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GENERAL CONDITIONS

1. DEFINITIONS

As used herein the following terms have the meaning indicated:

A. Board of Supervisors: The governing body of the County of Orange.

B. Director: The Director of OC Public Works, County of Orange, or a designated representative for the project.

C. County: The County of Orange as a legal entity, a political subdivision of the State of California.

D. A-E: The Architect or Engineer or his authorized representative retained by the County to design the project.

E. The Contract Documents: The Contract Documents consist of Notice Inviting Bids, Instruction to Bidders, Proposal, County/Contractor Agreement, Performance Bond, Payment Bond, Certificates of Insurance, General Conditions, Supplementary General Conditions, Drawings, Specifications, and all modifications and amendments thereto.

F. Health Care Agency (HCA): The County of Orange User Agency/Department for this project.

G. Project: The work to be performed by Contractor on behalf of County pursuant to this Agreement and more fully described in Section 01002 of the Specifications attached hereto and incorporated herein by reference.

H. OCPW: OC Public Works, County of Orange.

2. COUNTY'S REPRESENTATIVES

A. The work will be under the general direction of the Board of Supervisors. The OC Public Works is the authorized representative of the Board of Supervisors and, under the Board of Supervisors, has complete charge of the work, and shall exercise full control of the work, so far as it affects the interest of the County.

B. The provisions in this Clause or elsewhere in this Contract regarding approval or direction by the County, Board of Supervisors, or OC Public Works, or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.

C. The OC Public Works assigned Project Manager is the County's exclusive contact agent to the Contractor with respect to this Project during construction and until the completion of the project.

The County's communications with the Contractor and Architect shall be exclusively through the County's Project Manager (OC Public Works assigned Project Manager).

D. The OC Public Works assigned Project Manager shall at all times have access to the work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.

E. The County and Architect shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and will not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents.

F. The County and Architect will not be responsible for the failure of the Contractor to plan, schedule, and execute the work in accordance with the approved schedule or the failure of the Contractor to meet the Contract completion dates or the failure of the Contractor to schedule and coordinate the work of his own trades and subcontractors or to coordinate with others separate Contractors.

G. The County will not be responsible for the acts or omissions of the Contractor, or any subcontractor, or any Contractor's or subcontractor's agents or employees, or any other persons performing any of the work.

H. The OC Public Works Project Manager has the authority to disapprove or reject work on behalf of the County when, in the OC Public Works Project Manager's opinion, the work does not conform to the Contract Documents.

Whenever, in OC Public Works Project Manager's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Contract Documents, OC Public Works Project Manager has the authority to require special inspection or testing of any work in accordance with the provisions of the Contract Documents whether or not such work shall then be fabricated, installed or completed.

I. The OC Public Works Project Manager has the authority to require special inspection or testing of the work. However, neither OC Public Works Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the County to the Contractor, or any subcontractor, or any of their agents, or employees, or any other person performing any portion of the work.

J. The OC Public Works Project Manager has the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his subcontractors and the Architect and his consultants, to discuss such matters as procedures, progress, problems, and scheduling.

K. The OC Public Works Project Manager will establish procedures to be followed for processing all submittals, change orders, progress payments, other project reports, documentation and test reports.

L. The OC Public Works Project Manager and Architect will review all requests for changes and shall implement the processing of change orders, including application for extensions of time.

M. The OC Public Works Project Manager and Architect will review and process all Progress Payment Requests by the Contractor, including Final Progress Payment Requests.

3. ARCHITECT-ENGINEER PROJECT MANAGEMENT STATUS

Unless otherwise expressly stated in the Agreement between the Contractor and the County, the A-E is responsible to the County for the preparation of adequate drawings, specifications, cost estimates, and reports within the scope of his contract. His services normally include checking of shop drawings and material lists; recommendations to the County regarding proposed substitutions; furnishing consultation and advice to the County to clarify the intent of the drawings and specifications and on questions that may arise during construction. He shall have access to observe the work at all times wherever it is in preparation or progress. He does not have the authority to act for the County or to stop the work. Should he observe work which, in his judgment, should be stopped to prevent damage, injury, loss, or error, he should notify the Contractor and OC Public Works without delay.

4. CONTRACTOR

A. Composition: If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

B. Review Documents: The Contractor shall carefully study and compare all drawings, specifications, and other instructions and shall at once report to OC Public Works any error, inconsistency, or omission which he may discover, but he shall not be liable to the County for any damage resulting from any errors or deficiencies in the contract documents or other instructions by the County if the provisions hereinafter set forth are carried out by him. Except as otherwise specifically provided hereinafter under warranties, the Contractor shall not be an agent for the County.

C. Superintendence: The Contractor shall maintain on site, at all times during the construction activities, a competent Superintendent. In addition to a General Superintendent and other administrative and supervisory personnel required for the performance of the work, the Contractor shall provide specific coordinating personnel as reasonably required for interfacing of all the work required for the total project, all satisfactory to OC Public Works. The Superintendent shall not be changed except with consent of OC Public Works, unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he shall be replaced within 24 hours by a Superintendent acceptable to OC Public Works. The Superintendent shall represent the Contractor in his absence and all directions given to him shall be binding, as if given to the Contractor.

