

**20.2.2.1.29.** Scaffold Erection and Inspection

**20.2.2.1.30.** Fall Protection

**20.2.2.1.31.** Steel Erection

**20.2.2.1.32.** Submit to Construction Manager a list of their Forklift Operators that will be on the project, copies of their certification, expiration date, and update when new operators arrive on site.

**20.2.2.1.33.** A Competent Person shall be readily available on-site during any of the referenced activities above, or activity identified by Construction Manager and/or Owner.

**20.2.2.2.** Second Payment Request. The County will not process the second payment request until and unless all submittals and Shop Drawings have been accepted for review by the Architect.

**20.2.2.3.** No Waiver of Criteria. Any payments made to Contractor where criteria set forth herein have not been met shall not constitute a waiver of said criteria by County. Instead, such payment shall be construed as a good faith effort by County to resolve differences so Contractor may pay its Subcontractors and suppliers. Contractor agrees that failure to submit such items may constitute a breach of contract by Contractor and may subject Contractor to termination.

### **20.3. Progress Payments**

#### **20.3.1. County's Approval of Application for Payment**

**20.3.1.1.** Upon receipt of an Application for Payment, The County shall act in accordance with both of the following:

**20.3.1.1.1.** Each Application for Payment shall be reviewed by the County as soon as practicable after receipt for the purpose of determining that the Application for Payment is a proper Application for Payment.

**20.3.1.1.2.** Any Application for Payment determined not to be a proper Application for Payment suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. An Application for Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Payment is not proper. The number of days available to the County to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the County exceeds this seven-day return requirement.

**20.3.1.1.3.** An Application for Payment shall be considered properly executed if funds are available for payment of the Application for Payment, and payment is not delayed due to an audit inquiry by the financial officer of the County.

**20.3.1.2.** The County's review of the Contractor's Application for Payment will be based on the County's and the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the County's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

**20.3.1.2.1.** Observation of the Work for general conformance with the Contract Documents,

**20.3.1.2.2.** Results of subsequent tests and inspections,

**20.3.1.2.3.** Minor deviations from the Contract Documents correctable prior to completion, and

**20.3.1.2.4.** Specific qualifications expressed by the Architect.

**20.3.1.3.** County's approval of the certified Application for Payment shall be based on Contractor complying with all requirements for a fully complete and valid certified Application for Payment.

**20.3.2. Payments to Contractor**

**20.3.2.1.** Within thirty (30) days after approval of the Application for Payment, Contractor shall be paid a sum equal to ninety percent (95%), or a lesser percentage if a higher retention amount is required pursuant to Public Contract Code section 7201(b) (4), of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The value of the Work completed shall be Contractor's best estimate. No inaccuracy or error in said estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the County's right to enforce each and every provision of this Contract, and the County shall have the right subsequently to correct any error made in any estimate for payment.

**20.3.2.2.** The Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for Work performed, so long as any lawful or proper direction given by the County concerning the Work, or any portion thereof, remains incomplete.

**20.3.2.3.** If the County fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Payment from the Contractor, the County 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.

**20.3.3. No Waiver**

No payment by County hereunder shall be interpreted so as to imply that County has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the County may enforce each and every provision of this Contract. The County may correct or require correction of any error subsequent to any payment.

**20.4. Decisions to Withhold Payment**

**20.4.1. Reasons to Withhold Payment**

The County may withhold payment in whole, or in part, to the extent reasonably necessary to protect the County if, in the County's opinion, the representations to the County required herein cannot be made. The County may withhold payment, in whole, or in part, to such extent as may be necessary to protect the County from loss because of, but not limited to:

**20.4.1.1.** Defective Work not remedied within **FORTY-EIGHT (48)** hours of written notice to Contractor;

**20.4.1.2.** Stop Payment Notices or other liens served upon the County as a result of the Contract;

**20.4.1.3.** Liquidated damages assessed against the Contractor;

**20.4.1.4.** The cost of completion of the Contract if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the completion date;

- 20.4.1.5.** Damage to the County or other contractor(s);
- 20.4.1.6.** Unsatisfactory prosecution of the Work by the Contractor;
- 20.4.1.7.** Failure to store and properly secure materials;
- 20.4.1.8.** Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;
- 20.4.1.9.** Failure of the Contractor to maintain As-Built Drawings;
- 20.4.1.10.** Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- 20.4.1.11.** Unauthorized deviations from the Contract Documents;
- 20.4.1.12.** Failure of the Contractor to prosecute the Work in a timely manner in compliance with the Construction Schedule, established progress schedules, and/or completion dates;
- 20.4.1.13.** Failure to provide acceptable certified payroll records, as required by these Contract Documents or by written request; for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or by each Subcontractor in connection with the Worker if payroll records are delinquent or inadequate;
- 20.4.1.14.** Failure to properly pay prevailing wages as required in Labor Code section 1720 et seq. or failure to comply with any other Labor Code requirements;
- 20.4.1.15.** Failure to comply with any applicable federal statutes and regulations regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon Act and related requirements, Contract Work Hours and Safety Standards Act requirements, if applicable;
- 20.4.1.16.** Failure to properly maintain or clean up the Site;
- 20.4.1.17.** Failure to timely indemnify, defend, or hold harmless the County;
- 20.4.1.18.** Any payments due to the County, including but not limited to payments for failed tests, utilities changes, or permits;
- 20.4.1.19.** Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;
- 20.4.1.20.** Failure to pay any royalty, license or similar fees;
- 20.4.1.21.** Contractor is otherwise in breach, default, or in substantial violation of any provision of this Contract; and
- 20.4.1.22.** Failure to perform any implementation and/or monitoring required by any SWPPP for the Project and/or the imposition of any penalties or fines therefore whether imposed on the County or Contractor.

