

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

SIGNATURE OF BIDDER

DATE

NAME OF BIDDER

END OF QUESTIONNAIRE AND FINANCIAL STATEMENT FORM

Accompanying this proposal is BIDDER'S BOND in amount equal to at least ten percent of the total of the bid.

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 copartnership, state true name of firm, also names of all individual copartners composing firm; if bidder or other interested person is an individual, state first and last names in full.

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

License No. _____ Classification(s) _____

ADDENDA

This Proposal is submitted with respect to the changes to the contract included in addenda number/s

(Fill in addenda numbers if addenda have been received and insert, in this Proposal, any Engineer's Estimate sheets that were received as part of the addenda.)

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code). By my signature on this proposal I further certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Noncollusion Affidavit required by Title 23 United States Code, Section 112 and Public Contract Code Section 7106; and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Date:

Signature

Title of Bidder

Place of Business

Place of Residence

BIDDER'S BOND

We, _____

_____ as Principal, and

_____ as Surety are bound unto Napa Valley Transportation Authority, Napa, State of California, hereafter referred to as "Obligee", in the penalsum of ten percent (10%) of the total amount of the bid of the Principal submitted to the Obligee for the work described below, for the payment of which sum we bind ourselves, jointly and severally,

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT:

WHEREAS, the Principal is submitted to the Obligee, for _____

(Copy here the exact description of work, including location as it appears on the proposal)

for which bids are to be opened at _____ on _____
(Insert place where bids will be opened) (Insert date of bid opening)

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

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurredby the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

Dated: _____, 20____.

Principal

Surety

By _____
Attorney-in-fact

CERTIFICATE OF ACKNOWLEDGEMENT

State of California
City/County of _____, SS

On this _____ day of _____ in the year 20__ before me
_____, personally appeared _____,
Attorney-in-fact

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed tothis instrument as the attorney-in-fact of _____, and acknowledged to me that he (she) subscribed the name of the said company thereto as surety, and his (her) own name as attorney-in-fact.

(SEAL) _____
Notary Public

PAYMENT BOND
(Section 3247, Civil Code)

WHEREAS, the, Napa Valley Transportation Authority, hereafter referred to as "Obligee", has awarded to Contractor _____, hereafter designated as the "Principal", a contract for the work described as follows:

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

NOW, THEREFORE, we the undersigned Principal and Surety are bound unto the Obligee in the sum of

_____ dollars

(\$ _____), for which payment, we bind ourselves, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if said Principal or its subcontractors shall fail to pay any of the persons named in Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board for the wages of employees of the Principal and his subcontractors pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor, that the surety herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the surety will pay a reasonable attorney's fee to be fixed by the court. This bond shall inure to the benefit of any of the persons named in Civil Code Section 3181 as to give a right of action to such persons or their assigns in any suit brought upon this bond.

Dated: _____, 20_____

Correspondence or claims relating to this bond should be sent to the surety at the following address:

Principal

Surety

By _____
Attorney-in-fact

NOTE: Signatures of those executing for the surety must be properly acknowledged.

CERTIFICATE OF ACKNOWLEDGEMENT

State of California
City/County of _____ SS

On this _____ day of _____ in the year 20____ before me

_____, personally appeared _____,
Attorney-in-fact

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney-in-fact of _____, and acknowledged to me that he (she) subscribed the name of the said company thereto as surety, and his (her) own name as attorney-in-fact.

(SEAL)

Notary Public

PERFORMANCE BOND
(To Accompany Contract)

Bond No. _____

WHEREAS, the Napa Valley Transportation Authority (NVTA), has awarded to Contractor _____, hereafter designated as the "Contractor", a contract for the work described as follows:

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

NOW, THEREFORE, we the undersigned Contractor and Surety are held firmly bound to the Napa Valley Transportation Authority in the sum of \$ _____ dollars (\$ _____), to be paid to said NVTA or its certain attorney, its successors and assigns: for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if the above bound Contractor, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof made as therein provided, on his or their part to be kept and performed at the time and in the manner thereinspecified, and in all respects according to their intent and meaning, and shall indemnify and save harmless the Napa Valley Transportation Authority (NVTA) its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this _____ day of _____, 20__.

Correspondence or claims relating to this bond should be sent to the surety at the following address:

Contractor

Name of Surety

By _____
Attorney-in-fact

NOTE: Signatures of those executing for the surety must be properly acknowledged.

CERTIFICATE OF ACKNOWLEDGEMENT

State of California
City/County of _____ SS

On this _____ day of _____ in the year 20__ before me _____, personally appeared _____,
Attorney-in-fact

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney-in-fact of _____, and acknowledged to me that he (she) subscribed the name of the said company thereto as surety, and his (her) own name as attorney-in-fact.

(SEAL)

Notary Public

MAINTENANCE BOND

WHEREAS, the Napa Valley Transportation Authority (“NVTA”) and _____
_____, (hereinafter designated as “Principal”) have entered into an
agreement whereby Principal agrees to install and complete certain designated public improvements, which
said agreement, dated _____, 20__ and identified as
project _____, is
hereby referred to and made a part hereof; and,

WHEREAS, said Principal is required under the terms of said contract to furnish a maintenance bond for the
correction of any defects due to defective materials or workmanship in the work performed under said
agreement.

NOW, THEREFORE, we the Principal and _____
as Surety, are held and firmly bound unto the Napa Valley Transportation Authority in the penal sum of

_____ Dollars (\$_____) lawful money of the United States for the payment of which
sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and
assigns jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if, during a maintenance period of one (1) year
from the date of acceptance of the contracted work, the Principal upon receiving written notice of a need for
repairs which are directly attributable to defective materials or workmanship, shall diligently take the
necessary steps to correct said defects within seven (7) days from the date of said notice, then this
obligation shall be null and void; otherwise it shall remain in full force and effect.

As part of this obligation secured hereby and in addition to the face amount specified therefor, there shall be
included costs and reasonable expenses and fees, including reasonable attorney’s fees, incurred by the
NVTA in successfully enforcing such obligation, all to be taxed as costs and included in any judgment
rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the
terms of this agreement or to the work to be performed thereunder or the specifications accompanying the
same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such
change, extension of time, alteration or addition to the terms of the agreement or to the work or to the
specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on _____, 20_____.

PRINCIPAL

SURETY

By _____

By _____

Name and Title

Name and Title

Address

City State Zip

Phone Number

###

NOTE: No substitution or revision to this bond form will be accepted. Be sure that all bonds submitted have a certified copy of the bonding agent's power of attorney attached. Also verify that Surety is an "Admitted Surety" (i.e., qualified to do business in California), and attach proof of verification (website printout from the California Department of Insurance website (<http://www.insurance.ca.gov/docs/index.html>) or certificate from County Clerk).

APPROVED AS TO AMOUNT:

APPROVED AS TO FORM:

NVTA Executive Director

NVTA Attorney

END OF MAINTENANCE BOND