D. Licenses and Certificates: Contractor shall, at all times during the term of this agreement, maintain in full force and effect such licenses as may be required by the State of California or any other governmental entity for Contractor to perform the duties specified herein and provide the services required pursuant to this Agreement. Contractor shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities.

E. Superintendence and Project Manager: The Contractor shall provide OC Public Works with complete work history profiles of management staff associated with this Project for OC Public Works review.

F. Contractor's Completion Schedule: The Contractor, after being awarded the Contract, shall prepare and submit, for OC Public Works approval, a Construction Schedule for the work which shall provide for expeditious and practicable execution of the work for completion within the Contract Time. This schedule shall be coordinated with the entire Project Construction Schedule to the extent required by the Contract Documents (see Specification Section 01300).

G. Employee Eligibility Verification: The Contractor shall warrant that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statues and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

5. SUBCONTRACTS

A. Licensed Subcontractors: Each subcontractor selected for the work shall be licensed in the State of California in his particular field.

B. Transactions: Transactions with subcontractors shall be made through the Contractor, except when in emergency situations the General Contractor is not readily available, in which case detailed instructions will be transmitted to subcontractors directly.

C. Responsibility: Contractor shall be fully responsible to the County for the acts and omissions of subcontractors and all persons directly or indirectly employed by them as he is for the acts and omissions of himself and of persons-directly or indirectly employed by him and shall pay each subcontractor promptly the amount allowed Contractor on account of such subcontractor's work to the extent of such subcontractor's interest therein.

D. Contractual Relations: Nothing contained in this Contract shall create any contractual relations between County and a subcontractor.

6. DRAWINGS AND SPECIFICATIONS

A. Checking: The Contractor shall check all drawings and specifications furnished him immediately upon their receipt and shall promptly notify OC Public Works of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale

drawings. Door, finish hardware; etc., schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors, which might have been avoided thereby. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

B. Omissions and Misdescriptions: Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall be called to the attention of OC Public Works as soon as possible. OC Public Works shall promptly notify the Contractor of the correction or addition to be made. In the event the omission or misdirection is substantial and the custom of the trade or industry does not require the Contractor to perform the work without additional charge, OC Public Works shall issue an additive or deductive change order and the Contractor shall be compensated in the manner herein provided for change orders. Any adjustment by the Contractor without written determination shall be at Contractor's own risk and expense.

C. Conflicting Information: In case of conflict between sections of the specifications and/or the drawings, the Contractor shall bid the most expensive alternate.

D. Drawings and Specifications at the Site: The Contractor shall keep available at the site for ready reference a complete set of all contract drawings, details, supplementary drawings and approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of project correspondence.

In accordance with Section 01700, Contract Closeout, Clause 2, the Contractor shall maintain on the site a complete "as-built" record set of prints.

In addition, the Contractor shall keep on the site as required a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to OC Public Works.

E. Deviations: Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from OC Public Works.

F. Contractor shall carefully review all Requests for Information (RFI's) prior to submission to Architect. RFI's shall be clearly legible, shall be specific, and shall include supporting sketches or information necessary to properly convey requested information. Contractor shall submit recommended solution(s) for Architect's review and consideration.

7. DIVISION OF THE SPECIFICATIONS

A. For convenience, these specifications are arranged in several divisions and sections, but such separations shall not be considered as the limits of the work required for any subcontract or trade; the terms and conditions of such limitations are wholly between the Contractor and his subcontractors, and the County will not be responsible for any division of work by subcontractors. The Contractor will be solely responsible for al' subcontract arrangements of work, regardless of the location of provisions in the specifications.

B. Schedules of work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or work necessary to complete the work of any section.

C. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the work.

D. Each section of the specifications is covered by applicable requirements of the Contract Documents and other related sections as if therein written.

8. SITE CONDITIONS

A. Existing Site Conditions: Information with respect to the site of the work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.

B. Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify OC Public Works in writing of:

(1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or

(2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

(3) Material that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law.

(4) OC Public Works will promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for performance of this contract, an equitable adjustment in accordance with Clause 18 shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required.

In the event that a dispute arises between the County 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.

C. Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and removing, relocating existing or

protecting existing main or trunkline utility facilities located on the contract construction site and not identified in the plans or specifications with reasonable accuracy. Such compensation shall also cover the cost of Contractor's equipment necessarily idled during such work. This provision shall not be deemed to require compensation when the presence of existing service laterals or appurtenances can be inferred from the presence of visible facilities such as buildings, meter and junction boxes on or adjacent to the construction site. If the Contractor discovers such unidentified utility facilities during construction, he shall immediately notify OC Public Works and the utility in writing.

D. Space at Site: The Contractor shall be allowed reasonable space at the site of the work as available and access thereto and shall confine his operations to the space assigned. The work shall be done without interference with the ordinary use of streets, berthing places, fairways, and passages. The Contractor shall cooperate with other contractors of the County and shall not commit or permit any act which will interfere with the performance of work by any other contractor or employees of the County, whether at the site or not.