#### **20.4.2. Reallocation of Withheld Amounts**

**20.4.2.1.** County may, in its discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, County shall make such payments on behalf of Contractor. If any payment is so made by County, then that amount shall be considered a payment made under Contract by County to Contractor and County shall not be liable to Contractor for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. County will render Contractor an accounting of funds disbursed on behalf of Contractor.

**20.4.2.2.** If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, County may, after **FORTY-EIGHT (48)** hours written notice to the Contractor and, without prejudice to any other remedy, make good such deficiencies. The County shall adjust the total Contract Price by reducing the amount thereof by the cost of making good such deficiencies. If County deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract Price (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

#### **20.4.3. Payment After Cure**

When Contractor removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

### **20.5. Subcontractor Payments**

#### **20.5.1. Payments to Subcontractors**

No later than ten (10) days after receipt, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

#### **20.5.2. No Obligation of County for Subcontractor Payment**

The County shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

#### **20.5.3. Joint Checks**

County shall have the right in its sole discretion, if necessary for the protection of the County, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the County and a Subcontractor of any tier, any obligation from the County to such Subcontractor, or rights in such Subcontractor against the County.

## **21. COMPLETION OF THE WORK**

### **21.1. Completion**

**21.1.1.** County will accept completion of Contract and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of County.

**21.1.2.** The Work may only be accepted as complete by action of the governing board of the County.

**21.1.3.** County, at its sole option, may accept completion of Contract and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of County, except for minor corrective items, as distinguished from incomplete items. If Contractor fails to complete all minor corrective items within thirty (30) days after the date of the County's acceptance of completion, County shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by County, until the item(s) are completed.

**21.1.4.** At the end of the thirty-five (35) day period, if there are any items remaining to be corrected, County may elect to proceed as provided herein related to adjustments to Contract Price, and/or County's right to perform the Work of the Contractor.

## **21.2. Close-Out Procedures**

### **21.2.1. Punch List**

The Contractor shall notify the Architect when Contractor considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

### **21.2.2. Close-Out Requirements**

#### **21.2.2.1. Utility Connections**

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

#### **21.2.2.2. Record Drawings**

**21.2.2.2.1.** Contractor shall provide exact Record Drawings of the Work upon completion of the Project as indicated in the Specifications.

**21.2.2.2.2.** Contractor is liable and responsible for any and all inaccuracies in the Record Drawings, even if inaccuracies become evident at a future date.

**21.2.2.2.3.** Upon completion of the Work and as a condition precedent to approval of final payment, Contractor shall obtain the Inspector's approval of the corrected prints and employ a competent draftsman to transfer the Record Drawings information to the most current version of Autocad that is, at that time, currently utilized for plan check submission by either the County, the Architect, and print a complete set of transparent sepias. When completed, Contractor shall deliver corrected sepias and diskette/CD/other data storage device acceptable to County with Autocad file to the County.

**21.2.2.3. Maintenance Manuals:** Contractor shall prepare all operation and maintenance manuals and date as indicated in the Specifications.

## **21.3. Final Inspection**

**21.3.1.** Contractor shall comply with Punch List procedures as provided herein, and maintain the presence of a Project Superintendent and Project Manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor's written notice that all of the Punch List items have

been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Contractor and County a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

**21.3.2.** Upon Contractor's completion of all items on the Punch List and any other uncompleted portions of the Work, the Contractor shall notify the County and Architect, who shall again inspect such Work. If the Architect finds the Work complete and acceptable under the Contract Documents, the Architect will notify Contractor, who shall then jointly submit to the Architect and the County its final Application for Payment.

**21.3.3. Final Inspection Requirements**

**21.3.3.1.** Before calling for final inspection, Contractor shall determine that the following have been performed:

- 21.3.3.1.1.** The Work has been completed.
- 21.3.3.1.2.** All life safety items are completed and in working order.
- 21.3.3.1.3.** Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.
- 21.3.3.1.4.** Electrical circuits scheduled in panels and disconnect switches labeled.
- 21.3.3.1.5.** Painting and special finishes complete.
- 21.3.3.1.6.** Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.
- 21.3.3.1.7.** Tops and bottoms of doors sealed.
- 21.3.3.1.8.** Floors waxed and polished as specified.
- 21.3.3.1.9.** Broken glass replaced and glass cleaned.
- 21.3.3.1.10.** Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.
- 21.3.3.1.11.** Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.
- 21.3.3.1.12.** Finished and decorative work shall have marks, dirt, and superfluous labels removed.
- 21.3.3.1.13.** Final cleanup, as provided herein.

**21.4. Costs of Multiple Inspections**

More than two (2) requests of the County to make a final inspection shall be considered an additional service of County, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Contractor and if funds are available, withheld from remaining payments.

## **21.5. Partial Occupancy or Use Prior to Completion**

### **21.5.1. County's Rights to Occupancy**

The County may occupy or use any completed or partially completed portion of the Work at any stage, and such occupancy shall not constitute the County's Final Acceptance of any part of the Work. Neither the County's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by County shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The County and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Claims and Disputes provisions herein, with the added provision that during the dispute process, the County shall have the right to occupy or use any portion of the Work that it needs or desires to use.

### **21.5.2. Inspection Prior to Occupancy or Use**

Immediately prior to partial occupancy or use, the County, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

### **21.5.3. No Waiver**

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Work shall not constitute beneficial occupancy or acceptance of the Work not complying with the requirements of the Contract Documents.

