



A Tradition of Stewardship  
A Commitment to Service

NAPA COUNTY  
DEPARTMENT OF PUBLIC WORKS  
1195 THIRD STREET, ROOM 101  
NAPA, CALIFORNIA 94559

## SPECIFICATIONS

FOR

**LNU FIRE EMERGENCY OPENING TREE DEBRIS REMOVAL,  
RDS 20-44**

*NOTICE TO CONTRACTORS  
CONTRACT FOR CONSTRUCTION*

*PROPOSAL FORM*

*SPECIAL PROVISIONS*

*Section "A" – General Conditions*

*Section "B" – General Requirements*

*Section "C" – Federal Provisions*

*Contractor shall possess a Class 'A, C-61 or D49' License at the time of contract award.*

**MANDATORY PREBID MEETING: CONTRACTOR VERIFICATION**

**LAST DAY FOR QUESTIONS: 12 PM, OCTOBER 1, 2020**

**BID OPENING: 11:30 AM, October 8, 2020**

Approved

  
Juan S Arias County Engineer RCE No. C63365

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**NAPA COUNTY  
STATE OF CALIFORNIA**

***NOTICE TO CONTRACTORS***

Proposals shall be submitted under sealed cover plainly marked as a proposal, and identifying the project to which the proposal relates and the date of the bid opening therefore. Proposals which are not properly marked will be rejected. Sealed proposals will be received at the office of the Clerk of the Board of Supervisors, Napa County Administration Building, 1195 Third Street, Room 310, Napa, California, until 11:30 A.M. on October 8, 2020 (**no bids will be accepted after 11:30 A.M.**) after which they will be opened and read under the social distancing protocol in enforcement at the time, for the construction in accordance with the Plans and Special Provisions thereto, to which special reference is made as follows:

**LNU FIRE EMERGENCY OPENING TREES DEBRIS REMOVAL, RDS 20-44**

Bids are required for the entire work called for by the Plans and Specifications, and neither partial nor contingent bids will be considered. In conformance with Public Contract Code Section 20129, bids must be valid for 60 days from the date bids are opened. Bid documents and any addendums are available at <https://www.countyofnapa.org/1607/Current-Projects>. **Bidders are responsible for monitoring issued addendums at this website.**

Bid results of the three apparent low bidders with their subcontractor's list will be on the above website the following day after the bids are publicly opened and read.

The Plans and Specifications may be seen at the office of the Napa County Department of Public Works, 1195 Third Street, Room 101, Napa, California. Plans, Special Provisions (excluding State Standard Specifications and other documents included by reference), Proposal Forms and Contract Forms may be obtained at said office by prospective bidders to those licensed by the State of California for the type of work involved, may be found electronically for no fee on the County website at <https://www.countyofnapa.org/1607/Current-Projects>.

In accordance with California Public Contract Code Section 3400, bidders may propose equals of products listed in the technical specifications or project plans by manufacturer name, brand or model number, unless the technical specifications or plans specify that the product is necessary to match others in use. Complete information for products proposed as equals must be submitted to the Public Works Office for review at least 10 Days before the time specified for bid opening. This submission deadline shall control over the timeline set forth in Section 6-1.05 of the Standard Specifications.

In accordance with Section 1771.1 of the Labor Code, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirement of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public works, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

In accordance with the California Government Code Section 1773.2, copies of the applicable determinations of the Director are on file with at the Public Works Office and may be reviewed upon request. In accordance with the provisions of Section 1774 of the Labor Code, the prevailing wage rate for classifications of Labor to be employed in the work have been determined by the Napa County Board of Supervisors and is included in the Special Provisions referred to above.

No bid will be considered unless it is made on a blank form furnished by the County Engineer of Napa County and is made in accordance with the provisions of the proposal requirements and conditions set forth under the Standard Specifications of the State California, Department of Transportation, except as modified in the above referred to Special Provisions.

A bid guarantee in the amount of 10% of the total bid shall accompany the bid.

The successful bidder shall be required to furnish a Performance Bond in an amount equal to 100% of the contract price and a Labor and Material Bond in an amount equal to 100% of the contract price with good and sufficient surety.