9. CONDITIONS AFFECTING THE WORK

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the County. The County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

10. COUNTY'S PROPERTY ON SITE

All fixtures, crops, trees, and all other personal property of the County located at the job site which are removed in the course of construction of the project remain the property of the County unless express provision to the contrary is made in the Contract between the parties. The Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by OC Public Works.

11. PROTECTION

A. The Contractor shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction which theretofore may have been accepted.

B. The Contractor shall maintain continuously adequate protection of all his work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the contract documents or caused by agents or representatives of the County. He shall adequately protect adjacent property as provided by law and the contract documents, and shall maintain reasonable security of the site at all times. He shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to OC Public Works.

Contractor's and subcontractors' employees shall possess means of identification at all times as required by OC Public Works while on the job site.

C. In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor, without special instruction or authorization from the A-E or County, is hereby permitted to act at his discretion to prevent such threatened loss or injury. He shall so act if directed or instructed by OC Public Works. Any dispute as to compensation claimed by the Contractor on account of emergency work shall be determined by agreement as hereinafter set forth.

D. OC Public Works may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from OC Public Works shall not relieve the Contractor of responsibility.

E. If the Contractor fails or refuses to comply promptly, OC Public Works may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his subcontractors comply with the provisions of this Clause.

12. RESPONSIBILITY FOR DAMAGES OR INJURY

A. The County and all officers and employees thereof shall not be answerable or accountable in any manner: for any loss or damage that may happen to the work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the work; for injury to or death of any person either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workers, or anyone employed by him.

B. The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance.

C. In accordance with Section 17 below, the Contractor shall indemnify, defend with counsel approved in writing by County and save harmless the County and all officers and employees thereof connected with the work, from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the work or by or in consequence of any negligence in guarding the work; use of improper materials in construction of the work; or by or on account of any act or omission by the Contractor or his agents during the progress of the work or at any time before its completion and final acceptance.

D. In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the County may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

13. PAYMENTS

A. The County shall make payments upon the contract price in accordance with Clause 5 of the Agreement and as hereinafter provided.

B. The County will make progress payments monthly as the work proceeds on estimates approved by OC Public Works. The Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, to provide a basis for determining progress payments. The County, at its discretion, may authorize payment up to 50% of the value thereof, as determined by it, of material delivered on the site and not yet incorporated into the construction. Material delivered to the Contractor at locations other than the site may be taken into consideration (1) if such consideration is specifically authorized by the Contract and (2) if the Contractor furnishes satisfactory evidence that he has acquired title to such material and it will be utilized on the work covered by this Contract, such payments shall be made on submission of itemized requests by the Contractor and shall be subject to reduction for overpayments or increase for underpayments on preceding payments to Contractor.

14. ASSIGNMENT

Neither the Contract nor any portion thereof may be assigned by the Contractor without the expressed permission of the County. Claims for monies due or to become due the Contractor from the County under this Contract may be assigned, with the written consent of the Board of Supervisors, to a bank, trust company, or other financing institution and may thereafter be further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or his assignee, shall submit a written request to the Board of Supervisors enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to the provisions of this paragraph shall be void.

15. OTHER CONTRACTS

The Board of Supervisors may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and County employees and carefully fit his own work to such additional work as may be directed by OC Public Works. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by County employees.

16. BONDS

A. The Contractor shall furnish, at time of signing the Agreement, one surety bond which shall protect the laborers and material men and shall be for 100 percent of the amount of the Contract, in accordance with Section 3248 of the Civil Code, and one surety bond in the amount of 100 percent of the Contract, guaranteeing the faithful performance of the Contract; said bonds to be first approved by the office of the County Counsel and the County Executive Office of Orange County. Such bonds shall be in substantially the forms provided in these specifications and issued and executed by an admitted surety insurer (authorized to transact surety insurance in California). In addition, if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.

B. The faithful performance bond shall be issued by a surety company with a minimum insurance rating of A- (Secure Best's Rating) and VII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com. The surety company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by OC Public Works, the Contractor shall promptly furnish such additional security as may be required by OC Public Works or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the work contemplated by this Contract.

17. INDEMNIFICATION AND INSURANCE

A. Indemnification Provisions

Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

B. Insurance Provisions

(1) Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

(2) All insurance policies required by this Contract shall declare any deductible or self-insured retention (SIR) in an amount in excess of $25,000 ($5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

(3) If the contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

(4) Qualified Insurer
The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

(5) Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

(6) If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

(7) The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability with broad form property damage and contractual liability	$5,000,000 combined single limit per occurrence $5,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$1,000,000 combined single limit per occurrence
Workers' Compensation Employers' Liability Insurance	Statutory $1,000,000 per occurrence
Contractor's Pollution Liability	$1,000,000 limit per occurrence $2,000,000 aggregate
Builder's Risk Policy	As Specified Below

(8) Contractor's Pollution Liability shall apply to bodily injury; property damage including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. If coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be exercised for a period of two years beginning from the time that work under the contract is completed.