## **22. FINAL PAYMENT AND RETENTION**

### **22.1. Final Payment**

Upon receipt and approval of a valid and final Application for Payment, the Architect will issue a final Certificate of Payment. The County shall thereupon jointly inspect the Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete (that, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the County shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of final payment from the County, pay the amount due Subcontractors.

**22.2. Prerequisites for Final Payment** The following conditions must be fulfilled prior to Final Payment:

**22.2.1.** A full release of all Stop Payment Notices served in connection with the Work shall be submitted by Contractor

**22.2.2.** A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 8136, from the Contractor and each subcontractor of any tier and supplier to be paid from the final payment;

**22.2.3.** A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8134, from the Contractor and each subcontractor of any tier and supplier that was paid from the previous progress payments;

**22.2.4.** The Contractor shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of County required under the Contract Documents.

**22.2.5.** Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

**22.2.6.** Contractor must have completed all requirements set forth under "Close-Out Procedures," including, without limitation, submission of an approved set of complete Record Drawings.

**22.2.7.** Architect shall have issued its written approval that final payment can be made.

**22.2.8.** The Contractor shall have delivered to the County all manuals and materials required by the Contract Documents.

**22.2.9.** The Contractor shall have completed final clean up as provided herein.

### **22.3. Retention**

**22.3.1.** The retention, less any amounts disputed by the County or that the County has the right to withhold pursuant to provisions herein, shall be paid:

**22.3.1.1.** After approval of the County by the Architect's Certificate of Payment,

**22.3.1.2.** After the satisfaction of the conditions set forth herein, and

**22.3.1.3.** After thirty-five (35) days after the recording of the Notice of Completion by County.

**22.3.2.** No interest shall be paid on any retention, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the County and the Contractor pursuant to Public Contract Code section 22300.

**22.4. Substitution of Securities** The County will permit the substitution of securities in accordance with the provisions of Public Contract Code section 22300.

### **23. UNCOVERING OF WORK**

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the County, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Contract Price or Contract Time.

### **24. NONCONFORMING WORK AND CORRECTION OF WORK**

#### **24.1. Nonconforming Work**

**24.1.1.** Contractor shall promptly remove from Premises all Work identified by County as failing to conform to the Contract Documents whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the County and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the County or other Contractors caused thereby.

**24.1.2.** If Contractor does not remove Work that County has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed **FORTY-**



**EIGHT (48)** hours, County may remove it and may store any material at Contractor's expense. If Contractor does not pay expense(s) of that removal within ten (10) days' time thereafter, County may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the County and/or County may withhold those amounts from payment(s) to Contractor.

## **24.2. Correction of Work**

### **24.2.1. Correction of Rejected Work**

Pursuant to the notice provisions herein, the Contractor shall promptly correct the Work rejected by the County, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

### **24.2.2. One-Year Warranty Corrections**

If, within one (1) year after the date of Completion of the Work or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the County to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract and termination of the Contract. The County shall give such notice promptly after discovery of the condition.

## **24.3. County's Right to Perform Work**

**24.3.1.** If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of this contract, the County, after **FORTY-EIGHT (48)** hours written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

**24.3.2.** If it is found at any time, before or after completion of the Work, that Contractor has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, County may require at its option:

**24.3.2.1.** That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Contractor at no additional cost to the County;

**24.3.2.2.** That the County deduct from any amount due Contractor the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

**24.3.2.3.** That the County exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the County hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case the County shall either issue a deductive Change Order, a Construction Change Directive, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or County may withhold those amounts from payment(s) to Contractor.

## **25. TERMINATION AND SUSPENSION**

### **25.1. County's Right to Terminate Contractor for Cause**

**25.1.1. Grounds for Termination** The County, in its sole discretion, may terminate the Contract and/or terminate the Contractor's right to perform the work of the Contract based upon the following:

**25.1.1.1.** Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or

**25.1.1.2.** Contractor fails to complete said Work within the time specified or any extension thereof, or

**25.1.1.3.** Contractor persistently fails or refused to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or

**25.1.1.4.** Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition not dismissed within sixty (60) days; or

**25.1.1.5.** Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or

**25.1.1.6.** Contractor persistently or repeatedly refuses fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or

**25.1.1.7.** Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or

**25.1.1.8.** Contractor persistently disregards laws, or ordinances, or instructions of County; or

**25.1.1.9.** Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or

**25.1.1.10.** Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

### **25.1.2. Notification of Termination**

**25.1.2.1.** Upon the occurrence at County's sole determination of any of the above conditions, County may, without prejudice to any other right or remedy, serve written notice upon Contractor and its Surety of County's termination of this Contract and/or the Contractor's right to perform the work of the Contract. This notice will contain the reasons for termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to County for the correction of the condition(s) and/or violation(s) be made, this Contract shall cease and terminate. Upon Determination, Contractor shall not be entitled to receive any further payment until the entire Work is finished.