Each bidder must be licensed as required by law.

The Contractor shall possess a Class "A, C-61 or D-49" license at the time of contract award.

The Contractor and Sub-Contractor shall be registered with the State of California Department of Industrial Relations (Public Works Contractor (PWC) Registration) at the time of bid opening.

In place of a mandatory pre-bid meeting contractors are required to review the work prior to bidding as the prime contractor for this project.

**All questions must be received by mail, or e-mail to Frank Lucido (Frank.Lucido@countyofnapa.org), Napa County Public Works, 1195 Third St. Room 101, Napa, CA 94559, by October 1, 2020, 12:00 P.M.**

The Board of Supervisors reserves the right to reject any or all bids.

**NAPA COUNTY CLERK OF THE BOARD OF SUPERVISORS**

NAPA COUNTY AGREEMENT NO. \_\_\_\_\_

**CONTRACT FOR CONSTRUCTION**

**THIS AGREEMENT**, made and concluded in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and \_\_\_\_\_, hereinafter referred to as "CONTRACTOR";

**TERMS**

**ARTICLE I.** In consideration of the payments and covenants hereinafter mentioned, to be made and performed by County, and under the conditions expressed in the two (2) bonds attached hereto, Contractor shall, at Contractor's own cost and expense, do all the work and furnish all materials, except such as are specified herein to be furnished by County, necessary to construct and complete in a good, workmanlike and substantial manner and to the satisfaction of the Napa County Board of Supervisors that project known as **LNU FIRE EMERGENCY OPENING TREES DEBRIS REMOVAL, RDS 20-44**, which shall be constructed in the County of Napa, California, in accordance with the Plans and Specifications ("Plans") entitled **LNU FIRE EMERGENCY OPENING TREES DEBRIS REMOVAL, RDS 20-44**, the Bid submitted by Contractor ("Bid Proposal"), the Special Provisions, and the 2018 Standard Specifications of the State of California Department of Transportation ("Standard Specifications"). The Plans, Bid Proposal, Special Provisions, and Standard Specifications are hereby incorporated by reference as if set forth herein.

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

**ARTICLE III.** It is further expressly agreed by and between the parties that if there is any conflict between the Bid Proposal of Contractor and any of the other terms of this Contract, then such other terms shall control and any such conflicting terms of the Bid Proposal shall not be deemed to have been accepted by County.

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

**LNU FIRE EMERGENCY OPENING TREES DEBRIS REMOVAL**

**RDS 20-44**

| <b>LNU FIRE EMERGENCY OPENING TREES DEBRIS REMOVAL</b> |                          |             |                 |                  |              |
|--|--------------------------|-------------|-----------------|------------------|--------------|
| <b>ITEM NO.</b>  | <b>DESCRIPTION</b>       | <b>UNIT</b> | <b>QUANTITY</b> | <b>UNIT COST</b> | <b>TOTAL</b> |
| <b>A. GENERAL CONDITION</b>                            |                          |             |                 |                  |              |
| 1  | Mobilization             | LS          | 1               |                  |              |
| 2  | Traffic Control          | LS          | 1               |                  |              |
| <b>B. DEBRIS REMOVAL</b>                               |                          |             |                 |                  |              |
| 3  | Aetna Springs Road       | LS          | 1               |                  |              |
| 4  | Atlas Peak Road          | LS          | 1               |                  |              |
| 5  | Berryessa Knoxville Road | LS          | 1               |                  |              |
| 6  | Butts Canyon Road        | LS          | 1               |                  |              |
| 7  | James Creek Road         | LS          | 1               |                  |              |
| 11   | Live Oak Lane            | LS          | 1               |                  |              |
| 12   | Mulford Drive            | LS          | 1               |                  |              |
| 13   | Pope Canyon Road         | LS          | 1               |                  |              |
| 14   | Rimrock Drive            | LS          | 1               |                  |              |
| 15   | Snell Valley Road        | LS          | 1               |                  |              |
| 16   | Spanish Flat Loop Road   | LS          | 1               |                  |              |
| 17   | Steele Canyon Road       | LS          | 1               |                  |              |
| 18   | Wragg Canyon Road        | LS          | 1               |                  |              |
| 19   | Sugar Loaf Drive         | LS          | 1               |                  |              |
| <b>TOTAL BASE BID</b>                                  |                          |             |                 |                  |              |
| <b>TOTAL BASE BID (WRITTEN)</b>                        |                          |             |                 |                  |              |

**IN WITNESS WHEREOF**, this Contract has been approved by County and Contractor as of the date first set forth on page C-1 of this Contract.