(9) The Contractor shall secure and maintain a Builder's Risk Policy upon the entire Project for new construction amounting to 100 percent of the insurable value of the Project. The Builder's Risk policy shall be written on a Special Causes of Loss form or All Risk form with Agreed Value. There shall not be any coinsurance provision. The policy shall include coverage for property off premises and property in transit if applicable for the full replacement cost of such property. All fixtures, materials, supplies, machinery and equipment that are intended to become part of the structure, or are used in, or incidental to the construction shall be included as covered property under the Builder's Risk policy. The Builder's Risk policy shall also provide coverage for Equipment Breakdown including coverage for hydraulic, pneumatic or mechanical testing. Builder's Rick Policy shall also be

required for additions to existing buildings/structures, or alterations to existing buildings/structures at 100 percent of the insurable value of that addition or alteration. The Builder's Risk Policy does not have to cover any tool or equipment unless such tools and equipment are part of the building being constructed. The Contractor shall be responsible for securing and maintaining appropriate insurance on any tool, equipment, or supply that is expected to remain its property.

A loss payee, additional insured, and waiver of subrogation endorsements must name the County of Orange, and shall accompany the Certificate of Insurance.

(10) All liability insurance required by this Contract shall be at least $1,000,000 combined single limit per occurrence. The minimum aggregate limit for the Commercial General Liability policy shall be $2,000,000.

(11) The County of Orange shall be added as an additional insured on all insurance policies required by this Contract with respect to work done by the Contractor under the terms of this Contract (except Workers' Compensation/Employers' Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

(12) All insurance policies required by this Contract shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability and Sexual Misconduct Liability.

(13) All insurance policies required by this Contract shall give the County of Orange 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~ENDEAVOR TO~~ MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. ~~BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE~~.

(14) All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

(15) If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of contract.

(16) The Commercial General Liability policy shall contain a severability of interests clause.

(17) The Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the Contractor has secured, for the period of this Contract, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of $1,000,000 per occurrence.

(18) Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

(19) If the Contractor fails to provide the insurance certificates and endorsements within ten (10) calendar days from the date of award of the Contract by County, award may be made to the next qualified vendor.

(20) County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

(21) County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

(22) The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract.

(23) The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

18. CHANGES

A. The Board of Supervisors may, at any time, by written order, and without notice to the sureties, make changes in the drawings or specifications of this Contract if within the general scope thereof. If such changes cause an increase or decrease in the Contractor's cost, or the time required for performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly by the County and Contractor.

B. The cost or credit to the County resulting from a change in the work shall be calculated by using the unit prices in the Contract Documents, if there are any, otherwise it shall be determined in the following manner:

(1) By mutual acceptance of a lump sum cost properly itemized and supported by sufficient substantiating data as the County Project Manager may require to permit evaluation. For the purposes of this paragraph, "cost" shall be determined as follows-by the Contractor's cost proposal and the County's acceptance. Contractor's proposal must include the following breakdown and shall not exceed the total actual cost of the items listed below.

(a) Cost of materials and supplies (list unit cost and quantity)

(b) Cost of labor (show hourly rate x hours)

(c) Sales tax on materials [percentage of (a)]

(d) Payroll tax on labor [percentage of (b)]

(e) Insurance [Provide complete documentation relating to increase in insurance due this change. In no case shall the percentage be greater than 2% of (a) through (d).]

(f) Overhead and profit [maximum as defined in Subparagraphs G. and H. on (a) through (d)]

C. OC Public Works is authorized by the Board of Supervisors to make, by written order, changes or additions to the work within the scope of this Contract. This authority to approve changes is limited to an amount not to exceed Five Thousand Dollars ($5,000) for original contracts of up to Fifty Thousand Dollars ($50,000), or ten percent (10%) of the amount of any original contract which exceeds Fifty Thousand Dollars ($50,000 but does not exceed Two Hundred Fifty Thousand Dollars ($250,000) per each change. For original contracts exceeding Two Hundred Fifty Thousand Dollars ($250,000), the amount shall not exceed Twenty Five Thousand Dollars ($25,000), plus five percent (5%) of the amount of the original contract in excess of Two Hundred Fifty Thousand Dollars ($250,000), up to a maximum of One Hundred Thousand Dollars ($100,000) per each change.

All changes over the amounts specified above shall be subject to the approval of the Board of Supervisors.

D. Any claim of the Contractor for adjustment under this Clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change unless the Board of Supervisors or OC Public Works grants a further period of time before the date of final payment under the Contract. Nothing provided in this Clause should excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise provided in this Contract, no charge for any extra work or material will be allowed.

E. Labor wage rates shall not exceed the Prevailing Wage Rates supported by payroll records. Equipment rental rates should be based on latest edition of equipment rental rates published by the State of California Department of Transportation; Division of Construction.

F. For the purposes of Subparagraph B, overhead shall include the following: bond premiums, supervision, superintendence, scheduling, wages of timekeepers, watchmen and clerks, small tools, incidentals, field and home office expenses, preparation and estimating costs for change orders, and all other expenses not included in "cost",... such as "Learning Curves" and "Productivity Factors", etc.

G. For the purposes of Subparagraph B, overhead and profit combined included in the total cost to the County of any change shall not exceed the rates set forth in the following schedule:

(1) For work performed by the Contractor and his own forces, 15% of cost.