**25.1.2.2.** When any of the above reasons exist, the County may, without prejudice to any other rights or remedies of the County and after giving the Trade Contractor and the Trade Contractor's Surety written notice of three (3) days, terminate the Trade Contractor and/or this Contract and may, subject to any prior rights of the Surety:

**25.1.2.2.1.** Take possession of the Project and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Trade Contractor;

**25.1.2.2.2.** Accept assignment of Subcontracts. Trade Contractor acknowledges and agrees that if the County (in its sole and absolute discretion) decides to takeover completion of the Project, the Trade Contractor agrees to immediately assign all subcontracts to the County which the County has chosen to accept;

**25.1.2.2.3.** Complete the Work by any reasonable method the County may deem expedient, including contracting with a replacement contractor or contractors; and,

**25.1.2.2.4.** Agree to accept a takeover and completion arrangement with Surety that is acceptable to the County.

**25.1.2.3.** If Surety fails to notify County or begin performance as indicated herein, County may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of Contractor and/or its Surety. Contractor and/or its Surety shall be liable to County for any excess cost or other damages the County incurs thereby. Time is of the essence in this Contract. If the County takes over the Work as herein provided, County may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Contractor as may be on the Site of the Work, in bonded storage, or previously paid for.

**25.1.3.** Effect of Termination

**25.1.3.1.** Contractor shall, only if ordered to do so by the County, immediately remove from the Site all or any materials and personal property belonging to Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. The County retains the right, but not the obligation, to keep and use any materials and personal property belonging to Contractor that have not been incorporated in the construction of the Work, or which are not in place in the Work. The Contractor and its Surety shall be liable upon the performance bond for all damages caused the County by reason of the Contractor's failure to complete the Contract.

**25.1.3.2.** In the event that the County shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the County shall not be liable nor account to the Contractor in any way for the time within which, or the manner in which, the Work is performed by the County or for any changes the County may make in the Work or for the money expended by the County in satisfying claims and/or suits and/or other obligations in connection with the Work.

**25.1.3.3.** In the event that the Contract is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor or any impact or impairment of Contractor's bonding capacity.

**25.1.3.4.** If the expense to the County to finish the Work exceeds the unpaid Contract Price, Contractor and Surety shall pay difference to County within twenty-one (21) days of County's request.

**25.1.3.5.** The County shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Contractor under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the County, no Subcontractor shall have any claim against the County or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract. The County or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the County so elect, the Contractor shall

execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the County may require, for the purpose of fully vesting in the County the rights and benefits of it Subcontractor under Subcontracts or other obligations or commitments. All payments due the Contractor hereunder shall be subject to a right of offset by the County for expenses and damages suffered by the County as a result of any default, acts, or omissions of the Contractor. Contractor must include this assignment provision in all of its contracts with its Subcontractors.

**25.1.3.6.** The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to County.

**25.1.4.**      Emergency Termination of Public Contracts Act of 1949

**25.1.4.1.** This Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

**25.1.4.1.1.** Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

**25.1.4.1.2.** Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

**25.1.4.2.** Compensation to the Contractor shall be determined at the sole discretion of County on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the County's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The County, at its sole discretion, may adopt the Contract Price as the reasonable value of the work done or any portion thereof.

**25.2.**      Termination of Contractor for Convenience

**25.2.1.** County in its sole discretion may terminate the Contract upon three (3) days written notice to the Contractor. Under a termination for convenience, the County retains the right to all the options available to the County if there is a termination for cause. In case of a termination for convenience, the Contractor shall have no claims against the County except:

**25.2.1.1.** The actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and

**25.2.1.2.** Five percent (5%) of the total cost of work performed as of the date of termination or five percent (5%) of the value of the Work yet to be performed, whichever is less. This five percent (5%) amount shall be full compensation for all Contractors' and its Subcontractor(s)' mobilization and/or demobilization costs and any anticipated loss profits resulting from termination of the Contractor for convenience.

### **25.3. Suspension of Work**

**25.3.1.** County in its sole discretion may suspend, delay or interrupt the Work in whole or in part for such period of time as the County may determine upon three (3) days written notice to the Contractor.

**25.3.1.1.** An adjustment may be made for changes in the cost of performance of the Work caused by any such suspension, delay or interruption. No adjustment shall be made to the extent:

**25.3.1.1.1.** That performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or

**25.3.1.1.2.** That an equitable adjustment is made or denied under another provision of the Contract; or

**25.3.1.1.3.** That the suspension of Work was the direct or indirect result of Contractor's failure to perform any of its obligations hereunder.

**25.3.1.2.** Any adjustments in cost of performance may have a fixed or percentage fee as provided in the section on Format for Proposed Change Order herein. This amount shall be full compensation for all Contractor's and its Subcontractor(s)' changes in the cost of performance of the Contract caused by any such suspension, delay or interruption.

## **26. CLAIMS AND DISPUTES**

### **26.1. Performance During Dispute or Claim Process**

Contractor shall continue to perform its Work under the Contract and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement by the County. It is the intent of this Section that differences between the parties arising under and by virtue of this Contract be brought to the attention of the County Project Manager and/or Construction Manager at the earliest possible time in order that such matters be promptly settled if possible, or other appropriate action or investigation may be promptly undertaken.

### **26.2. Definition of Dispute**

**26.2.1.** The term "Dispute" means a separate demand by the Contractor for:

**26.2.1.1.** A time extension; including without limitation, for relief from damages or penalties for delay assessed by the County under the contract.

**26.2.1.2.** Payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or Contractor is not otherwise entitled to; or

**26.2.1.3.** An amount of payment disputed by the County.

### **26.3. Dispute Presentation**

**26.3.1.** If Contractor intends to apply for an increase in the Contract Price or Contract Time for any reason including, without limitation, the acts of County or its agents, Contractor shall, within ten (10) days after the event giving rise to the Dispute, give notice of the Dispute in writing and submit to the County a written statement of the damage sustained or time requested. On or before twenty (20) days after Contractor's written Notice of Dispute, Contractor shall file with the County an itemized statement of the details and amounts of its Dispute for any increase in the Contract Price or Contract Time. Otherwise, Contractor shall have waived and relinquished its dispute against the County and Contractor's claims for compensation or an extension of time shall be forfeited and invalidated. Contractor shall not be entitled to consideration for payment or time on account.

