



## NAPA VALLEY TRANSPORTATION AUTHORITY

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

### **INVITATION FOR BID IFB No. 25-R29**

for

## **REDWOOD PARK AND RIDE CAPITAL IMPROVEMENTS**

**Date Released: AUGUST 7, 2025**

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

**Bids are due prior to 2:00 P.M. Wednesday, September 4, 2025**

**Late Bids 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:

A handwritten signature in blue ink, appearing to read "Danielle Schmitz", is written over a horizontal line.

Danielle Schmitz, NVTA Executive Director

08/06/2025

Date

**INVITATION FOR BID**

**REDWOOD PARK AND RIDE CAPITAL IMPROVEMENTS**

**PROCUREMENT SCHEDULE**

<b>Issue Date</b>	<b>AUGUST 6, 2025</b>
<b>Virtual Pre-bid Conference</b>	<b>WEDNESDAY, AUGUST 13, 2025, 10:00 A.M. (PST/Local)</b>
<b>Deadline for Submitting Written Questions</b>	<b>AUGUST 20, 2025, 5:00 P.M. (PST/Local)</b>
<b>Answers to Written Questions Posted</b>	<b>AUGUST 25, 2025, 5:00 P.M. (PST/Local)</b>
<b>Bids due using Electronic Submission</b>	<b>SEPTEMBER 04, 1:30 P.M. (PST/Local)</b>
<b>Bids due by Mail or in Person</b>	<b>SEPTEMBER 04, 2:00 P.M. (PST/Local)</b>
<b>Public Bid Opening</b>	<b>SEPTEMBER 04, 2025, 2:00 P.M. (PST/Local)</b>
<b>Notice of Apparent Low Bidder</b>	<b>SEPTEMBER 04, 2025, 5:00 P.M. (PST/Local)</b>
<b>Notice of Award</b>	<b>SEPTEMBER 17, 2025</b>
<b>Estimated Notice to Proceed</b>	<b>OCTOBER 2025</b>

**California Public Records Act:**

Government Code Sections 7920, the California Public Records Act, defines a public record as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

Public records are open to inspection at all times during the office hours of a state or local agency and every person has a right to inspect any public record, except as otherwise provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

Any executed contract for the purchase of goods or services by a state or local agency, including the price and terms of payment, is a public record subject to disclosure under this division.

Any provision in a written agreement that purports to exclude a contract specified in subdivision from disclosure by agreeing to consider it a confidential or proprietary record of the vendor is void and unenforceable as a matter of law.

This section does not require disclosure of a record that is otherwise exempt from disclosure or prohibited from disclosure pursuant to federal or state law.

# NOTICE OF INVITATION FOR BIDS

## 1. DESCRIPTION OF WORK:

This Invitation for Bid (IFB) seeks construction bids for Redwood Park and Ride Capital Improvements.

## 2. WORK SITE:

Located at 3416 Solano Avenue and 2000 Redwood Road in Napa, CA 94559, refer to **EXHIBIT C “Plans”**.

## 3. ESTIMATED AWARD DATE:

NVTA estimates an award will be made, following recommendation to the Board, at the September 17, 2025, Board meeting.

## 4. START OF WORK:

The commencement of work is contingent upon receiving federal financial assistance, therefore the notice-to-proceed (NTP) is estimated in October 2025.

## 5. COMPLETION OF WORK:

**A limited NTP will be issued to procure the prefabricated restroom and have it delivered to the worksite. Once delivered, NVTA and the Contractor will coordinate the issuance of the actual NTP to start work.** The work shall be completed within **60** working days from **the actual** NTP.

A01

## 6. CONTRACTOR'S LICENSE CLASSIFICATION:

Bidders shall possess a current, valid **Class A – General Engineering** license **at the time of award**. All subcontractors in a field requiring a license in accordance with the [Contractors State License Board](#), must also possess a current, valid license for their field of work at the time of award. Prior to awarding the contract, licenses for the Prime Contractor and all Subcontractors, as required by law, will be checked as a responsibility measure. If the Awardee is unable to meet the licensing requirement at the time of the award, their bid may be rejected and NVTA will proceed with the next lowest bidder.