(2) For work performed by Subcontractor forces:

(a) 15% of the cost to the Subcontractor,

(b) 6% of the cost to the General Contractor.

H. If the net value of a change results in a credit from the Contractor or Subcontractor, the credit given shall be the net cost without overhead or profit.

If the net value of a change results in additional costs, overhead and profit will only be applied to the difference of the added change and credited amount.

I. Nothing in this Article shall excuse the Contractor from proceeding with the Contract or changes.

19. ORAL MODIFICATION

No oral statement of any person whomsoever, shall in any manner or degree, modify or otherwise affect the terms of this Contract.

20. MATERIAL, WORKMANSHIP AND ACCEPTANCE

A. Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract Documents to the same force and effect as if repeated therein.

B. All work under this Contract shall be performed in a skillful and workmanlike manner. OC Public Works may, in writing, require the Contractor to remove from the work any employee OC Public Works deems incompetent, careless, or otherwise objectionable.

C. The Contractor shall, without charge, replace any material or correct any workmanship found by OC Public Works not to conform to the Contract requirements, unless in the public interest OC Public Works consents to accept such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

D If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with Clause 21 of these General Conditions.

E. Unless otherwise provided in this Contract, acceptance by the County shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the County's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

21. TERMINATION FOR CAUSE & DAMAGES FOR DELAY

A. If the Contractor refuses or fails to prosecute the work with such diligence as will insure its completion within the time specified in this Contract or any extension thereof, or fails to complete said work within such time, the Board of Supervisors may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as

to which there has been delay. In such event, the County may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the work within the specified time.

B. If fixed and agreed liquidated damages are provided in the Contract and if the County so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work, together with any increased costs occasioned the County in completing the work.

C. If fixed and agreed liquidated damages are provided in the Contract, and if the County does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

D. The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the County, acts of another contractor in the performance of a contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor within ten (10) days from the beginning of any such delays (unless OC Public Works grants a further period of time before the date of final payment under the Contract), notifies OC Public Works in writing of the causes of delay.

OC Public Works shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in its judgment, the delay is justified. OC Public Works shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Clause 26 of these General Conditions.

E. The rights and remedies of the County provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

22. TERMINATION FOR CONVENIENCE OF THE COUNTY

Notwithstanding any other provision of the Agreement, the County may, at any time, and without cause, terminate this Agreement in whole or in part, upon not less than seven (7) days' written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. The Contractor shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the County. The County shall pay the Contractor for the Work completed prior to the effective date of the termination, and such payment shall be

Contractor's sole remedy under this Agreement. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The Contractor shall insert in all subcontracts that the sub-consultant shall stop work on the date of and to the extent specified in a notice of termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

23. BENEFICIAL OCCUPANCY

A. The County may, at any time, and from time to time, during the performance of the work, enter the structure for the purpose of installing any necessary work by County labor or other contracts, and for any other purposes in connection with the installation of facilities. In doing so, the County shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other work being done by or on behalf of the County.

B. If, prior to completion and final acceptance of all the work, the County takes possession of any structure (whether completed or otherwise) comprising a portion of the work with the intent of retaining possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the County is in possession of the same, the Contractor, notwithstanding his normal responsibilities, shall be relieved of liability for loss or damage to structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the County shall not relieve the Contractor from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.

24. PATENT INFRINGEMENT

A. The Contractor shall report to OC Public Works, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of this Contract of which the Contractor has knowledge.

B. In the event of any suit against the County, or any claim against the County made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall, at his own expense, furnish to the County, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify, defend with counsel approved in writing by County, and hold harmless the County against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against County, its employees, or the Board of Supervisors.

25. NO WAIVER BY COUNTY

The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

26. DISPUTES

A. In the event of a dispute between the parties as to performance of the work, the

interpretation of this Contract, or payment or nonpayment for work performed, the parties shall attempt to resolve the dispute. Pending resolution of the dispute, the Contractor shall continue the work diligently to completion as directed by OC Public Works. If the dispute is not resolved, the Contractor agrees he will neither rescind this Contract nor stop the progress of the work. All construction claims of Three Hundred Seventy Five Thousand Dollars ($375,000) or less between the Contractor and the County shall be resolved in accordance with the provisions of Division 2, Part 3, Chapter 1, Article 1.5 of the Public Contract Code of the State of California. Contractor's sole remedy for construction claims of more than Three Hundred Seventy Five Thousand Dollars ($375,000) will be to submit such controversy to determination by a court of the State of California in Orange County, California, having competent jurisdiction of the dispute, after the project has been completed and not before.

B. Notwithstanding the foregoing, with respect to any dispute involving a claim by the Contractor for additional compensation, Contractor shall submit such claim in writing to OC Public Works promptly as the alleged facts giving rise to, or the alleged bases for, the claim become known to the Contractor; any such claim not promptly so submitted to OC Public Works shall be deemed waived; and in no event shall a claim for additional compensation be asserted or be assertable after completion or cessation of the work.