**26.3.2.** The Notice of Dispute shall identify:

**26.3.2.1.** The issues, events, conditions, circumstances and/or causes giving rise to the dispute;

**26.3.2.2.** The pertinent dates and/or durations and actual and/or anticipated effects on the Contract Price, Contract Schedule milestones and/or Contract Time adjustments; and

**26.3.2.3.** The line-item costs for labor, material, and/or equipment, if applicable.

**26.3.3.** The Notice of Dispute shall include the following certification by the Contractor:

**26.3.3.1.** The undersigned Contractor certifies under penalty of perjury that the attached dispute is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Contractor believes the County is liable; and that I am duly authorized to certify the dispute on behalf of the Contractor.

**26.3.3.2.** Furthermore, Contractor understands that the value of the attached dispute expressly includes any and all of the Contractor's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

**26.3.4.** If a Dispute, or any portion thereof, remains unresolved upon satisfaction of all applicable Dispute Resolution requirements, the Contractor shall comply with all claim resolution requirements as provided in Public Contract Code section 20104.

**26.3.5.** Contractor shall bind its Subcontractors to the provisions of this section and will hold the County harmless against disputes by Subcontractors.

#### **26.4. Dispute Resolution**

**26.4.1.** Contractor shall file with the County the Notice of Dispute, including the documents necessary to substantiate it, within ten (10) days of the event giving rise to the dispute or before the day of submitting the application for final payment (whichever occurs first).

**26.4.2.** County shall respond in writing within forty-five (45) days of receipt of the Dispute or may request in writing within thirty (30) days of receipt of the Dispute any additional documentation supporting the Dispute or relating to defenses or claims County may have against the Contractor.

**26.4.2.1.** If additional information is required, it shall be requested and provided by mutual agreement of the parties.

**26.4.2.2.** County's written response to the documented Dispute shall be submitted to the Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor to produce the additional information, whichever is greater.

**26.4.3.** If Contractor disputes the County's written response, Contractor may file a claim pursuant to the Claim Resolution requirements provided herein.

#### **26.5. Definition of Claim**

**26.5.1.** The term "Claim" means a dispute that remains unresolved at the conclusion of the Dispute Resolution requirements as provided herein.

## **26.6. Claim Presentations**

**26.6.1.** Contractor must timely submit the Notice of Claim and all reasonable documentation necessary to substantiate any Claim, which shall be sent by registered mail or certified mail return receipt requested. Otherwise, Contractor shall have waived and relinquished its Claim against the County and Contractor's Claims for compensation or an extension of time shall be forfeited and invalidated, and Contractor shall not be entitled to consideration for payment or time on account of the instant matter. Any statute that might otherwise govern the presentation of an unresolved Dispute, including but not limited to Government Code section 900 et seq. and Public Contract Code section 20104 et seq. shall be tolled during the course of construction on the Project. Timely shall be within ten (10) days of the event giving rise to the claim or before the day of submitting the application for final payment (whichever occurs first).

**26.6.1.1.** All Claims shall include the following certification by the Contractor:

**26.6.1.1.1.** The undersigned Contractor certifies under penalty of perjury that the attached Claim is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Contractor believes the County is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

**26.6.1.1.2.** Furthermore, Contractor understands that the value of the attached claim expressly includes any and all of the Contractor's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

**26.6.2.** The attention of the Contractor is drawn to Government Code section 12650, et seq. regarding penalties for false claims.

**26.6.3.** Not Applicable.

**26.6.4.** The Contractor shall bind all its Subcontractors to the provisions of this section and will hold the County harmless against claims by Subcontractors.

## **26.7. Claim Resolution**

**26.7.1.** In the event of a disagreement between the parties after the conclusion of the Dispute Resolution requirements pursuant to 26.3 herein, the parties shall follow the Claims Procedures set forth herein.

### **26.7.2. Claims Procedure**

**26.7.2.1.** Upon receipt of a Claim and the supporting documentation, the County shall conduct a reasonable review of the Claim and within forty-five (45) days, or an extended period as may be set by mutual agreement of the County and Contractor, provide the Contractor with a written statement identifying what portion of the Claim is still disputed and what portion is undisputed.

**26.7.2.2.** Notwithstanding the time period set forth in .1 above, if the County needs approval from the Board of Supervisors to provide the Contractor with a written statement identifying the disputed portion and the undisputed portion of the Claim, and the Board of Supervisors does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of the Claim, the County shall have up to three (3) days following the next duly publicly noticed meeting of the Board of Supervisors after the forty-five (45) day period, or extension, expires to provide Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim.

**26.7.2.3.** Any payment due on the undisputed portion of the Claim under this section shall be processed and made within sixty (60) days after the County issues its written statement. If the County fails to issue a written statement, the Claim shall be deemed rejected in its entirety. A Claim that is denied by reason of the County's failure to have responded to the Claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.

**26.7.2.4.** If the Contractor disputes the County's written response, or if the County fails to respond within the time prescribed, the Contractor may demand in writing, sent by registered mail or certified mail return receipt requested, an informal meet and confer conference for settlement of the portion of the Claim in dispute. Upon receipt of the demand, the County shall schedule a meet and confer conference within thirty (30) days.