## 7. PRE-BID CONFERENCE AND SITE VISIT:

**A non-mandatory pre-bid conference/site visit is to be held:** Prospective bidders are invited to attend a non-mandatory virtual pre-bid conference; meeting details are as follows:

Join Zoom Meeting

<https://countyofnapa.zoom.us/j/81991345206?pwd=VE0BYd8oGzXcJmn79PcTQXJabYE6OI.1>

Meeting ID: 819 9134 5206

Passcode: 513316

One tap mobile

+16694449171,,81991345206# US

+16699006833,,81991345206# US (San Jose)

Dial by your location

- +1 669 444 9171 US
- +1 669 900 6833 US (San Jose)
- +1 346 248 7799 US (Houston)
- +1 719 359 4580 US
- +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 929 436 2866 US (New York)
- +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

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

Bidders are encouraged to visit the work site location. A site visit request must be scheduled in advance by emailing [procurements@nvta.ca.gov](mailto:procurements@nvta.ca.gov).

**8. DEADLINE FOR QUESTIONS:**

Questions regarding this IFB and related documents and meetings must be submitted in writing to [procurements@nvta.ca.gov](mailto:procurements@nvta.ca.gov) no later than 5:00 p.m. (PST/Local) on August 20, 2025. Answers that result in changes to the IFB will be posted by Addendum. All other questions that have no material effect on the IFB or related documents will be answered by letter of clarification.

- 9. RECEIPT FOR BIDS IN PERSON OR BY REGULAR MAIL:** Sealed Bids must be submitted in PDF format and are **due no later than 2:00 P.M., on Thursday, September 04, 2025**, for the project titled: **"Redwood Park and Ride Capital Improvements"**. The **bids will be publicly opened and read aloud at 2:00 P.M.** (PST/Local) on this date and at this location:

Soscol Gateway Transit Center  
Napa Valley Transportation Authority (NVTA)  
625 Burnell Street  
Napa, California, 94559

JoAnn Busenbark Boardroom (1<sup>st</sup> Floor)

Any Bids received in-person or by regular mail after the specified time and date for Receipt for Bids in person or by regular mail will be considered non-responsive and will not be considered.

10. **RECEIPT FOR BID BY ELECTRONIC MAIL:** Bids may also be received by electronic mail in PDF format to: <mailto:procurements@nvt.ca.gov> and are **due no later than 1:30 P.M., on Thursday, September 04, 2025** for the project titled: “Redwood Park and Ride Capital Improvements”. The **bids will be publicly opened and read aloud at 2:00 P.M. (PST/Local)** on this date at the location above.

Each Bid shall be accompanied by a certified or cashier’s check or the original bid bond document in an amount equivalent to ten percent (10%) of the bid price. If Bidder submits their bid by electronic means, the bid bond must be mailed or hand delivered by 2:00 P.M. (PST/Local), on Thursday, September 04, 2025, to the location under Section 9. “Receipt for Bids in Person or by Regular Mail”.

Any Bids received by electronic mail after the specified time and date for Receipt for Bids by electronic mail will be considered non-responsive and will not be considered.

11. **OPENING OF BIDS:** The Bids will be publicly opened and read aloud at **2:00 P.M. (PST/local) on Thursday, September 04, 2025**, at the location mentioned above (Office of the Agency). The Agency reserves the right to extend the time frame for receipt for bids but shall do so by Addendum no later than five (5) working days prior to the date established by this IFB or any subsequent Addenda (if any) for receipt for bids.
12. **REJECTION OF BIDS:** Bids are required for the entire work described herein including all the alternatives, if any, are listed in the Bid schedule. A bidder will be considered non-responsive if any of the alternative bid items are omitted and the bid will be rejected in its entirety. The AGENCY reserves the right to reject all, or any part of all bids submitted, waive informalities and irregularities.
13. **BIDS TO REMAIN OPEN:** The Bidder shall guarantee the total bid price for a period of ninety (90) days from the date of bid opening.