27. WAGE RATE PENALTY

Pursuant to the provisions of Section 1775 of the Labor Code, the Contractor shall forfeit to the County, as a penalty, the sum of Fifty Dollars ($50) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of this Contract.

28. PAYROLL RECORDS

Pursuant to the provisions of Section 1776 of the Labor Code:

A. Each contractor and subcontractor shall keep accurate payroll records, 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:

(1) The information contained in the payroll record is true and correct.

(2) 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 enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) 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.

(2) A certified copy of all payroll records enumerated in subdivision (a) 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.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, 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 pursuant to paragraph (2), 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 may 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. A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

E. 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 to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the 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 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

F. The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

G. The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor 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) 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.

H. The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

I. The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code)

and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

J. The following are the County's requirements for Certified Payroll Records in accordance with the Labor Code Section 1776:

(1) Contractor shall submit certified payroll records, including all subcontractors for each trade, along with each payment request. Contractor shall furnish three (3) copies for each trade involved with the project: one (1) copy with all pertinent information; and two (2) copies that are marked or obliterated to prevent disclosure of an individual's names, address and social security number. The name and address of the Contractor awarded the contract or any subcontractor performing the Contract shall not be marked or obliterated.

(2) Any copies 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 1987 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent the disclosure of an individual's name and social security number.

29. WORK HOUR PENALTY

Eight hours of labor constitute a legal day's work, and forty hours constitute a legal week's work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars ($25) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than the legal day's or week's work, except that work performed by employees of said Contractor and subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight hours per day of not less than 1-1/2 times the basic rate of pay.

30. APPRENTICES

A. The 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, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the Contractor to ensure compliance with this Clause and with Labor Code Section 1777.5 for all apprenticeable occupations.

B. Pursuant to Labor Code Section 1777.5, if that Section applies to this Contract as indicated above, the Contractor and any subcontractors under him 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.

C. Pursuant to Labor Code Section 1777.5, if that Section applies to this Contract as indicated above, the Contractor and any subcontractor under him may be required to make contributions to the apprenticeship program.

D. The Contractor and all subcontractors under him shall comply with Labor Code Section

1777.6, which Section forbids certain discriminatory practices in the employment of apprentices.

31. NON-DISCRIMINATION

In the performance of the terms of this Contract, Contractor agrees that he will not engage in, nor permit such subcontractors as he may employ, to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.

32. ASSIGNMENT OF ANTITRUST ACTIONS

In accordance with Public Contract Code, Section 7103.5, by entering into this Contract or into a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor or subcontractor offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the County tenders final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Clause and the provisions of Public Contract Code, Section 7103.5.

33. SUBSTITUTED SECURITY

In accordance with Section 22300 of the Public Contract Code, the County will, at the request and expense of the Contractor, accept securities equivalent to any amount withheld by the County to ensure performance under this Contract, including, but not limited to, the amount withheld under Paragraphs 5 and 8 of the Agreement. Such substituted security must meet the requirements of said Section 22300, and shall be deposited with a California or federally chartered bank as escrow agent. The security shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which Agreement shall be in a form substantially similar to that contained in Public Contract Code, Section 22300.

34. COST REDUCTION INCENTIVE

A. Contractor may submit to OC Public Works written proposals for modifying the plans, specifications, or other requirements of this Contract for the sole purpose of reducing the total cost of construction. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

B. Cost reduction proposals shall contain the following information:

(1) A description of both the existing Contract requirements for performing the work and the proposed changes;

(2) An itemization of the Contract requirements that must be changed if the proposal is adopted;

(3) A detailed estimate of the cost of performing the work under the existing Contract and under the proposed change;

(4) A prediction of the effects the proposed change would, if adopted, have on other costs to the, County, such as County furnished property costs, costs of future construction, and costs of maintenance and operation; and

(5) A statement of the time by which a Change Order adopting the proposal must be issued in order to obtain the maximum cost reduction.

C. The provisions of this Clause shall not be construed to require OC Public Works to consider any cost reduction proposal which may be submitted hereunder; the County will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted pursuant to this Clause; and the County will not be liable to the Contractor for any delays to the work attributable to any such proposal. If a cost reduction proposal is similar to a change in the plans or specifications which change is under consideration by OC Public Works or by the County for the project at the time said proposal is submitted, or if such a proposal is based upon or similar to standard specifications, standard special provisions or standard plans adopted by OC Public Works or by the County after the advertisement for the Contract, OC Public Works will not accept such proposal and the County reserves the right to make such changes without compensation to the Contractor under the provisions of this Clause.

D. The Contractor shall continue to perform the work in accordance with the requirements of the Contract until an executed Change Order incorporating the cost reduction proposal has been issued. If an executed Change Order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision thereon should be made, or such other date as the Contractor may subsequently have specified in writing, such cost reduction proposal shall be deemed rejected.

E. OC Public Works shall be sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the right is reserved to OC Public Works to disregard the Contract bid prices if in the judgment of OC Public Works such prices do not represent a fair measure of the value of work to be performed or to be deleted. The decision of OC Public Works as to acceptance or rejection of such proposal, and as to the estimated net savings in construction costs, shall not be subject to the "Disputes" Clause of the General Conditions to this Contract, above.