**26.7.2.5.** Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion thereof remains in dispute, the County shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion shall be processed and made within sixty (60) days after the County issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the County and Contractor sharing the associated costs equally. The County and Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

**26.7.2.6.** For purposes of this section, mediation includes any nonbinding process, including but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute with resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

**26.7.2.7.** If mediation is unsuccessful to resolve all issues, the parts of the claim remaining in dispute shall be subject to applicable procedures outside of this section and the requirements of Public Contract Code section 9204.

**26.7.2.8.** Following the mediation, if the claim or any portion of it remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

**26.7.2.9.** If a subcontractor or a lower tier subcontractor has a Claim, the contractor may present to the County a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the County shall furnish reasonable documentation as set forth in 26.3.2 to support the Claim. Within forty-five (45) days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the Claim to the County, and if the Contractor did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.



## **26.8. Dispute and Claim Resolution Non-Applicability**

**26.8.1.** The procedures for dispute and claim resolutions set forth in this Article shall not apply to the following:

**26.8.1.1.** Personal injury, wrongful death or property damage claims;

**26.8.1.2.** Latent defect or breach of warranty or guarantee to repair;

**26.8.1.3.** Stop payment notices;

**26.8.1.4.** County's rights set forth in the Article on Suspension and Termination;

**26.8.1.5.** County rights and obligations as a public entity set forth in applicable statutes; provided, however, that penalties imposed against a public entity by statutes, including, but not limited to, Public Contract Code sections 20104.50 and 7107, shall be subject to the Dispute and Claim Resolution requirements provided in this Article.

**26.9.** Contractor's costs incurred in seeking relief under this Article are not recoverable from the County.

## **27. STATE LABOR, WAGE & HOUR, APPRENTICE, AND RELATED PROVISIONS**

### **27.1. Monitoring and Enforcement by Labor Commissioner**

**27.1.1.** Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE). The Contractor and all subcontractors shall be required to furnish, at least monthly, certified payroll records directly to the Labor Commissioner in accordance with Labor Code section 1771.4. All payroll records shall be furnished in a format required by the Labor Commissioner. The Contractor and all subcontractors must sign up for, and utilize, the Labor Commissioner's electronic certified payroll records submission system. The County will have direct and immediate access to all CPRs for the Project that are submitted through the Labor Commissioner's system. The County can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests. Additionally, the County may, at the sole discretion of the County, require the Contractor to submit separate CPRs to the County in intervals required by the County's labor compliance program.

**27.1.2.** The Labor Commissioner/ DLSE may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site ("On-Site Visits"). On-Site Visits may include inspections of records, inspections of the Work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner/DLSE.

**27.1.3.** Any lawful activities conducted or any requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against the County by the Contractor. Contractor and all subcontractors shall cooperate and comply with any lawful requests by the Labor Commissioner/ DLSE. The failure of the Labor Commissioner, DLSE, or any other entity

related to the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

**27.1.4.** Prior to commencing any Work on the Project, the Contractor shall post the required notice/poster required under the California Code of Regulations and Labor Code section 1771.4 in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the Labor Commissioner's website.

## **27.2. Wage Rates, Travel, and Subsistence**

**27.2.1.** Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the County's principal office and copies will be made available to any interested party on request. Contractor shall obtain and post a copy of these wage rates at the job site.

**27.2.2.** Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the County, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

**27.2.3.** Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations ("DIR") ("Director"), regardless of any contractual relationship which may be alleged to exist between Contractor or any Subcontractor and such workers.

**27.2.4.** If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the wage rates in the Notice to Bidders or the Contract subsequently awarded.

**27.2.5.** Pursuant to Labor Code section 1775, Contractor shall, as a penalty to County, forfeit the statutory amount (believed by the County to be currently two hundred dollars (\$200)) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, determined by the County and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Contractor or by any Subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

**27.2.6.** Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification.

**27.2.7.** Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time,

subsistence pay, and apprenticeship or other training programs authorized by Labor Code section 3093, and similar purposes.

**27.2.8.** Contractor shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Contractor shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

### **27.3. Hours of Work**

**27.3.1.** As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal days work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

**27.3.2.** Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of County and to the Division of Labor Standards Enforcement of the DIR.

**27.3.3.** Pursuant to Labor Code section 1813, Contractor shall as a penalty to the County forfeit the statutory amount (believed by the County to be currently twenty-five dollars (\$25)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

**27.3.4.** Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the County.

### **27.4. Payroll Records**

**27.4.1.** Contractor shall prepare and provide to the County and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the County an accurate and complete certified payroll record ("CPR"), 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 the Contractor and/or each Subcontractor in connection with the Work. All CPRs as specified in Labor Code section 1776 of the Contractor and all subcontractors of any tier shall be certified and furnished directly to the Labor Commissioner in accordance with Labor Code section 1771.4(a)(3) on a monthly basis (or more frequently if required by the County or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. CPRs as specified in Labor Code section 1776 shall be certified and submitted to the County with each application for payment.

**27.4.2.** All CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

**27.4.2.1.** A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

**27.4.2.2.** CPRs shall be made available for inspection or furnished upon request to a representative of County, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

**27.4.2.3.** CPRs 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 the County, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by 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 Contractor.

**27.4.3.** The form of certification for the CPRs shall be as follows:

I, \_\_\_\_\_ (Name-Print), the undersigned, am the \_\_\_\_\_ (Position in business) with the authority to act for and on behalf of \_\_\_\_\_ (Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of \_\_\_\_\_ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 for any work performed by our employees on the Project.

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

(Section 16401 of the California Code of Regulations)

**27.4.4.** Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by County, Division of Apprenticeship Standards, or 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 Contractor awarded Contract or performing Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

**27.4.5.** Contractor shall inform County of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days, provide a notice of change of location and address.