**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, who is considered the Prime Contractor and is distinct from a subcontractor, who submits a price or quote to the Bidder for this solicitation.

### **2. BUSINESS LICENSE**

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

### **3. INTERPRETATIONS AND ADDENDA**

- 31 All questions about the meaning or intent of the Contract Documents are to be directed to Renel Coombs, Procurement & Contracts Administrator, by email to: [procurements@nvta.ca.gov](mailto:procurements@nvta.ca.gov). Additions, deletions, or revisions to the solicitation documents considered necessary by NVTA in response to such questions will be issued by Addenda and posted to NVTA's website. Questions received after 5:00 p.m. on August 27, 2025, are up to NVTA's discretion on whether to provide an answer or not. Answers issued by formal written Addenda are binding. Oral and other interpretations or written letter of clarifications will be without legal effect.
- 32 Addenda may also be issued to make additions, deletions, or revisions to the solicitation documents and are binding.

### **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 who is licensed or will be licensed at the time of award 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

- 51 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.
- 52 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.
- 53 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 public works 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. By filling out the “**Financial Assurance**” form in **ATTACHMENT 2**, 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 deadline for Receipt 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 AND INSURANCE**

Each Bid shall be accompanied by a certified or cashier's check or the original bid bond document in an amount equivalent to ten percent (10%) of the bid price. The bid bond must be obtained from companies holding certificates of authority as acceptable sureties under [Department of the Treasury regulations](#). 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 and bonds within contracted specified timeframe. In case of refusal or failure to enter said Agreement, the check or Bid Bond 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 must provide certified evidence of its current bonding capacity.

### **9.2 BID PERFORMANCE AND PAYMENT BONDS**

Within five (5) working days after the award of the contract, Contractor shall furnish the original performance bond in the amount equivalent to one hundred percent (100%) to secure fulfillment of all the Contractor's obligations under agreement and a payment bond in the amount equivalent to one hundred percent (100%) to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **9.3 RETURN OF BID SECURITY**

Within 14 days after the award of the contract, the AGENCY will, by request, 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, by request, to the respective bidders whose bids they accompany.

## **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 a 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**

Bid protests shall adhere to [California Public Contract Code Chapter 2, Article 4, 10345](#).

Any Bid protest must be submitted in writing to <mailto:procurements@nvta.ca.gov> no later than 5:00 PM (PST/local) on the fifth (5<sup>th</sup>) working day following the notice of award.

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**

The award of the contract, if awarded, will be made to the lowest responsive, responsible Bidder whose 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 will 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, payment, performance, and/or labor and materials, and maintenance bonds, along with required certificates of insurance and endorsements.

#### **15. 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.

#### **16. NON-DISCRIMINATION**

Bidders 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 NVTAs contracts. Bidders and any subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

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

**17. LEVINE ACT**

Bidders 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.

**18. DISADVANTAGE BUSINESS ENTERPRISE (DBE)**

NVTA has adopted a Disadvantage Business Enterprise (DBE) Policy, encouraging all prime Bidders 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 Bidders 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. If 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 7%**.

A01

**19. INDEMNIFICATION, INSURANCE, AND BONDING REQUIREMENTS**

Insurance and bonding requirements for this Project are set forth in **EXHIBIT D "Construction Agreement"**.

**20. DAVIS-BACON AND STATE PREVAILING WAGE**

This project has Federal assistance and therefore Davis-Bacon applies. Contractors must pay the higher of the two prevailing wage rates for each job classification. The Contractor shall also post a copy of such determination at each job site. Refer to 1-17 of the General Conditions for "California State Requirements" and EXHIBIT D "Construction Agreement" for the applicable Davis-Bacon wage rates.

A01

**21. WORKER'S 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.

**END OF INSTRUCTION TO BIDDERS**

# SCOPE OF WORK

## 1. INTRODUCTION

This Invitation for Bid (IFB) seeks submittals to **REDWOOD PARK AND RIDE CAPITAL IMPROVEMENTS**.

The work described requires that the Contractor be licensed by the State of California as a **Class A – General Engineering Contractor**.