NAPA COUNTY, a political subdivision of the State of California

By \_\_\_\_\_  
 DIANE DILLON, Chair  
 Board of Supervisors

“COUNTY”

By \_\_\_\_\_

By \_\_\_\_\_

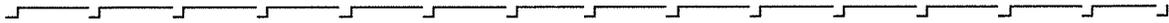
“CONTRACTOR”

|  |  |  |
|--|--|--|
| <p>APPROVED AS TO FORM<br/>Office of County Counsel</p> <p>By: _____<br/>County Counsel</p> <p>Date: _____</p> | <p>APPROVED BY THE<br/>NAPA COUNTY<br/>BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>_____<br/>Deputy Clerk of the Board</p> | <p>ATTEST: JOSE LUIS VALDEZ<br/>Clerk of the Board of Supervisors</p> <p>By: _____</p> |
|--|--|--|

**NOTE: Signature of those executing for the Contractor must be acknowledged by Notary Public. If a corporation, this document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate document demonstrating the legal authority of the signature to bind the company.**

**PROPOSAL FORM**  
**(MAY BE DETACHED AND SUBMITTED ALONE)**

**TO THE DIRECTOR OF PUBLIC WORKS  
OF NAPA COUNTY  
NAPA, CALIFORNIA**



**FOR:**

**LNU FIRE EMERGENCY OPENING TREES DEBRIS REMOVAL**

**RDS 20-44**

NAME OF BIDDER \_\_\_\_\_

BUSINESS ADDRESS \_\_\_\_\_

PLACE OF BUSINESS \_\_\_\_\_

DIR REGISTRATION NUMBER<sup>1</sup> \_\_\_\_\_

Location: The work to be done and referred to herein is in Napa County, State of California, more particularly described as follows:

**LNU FIRE EMERGENCY OPENING TREES DEBRIS REMOVAL**

**RDS 20-44**

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation; has visited the Site of Work as described in the Contract and has examined and familiarized him or herself with the existing conditions relating to the construction which will be performed, the annexed proposed form of contract, the Plans, Special Provisions and Standard Specifications; and he proposes, and agrees if this proposal is accepted, that he will contract with Napa County, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of payment therefore the following item prices to wit:

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<sup>1</sup> Labor Code Sections 1725.5 and 1771.1.

**LNU FIRE EMERGENCY OPENING TREES DEBRIS REMOVAL**

**RDS 20-44**

| <b>LNU FIRE EMERGENCY OPENING TREES DEBRIS REMOVAL</b> |                          |             |                 |                  |              |
|--|--------------------------|-------------|-----------------|------------------|--------------|
| <b>ITEM NO.</b>  | <b>DESCRIPTION</b>       | <b>UNIT</b> | <b>QUANTITY</b> | <b>UNIT COST</b> | <b>TOTAL</b> |
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| 19   | Sugar Loaf Drive         | LS          | 1               |                  |              |
| <b>TOTAL BASE BID</b>                                  |                          |             |                 |                  |              |
| <b>TOTAL BASE BID (WRITTEN)</b>                        |                          |             |                 |                  |              |

\_\_\_\_\_

\*Authorized Signature Name Title

\_\_\_\_\_

\*Authorized Signature Name Title

\* If a corporation, this document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. **In the alternative, a single corporate signature is acceptable when accompanied by a corporate document demonstrating the legal authority of the signature to bind the company.**

## INSTRUCTIONS TO BIDDERS

### **The Bid and Determining Low Bidder.**

Bids are required for the entire work. The amount of the bid for comparison purposes will be the Total Lump Sum Base Bid.