**27.4.6.** In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to County, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of

Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

## **27.5. [RESERVED]**

## **27.6. Apprentices**

**27.6.1.** Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

**27.6.2.** Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

**27.6.3.** Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.

**27.6.4.** Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

**27.6.5.** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

**27.6.6.** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.

**27.6.7.** If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

**27.6.7.1.** Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

**27.6.7.2.** Forfeit as a penalty to County the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

**27.6.8.** Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

**27.6.9.** Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

## **27.7. Non-Discrimination**

**27.7.1.** Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Contractor and Subcontractor.

**27.7.2.** Special requirements for Federally Assisted Construction Contracts: (Applicable if Federal Funds apply) During the performance of this Contract, Contractor agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

## **27.8. Labor First Aid**

Contractor shall maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (8 Cal. Code of Regs., §1 et seq.).

## **28. [RESERVED]**

## **29. MISCELLANEOUS**

### **29.1. Assignment of Antitrust Actions**

**29.1.1.** Section 7103.5(b) of the Public Contract Code states:

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

**29.1.2.** Section 4552 of the Government Code states:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

**29.1.3.** Section 4553 of the Government Code states:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

**29.1.4.** Section 4554 of the Government Code states:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

**29.1.5.** Under this Article, "public purchasing body" is County and "bidder" is Contractor.

**29.2. Excise Taxes**

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, County, upon request, will execute documents necessary to show (1) that County is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of County. No Federal Excise Tax for such materials shall be included in any Contract Price.

**29.3. Taxes**

Contract Price is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

**29.4. Shipments**

All shipments must be F.O.B. destination to Site or sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Contract Price shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

**29.5. Compliance with Government Reporting Requirements**

If this Contract is subject to federal or other governmental reporting requirements because of federal or other governmental financing in whole or in part for the Project of which it is part, or for any other reason, Contactor shall comply with those reporting requirements at the request of the County at no additional cost.

END OF DOCUMENT

## **SUPPLEMENTAL CONDITIONS**

These Supplemental Conditions modify the General Conditions and form a part of the Contract Documents for the work generally described. Where portions of the General Conditions are modified and or deleted by these Supplemental Conditions, the unaltered portions of the General Conditions shall remain in effect

### **1. Article 1 – Contract Terms and Definitions**

- a. Article 1.1.12 – Construction Change Directive
  - i. The word “Construction Change Directive” shall be synonymous with the words, “Bulletin”, “Instruction Bulletin”, “Field Directive, etc. Such words shall be the formal document issued by the Architect / County / Construction Manager, giving the Contractor authorization to proceed with changes in the scope of work post bid / contract award.
- b. Article 1.1.18 – Contractor
  - i. The word “Contractor” shall also be synonymous with the words, “Prime Contractor” “Trade Contractor”, “Category Contractor”, “Bid Contractor”, Bid Category Contractor” or any variation of the same. These terms are used interchangeably in the course of the contract documents.”

### **2. Article 2 – Shop Drawings, Product Data, and Samples**

- a. Article 2.1 - Submittals defined
  - i. All submittals unless noted otherwise in Division 01, shall be submitted for architect review no later than ten (10) days from the date of the Notice to Proceed.

### **3. Article 4 – Architect**

- a. Article 4.4
  - i. All communication to be submitted to the Program and/or the Construction Manager.

### **4. Article 11 – Contractor’s Submittals and Schedules**

- a. Article 11.1.1.2 – Preliminary Schedule of Values  
The schedule of values shall follow the following format:
  - i. A single line item for each of the following:
    - o Bond Premium (not to exceed the bond premium amount)
    - o General Conditions (not to exceed 8% of the subtotal of subcontractors)
    - o Alternates (each as it applies)
    - o Mobilization (not to exceed 2% of contract total)
    - o Submittals (all submittals on one line item, not to exceed 2% of contract total)
    - o Allowance
    - o SWPPP
    - o Punch-list (Including all subcontractors, 5% of the contract’s total)
    - o Closeout (Including all subcontractors, 5% of the contract’s total)



- Site: (if applicable)
  - Specification Section
    - Material (including subcontractor name)
      - Rough
      - Finish
      - Testing
    - Labor (including subcontractor name)
      - Rough
      - Finish
      - Testing
- Building and By Floor
  - Specification Section
    - Material (including subcontractor name)
      - Rough
      - Finish
      - Testing
    - Labor (including subcontractor name)
      - Rough
      - Finish
      - Testing

## 5. Article 14 – Insurance and Bonds

- a. Article 14.1.6.3  
Add “Program Manager(s)” to the endorsement.

## 6. Article 16 – Time

- a. Article 16.2 – Computation of Time / Adverse Weather
  - i. 20 calendar days are expected during the period of January through December. The Contractor’s Construction Schedules prepared shall incorporate the number of expected Rain Days set forth above and there shall be no adjustments to the Contract Time on account of unusually severe weather conditions resulting from rainfall until the actual number of Rain Days exceed those set forth above.
- b. Add Article 16.2.5 – Project Recognized Holidays
  - i. The project recognizes / observes the following seven (7) holidays **ONLY**: New Years’ Day, Memorial Day, July 4<sup>th</sup>, Veterans Day, Labor Day, Thanksgiving Day, the day following Thanksgiving Day, Christmas. ALL other days in the calendar year is considered a work day. Any day that the Contractor recognizes as a holiday, Contractor will be expected to be on-site with the correct crew size. Contractor shall include in base bid the appropriate wage rate for holiday pay.
- c. Article 16.4.1 – Time of the Essence
  - i. Refer to 01 32 16 – Construction Progress Documentation for contract time.