F. The County reserves the right to require the Contractor to pay the County's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering such proposal. Where such a condition is imposed, the Contractor shall indicate his acceptance thereof in writing, and such acceptance shall constitute full authority for the County to deduct amounts thereby payable to the County from any monies due to or that may become due to the Contractor under the Contract.

G. If the Contractor's cost reduction proposal is accepted in whole or in part such acceptance will be by a Change Order, which shall specifically state that it is executed pursuant to this Clause. Such Change Order shall incorporate the changes in the plans and specifications which are necessary to permit the cost reduction proposal or such part of it as has been accepted to be put into effect, and shall include any conditions on which County's approval is based if the approval of the County is conditional. The

Change Order shall also set forth the estimated net savings in the cost of performing the work attributable to the cost reduction proposal effectuated by the Change Order, and shall further provide that the Contractor be paid 50 percent of said estimated net savings amount.

H. Acceptance of the cost reduction proposal and performance of the work thereunder shall not extend the time for completion of the Contract unless such extension is specifically provided for in the Change Order authorizing the use of the cost reduction proposal.

I. The amount specified to be paid to the Contractor in the Change Order which effectuates a cost reduction proposal shall constitute full compensation to the Contractor for the cost reduction proposal and for the performance of the work thereunder pursuant to the said Change Order.

J. The County expressly reserves the right to adopt a cost reduction proposal for general use on contracts let or administered by the County when it determines that said proposal is suitable for application to other contracts. When an accepted cost reduction proposal is adopted for general use, only the Contractor who first submitted such proposal will be eligible for compensation pursuant to this Clause, and, in that case, only as to those contracts awarded to him prior to submission of the accepted cost reduction proposal and as to which such cost reduction proposal is also submitted and accepted. Cost reduction proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under the provisions of this Clause if the identical or similar previously submitted proposals were not adopted for general application to other contracts let or administered by the County. Subject to the provisions contained herein, the State or any other public entity shall have the right to use all or any submitted cost reduction proposal without obligation or compensation of any kind to the Contractor.

SUPPLEMENTAL GENERAL CONDITIONS

The following Supplemental Conditions modify, change, delete from, or add to the "General Conditions of the Construction Contract". Where any Article of the General Conditions is modified or any Paragraph, Subparagraph or Clause thereof is modified or deleted by these Supplemental Conditions, the unaltered provisions of such Article, Paragraph or Subparagraph, or Clause shall remain in effect.

Where the terms hereof are inconsistent with the General Conditions, the terms hereof shall be controlling.

GENERAL CONDITIONS, Clause 2; COUNTY'S REPRESENTATIVES

Replace the first sentence of Paragraph C with the following:

C. OC Public Works assigned Project manager or designee is the County's exclusive agent to the Contractor with respect to this Project during construction and until the completion of the project.

GENERAL CONDITIONS, Clause 4; CONTRACTOR

Add the following paragraphs:

H. Delays:

Except as otherwise specifically provided, the Contractor shall not be entitled to payment or compensation of any kind from the County for direct, indirect or impact damages, including but not limited to costs of acceleration, arising because of hindrance or delay from any cause whatsoever, whether such hindrance or delay be reasonable or unreasonable, foreseeable or unforeseeable or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery by the Contractor of damages for hindrances or delays due solely to fraud or bad faith on the part of the County. The Contractor shall be entitled to extensions in the time required for performance of the work as specifically provided in this Contract.

GENERAL CONDITIONS, Clause 5; SUBCONTRACTS

Add the following paragraphs:

E. Sub-subcontractor: A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the site. The term Sub- subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

F. Subcontractual Relations: By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor in terms of the Contract Documents, and to assume toward the Contractor all the obligations and

responsibilities which the Contractor, by these Documents, assumes toward the County. Said agreement shall preserve and protect the rights of the County under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor, by these Documents, that the Contractor has against the County. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound, by this Article, and shall identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such documents available to his Sub-subcontractors.

G. Preparatory Work: Before starting each section of work, the Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive his work. He shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to the proper contours, planes, levels and finishes. He shall promptly notify the Contractor, who shall notify the County Project Manager in writing, of any defects or imperfections in preparatory work which will, in any way, affect satisfactory completion of the work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.

Under no condition shall a section of work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials and equipment rests solely with the Contractor, who shall maintain coordination control at all times.

GENERAL CONDITIONS, Clause 18; CHANGES

Add the following paragraphs:

J. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after Final Payment under this Contact.

K. Changes - Ordinary

1. The Contractor will be issued a proposed request for change describing the intended change, and within seven (7) calendar days he shall indicate his proposed price to be added or deducted from Contract Sum due to the change, supported by full and completely detailed estimates of cost by the Contractor, Subcontractor, vendor, or supplier, and any adjustment in time of Final Completion of the entire work, which is directly attributable to the changed work. The Contractor shall, upon request by the County, permit inspection of his original contract estimate, Subcontract agreements or purchase orders relating to the change. If agreement is reached as to the adjustment in compensation for performance of the changed work, but agreement is not reached as to the time adjustment for such work, then the Contractor shall proceed with the work at the

agreed price reserving to the Contractor the right to further pursue his claim for time adjustment.