A01

The **DBE Goal** for this contract is **7%**. Pursuant to NVTA's adopted policies and its overall established DBE Goal of 2.6%, NVTA encourages the Bidders to utilize qualified DBE subcontractors on its projects.

## 2. PROJECT DESCRIPTION AND BACKGROUND

NVTA is seeking a contractor to perform the scope of work aimed at delivering infrastructure improvements at the heavily utilized Redwood Park and Ride (PNR), located in the northern sector of the City of Napa adjacent to State Route 29 (SR-29). The Redwood Park and Ride serves as a multimodal station for: Vine Transit Regional Routes 10 and 11, Express Route 11x to the Vallejo Ferry Terminal, Commuter Route 29 to the El Cerrito del Norte BART station, City of Napa on-demand buses, and the nearby local Route "N".

## 3. SCOPE OF WORK

Work includes "off-the-shelf" restroom, wayfinding/signage, pavement markings, traffic control, temporary pedestrian access routes, temporary water pollution control, and electrical systems. Refer to **EXHIBIT B "Special Conditions (Technical Specifications)"** and **EXHIBIT C "Plans"**.

A01

## 4. ENGINEER'S ESTIMATE

**The Engineer estimates a range of \$550,000 - \$650,000 for this project.**

## 5. SPECIAL NOTIFICATION REQUIREMENT FOR STATES

This project includes the Federal Transit Administration (FTA), assisted funding under TPI in the expected amount of \$600,000. Notice-to-Proceed (NTP) is contingent upon federal funding assistance.

**EXHIBIT A**

**NVTA GENERAL CONDITIONS**  
*(Attached)*



# **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. Change Orders
- 2. Agreement
- 3. Special Conditions
- 4. Supplemental Conditions
- 5. Technical Specifications
- 6. General Conditions
- 7. Most recent CA DOT Caltrans Standars Specifications
- 8. Drawings/Plans
- 9. Most recent CA DOT Caltrans Standard Plans

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**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 no 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 qualities 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

Labor .....20 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 discover 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.

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

- a. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15- day period, any party may petition the court to appoint the mediator.
- b. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of Article 1.5 of Chapter 1 of Part 3 of Division 2 of the California Public Contract Code 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.

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

- c. The AGENCY shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in this Contract.
- d. In any suit filed under Section 20104.4 of the California Public Contract Code, the 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.

**EXHIBIT B**

**NVTA SPECIAL CONDITIONS (TECHNICAL SPECIFICATIONS)**  
*(Attached as a Separate Document)*

**EXHIBIT C**

**NVTA PLANS**

*(Attached as a Separate Document)*

**EXHIBIT D**

**NVTA SAMPLE CONTRACT**  
*(Attached as a Separate Document)*

**ATTACHMENT 1**

A01

**HCD Approved (CA) Exeloo Jupiter 23AAD 33AAD**  
**(Brand Name or Equal)**  
*(Attached as a Separate Document)*

## ATTACHMENT 2

### BID PACKAGE REQUIRED FORMS *(Attached as a Separate Document)*

FORMS	REQUIRED FOR PRIME CONTRACTOR
Bid Proposal Certificate	✓
Bid Cover Document	✓
Bid Item List	✓
Bidder's List of Subcontractors	✓
List of Material Suppliers and Guarantee	✓
Equal Employment Opportunity Certification	✓
Public Contract Code	✓
Non-Collusion Affidavit	✓
Levine Act Disclosure Statement	✓
Conflict of Interest Declaration	✓
Financial Assurance Statement	✓
Bidding Capacity	✓
<b>FEDERAL SPECIFIC FORMS - ADDED</b>	<b>(Only Required for Federally Assisted Procurements)</b>
Federal Debarment & Suspension Certification	✓
Federal Non-Lobbying Certification	✓
Buy America Certification Form - Manufactured Products	✓
Federal Tax Liability and Recent Felony Convictions Certification	✓
DBE Commitment	✓
DBE Good Faith Efforts	✓

**Bid Signature page including Addenda acknowledgement and Bid Bond are the last pages of the Bid document package.**