## 7. Article 17 – Extension of Time – Liquidated Damages

- a. 17.1 – Liquidated Damages
  - i. Refer to 01 32 16 – Construction Progress Documentation for further information related to Contract Time and Liquidated Damages.
- b. 17.2.1.
  - i. Change five (5) calendar days to three (3) calendar days. Written notification to be on Company letterhead stationery.

## **8. Article 18 – Changes in the Scope of Work**

### **a. Article 18.5 – Force Accounts Directives**

- i. 18.5.6 Add the following to this article clarifying the start & stop, as well as daily approval. Adjustment to the Contract Price can be directed by the County on a time and material (T&M) basis. Contractor shall keep and maintain cost-accounting records satisfactory to the County, which shall be available to the County on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents. Contractor or Contractor's Subcontractor MUST notify the Construction Manager and the Inspector or Record (IOR) prior to each day of time and material commencement and again at the completion of the day. All T&M tickets must be presented to the Construction Manager and/or the IOR daily for signature for verification of work performed and time. Construction Manager and/or the IOR MUST verify all time and material work and will not sign the time and material ticket if the Contractor or their Subcontractor has not properly notified the Construction Manager and/or IOR, as stated above.

## **9. Article 20 – Payments**

### **a. Article 20.2 – Application for Progress Payment**

#### **i. Article 20.2.1.1.1**

Single Prime Contract: Draft invoice to be reviewed between Contractor and Program/Construction Manager by the 25<sup>th</sup> of each month.

Contractor to provide final invoice based on the draft approval by the 30<sup>th</sup> of each month for required signatures.

#### **ii. Article 20.2.1.1.1**

Multi-Prime Contracts: On or before the 25<sup>th</sup> of each calendar month, during the progress of the portion of the Work for which payment is being requested, the Construction Manager will forward a draft billing for the Prime Contractor's approval indicating the percentages representative of the work installed. The Prime Contractor shall affix comments and/or initials and return draft billing. Material invoices, evidence of equipment purchases and rentals, along with other support and details of cost, may be required to be submitted to the Owner from time to time. Draft billings not returned to the Construction Manager will be assumed "correct as noted". The Construction Manager will then forward a formal billing to the Prime Contractor. The formal billing, with applicable releases attached, and containing wet signatures, shall be returned to the Construction Manager. Monthly billings will be collectively forwarded to the County for processing. Failure to return the billing or applicable attachments within the time frames specified by the Construction Manager will result in processing no sooner than the next application period.

### **b. Article 20.2.2.1 – First Payment Request**

- i. The following items, if applicable, must be completed before the first payment request will be accepted for processing:
  - Installation of field office (if applicable);
  - Approved schedule of values
  - Copies of necessary permits;
  - Executed Contract with County
  - Bond and insurance endorsements received and accepted by County;
  - Copies of authorizations and licenses from governing authorities;

- Resumes of Contractor's key personnel as determined by the Contract Documents and approved by County;
  - List of all subcontractors, with names, license numbers, telephone numbers, and scope of work
  - Approved competent person
  - Preliminary CPM schedule
  - List of all Job Hazard Analysis (Section 01 44 40)
  - Site Safety Plan (Section 01 44 40)
  - Construction Waste Management (Section 01 74 19)
  - IIPP / Safety Program on file with the Construction Manager;
  - Receipt of submittals (Section 01 33 00)
  - Register with the Department of Industrial Relations (DIR)
- c. Article 20.2.2.2 – Second Payment Request
- i. The second payment request will not be processed until the following is received
    - Receipt of completed trade related submittals as noted in section 01 33 00
    - Approved CPM schedule
- d. Article 20.3 - Progress Payment
- i. In addition to the requirements to review, the following shall too be considered
    - Current daily work reports
    - Current safety meeting minutes
    - Current as-builts
    - Current insurance certificates
    - Current certified payroll
    - Current SWPPP log / maintenance
    - Currently releases
    - Safety Orientation (as necessary)
    - Waste & recycling forms
    - Conditional and unconditional waivers & release are required for prime contractor only
- e. Add Article 20.6 – Payment for Stored Materials
- i. **Materials or Equipment Delivered and Stored at the Site:**  
Payment of stored amount shall not exceed the actual invoice amount nor the schedule of value line item amount.
  - ii. **Materials or Equipment Not Delivered or Stored at the Site:**  
Contractor may include in its Request for Payment the value of any purchased material being stored off -site. Provide the following is met:
    - Approval of the County to be given at the County's sole discretion,
    - Written request to be received a minimum of two weeks prior to the draft billing approval cycle. There must be reasonable time for County representative to schedule time to travel to and inspect to confirm. Travel not to exceed 50 miles from project site.
    - Title to such materials shall be vested in the County as evidenced by documentation satisfactory in form and substance to the County, including, without limitation, recorded financing statements, UCC filings and UCC searches;

- Contractor shall submit to the County a written list identifying each location where materials are stored off-site (which must be a bonded warehouse) and the value of the materials at each location. The Contractor shall procure insurance satisfactory to the County (in its reasonable discretion) for materials stored off-site in an amount not less than the total value thereof,
- The consent of any Surety shall be obtained to the extent required prior to payment for any materials stored off-site,
- Representatives of the County shall have the right to make inspections of the storage areas at any time; and
- Such materials shall be (1) protected from diversion, destruction, theft and damage to the reasonable satisfaction of the County; (2) specifically marked for use on the Project; and (3) segregated from other materials at the storage facility.

END OF DOCUMENT