While the County retains the right to order the Contractor to proceed with changes in the work at any time; if the Contractor fails to submit his cost estimate within a seven (7) calendar day period, or there is a failure to agree to such costs, the County has the right to order the Contractor, in writing, to commence work immediately and the Contract price shall be adjusted (unilateral change order) in accordance with the County estimate of cost, unless, within fifteen (15) calendar days following completion of added work or with written notice to delete work, the Contractor presents proof that the County's estimate was in error.

2. Procedure - Failure to agree as to Cost: If the County and the Contractor fail to agree as to the cost of a proposed change order, the Contractor, upon written order (unilateral change order) from the County shall proceed immediately with the changed work. The Contractor shall maintain a daily job record containing a detailed summary of the labor, materials, and equipment required for the changed work. Upon being signed and agreed to by the County and the Contractor at the end of each day's performance, the daily job record will become the basis for payment for the changed work, but such agreement shall not preclude subsequent adjustment based upon later audit by the County. Upon completion of the work under Change Order, the Contractor shall submit his invoice containing only the items of labor, materials, and equipment which are in addition to requirements of the Contract and as approved by the County, together with allowable mark-ups.

   When a proposed change order contains deletion of any work and the County and the Contractor are unable to agree upon the cost thereof, the County's estimate shall be deducted from the contract price by a Change Order, unless within fifteen (15) calendar days the Contractor presents proof that the County's estimate is in error.

L. Changes - Emergency

Changes in the work made necessary due to unexpected or unforeseen site conditions, discovery of errors in plans or specifications requiring immediate clarification in order to avoid serious work stoppage, changes of a kind where extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the County, are types of emergency changes which may be authorized in writing by the County to the Contractor. The Contractor shall commence performance of an emergency change immediately upon authorization. Daily job records shall be maintained in the same manner as required by Paragraph K.

After receiving emergency authorization, the Contractor shall submit a detailed estimate of cost and proposed extension in the contract time based on daily job records in the same manner as required under Paragraph K. Daily job records shall constitute the basis upon which the contract price shall be adjusted in the same manner as set forth in Paragraph K. In the event an agreement is not reached as to time adjustment, it shall not affect the agreement as to the contract price adjustment, but the Contractor shall have the right to pursue a claim for time extension.

M. Claims For Additional Cost/Time Extension

(1) If the Contractor wishes to make a claim for an increase in the contract sum and/or time extension, he shall give the County written notice thereof within seven (7) calendar days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding with execution of the work, except in an emergency endangering life or property, in which case the Contractor shall proceed. No claim shall be valid unless so made. The Contractor hereby waives all claims not so made. Any change in the contract sum resulting from such a claim shall be authorized by a Change Order. In every such written claim, the Contractor shall provide the following information:

(a) Nature of the delay;

(b) Date (or, anticipated date) of commencement of the delay;

(c) Activities on the progress schedule affected by the delay; and/or new activities created by the delay and their relationship with existing activities;

(d) Identification of person(s) or organization(s) or event(s) responsible for the delay;

(e) Anticipated extent of the delay; and

(f) Recommended action to avoid or minimize the delay.

(2) If the Contractor claims that additional cost is involved because of, but not limited to, any written interpretation, the Contractor shall make such claims as provided in Subparagraph M.1.

(3) The Contract Time shall be adjusted only for changes in the work, the County's right to stop work and excusable delays. In the event the Contractor requests an extension of the Contract Time, he shall furnish such justification and supporting evidence to the County Project Manager for his review and recommendation. The County shall make its findings of fact and decision thereon and shall advise the Contractor in writing thereof. If the County finds that the Contractor is entitled to any extension of the Contract Time, the County's determination as to the total number of days extension shall be based upon the currently approved schedule and, on all data relevant to the extension. The Contractor acknowledges and agrees that actual delays (due to said changes, suspension of work or excusable delays) in activities which, according to the schedule, do not affect the Contract Time or Specific Completion Dates, will not be the basis for an extension of the Contract Time or Specific Completion Dates.

(4) Subject to other provisions of this Contract, the Contractor may be entitled to an extension of the Contract Time (but no increase in the Contract Sum) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Contractor or his Subcontractors as follows:

(a) Labor strikes (including strikes affecting transportation), that do, in fact, directly and critically affect the progress of the work; however, an extension of the Contract Time on account of an individual labor strike shall not exceed the number of calendar days of said strike.

(b) Acts of God, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that damages the completed work or stored materials, provided that an act of neglect by the Contractor did not contribute to such damage.

(5) All claims for extensions of time shall be made in writing to the County Project Manager no more than seven (7) days after the beginning of the delay, otherwise all such claims are waived by the Contractor. In the case of a continuous cause of delay, only one written claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the work.

(6) If no schedule or agreement is made stating the dates upon which written interpretation as set forth shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretation until fifteen (15) days after demand is made for them, and not then unless such claims are reasonable.

(7) This paragraph does not preclude the recovery of damages for delay by another party under other provisions of the Contract Documents, except as specifically provided herein.