The bidder shall set forth for each item of work, in clearly legible figures, as item price and a total for the item in the respective spaces provided for this purpose. In the case of unit basis items, the amount set forth under the "Total" column shall be the extension of the item price bid on the basis of the estimated quantity for the item.

In case of a discrepancy between the item price and the total set forth for the item, the item price shall prevail, provided, however, if the amount set forth as an item price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or in the case of unit basis items, is the same amount as the entry in the "Total" column, then the amount set forth in the "Total" column for the item shall prevail in accordance with the following:

- 1) As to lump sum items, the amount set forth in the "Total" column shall be the item price.
- 2) As to unit basis items, the amount set forth in the "Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the item price.

In case of a discrepancy between the Total Lump Sum Bid and the calculated total of the amounts in the "Total" column for each line item determined after using the above procedures for resolving the discrepancies, the calculated total of the amounts set forth in the "Total" column for shall become the Total Lump Sum Bid and shall be used for comparison purposes in determining the lowest bid.

It is understood and agreed that the quantities of work under each item are approximate only, being given for a basis of comparison of proposal, and the right is reserved to the County to increase or decrease the amount of work under any item as may be required, in accordance with provisions set forth in the specifications for this project.

It is further understood and agreed that the total amount bid for the project does not constitute an agreement to pay a lump sum for the work unless it specifically so states.

If this proposal shall be accepted and the undersigned shall fail to contract as aforesaid and to give the two bonds in the sums to be determined as aforesaid, with surety satisfactory to the Director of Public Works within eight (8) days, not including Saturdays, Sundays and legal holidays, after the bidder has received notice from the County Engineer that the contract has been awarded to him, the Director of Public Works may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal, and the acceptance thereof shall be null and void, and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of Napa County.

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**Form of Bid.**

- (1) To receive consideration, bids shall be made on the forms and in the manner set forth in the Notice to Contractors.
- (2) Bids received after the date and time advertised for opening will be considered non-responsive and will be rejected.
- (3) Each bid must be completed in ink, typewritten or computer generated, and all changes and/or erasures must be initialed in ink. Each bid must be signed in ink by an authorized representative of the firm.
- (4) Bidders shall not change the bid form nor make additional stipulations on the bid form which are not consistent with the provisions of the specifications.

**Taxes.** Bid prices shall include all applicable federal, state, and local taxes.

**Receipt of Bids.** All bids must be received sealed in an envelope prior to the time specified in the Notice to Proposers or as amended expressly by an addendum. Late bids will not be opened and will not be considered under any circumstances.

**Postponement of Opening.** The County reserves the right to postpone the date and time for receiving and/or opening of proposals at any time prior to the date and time established in the Notice to Proposers.

**Rejection of Proposals.** The County reserves the right to reject any proposals which are incomplete, obscure, or irregular, any proposals which omit a bid on any one or more items for which bids are required; any proposals which omit unit prices if unit prices are required; any proposal in which unit prices are unbalanced in the opinion of the County; any proposals accompanied by insufficient or irregular proposal guaranty; and any proposals from bidders who have previously failed to perform properly or to complete contracts of any nature on time.

**Relief of Bidders.** Attention is directed to the provisions of Public Contract Code Section 5100, et seq., concerning relief of bidders, and in particular to the requirement therein that if a bidder claims a mistake was made in its bid, the bidder shall give the County written notice within five (5) calendar days after the opening of the bids of the alleged mistake, specifying in the notice, in detail, how the mistake occurred.

**Bid Protest Procedures.** Any bid protest must be in writing and received by the County at 1195 Third Street, Room 101, Napa, CA before 5:00 p.m. no later than five (5) working days following the occurrence giving rise to the protest (the "Bid Protest Deadline") shall be considered pursuant to the procedures set forth in Section 10 of the County Purchasing Manual and must comply with the provisions of that Section and those requirements set forth below:

- (1) Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest.

(2) The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address and telephone number of the person representing the protesting bidder if different from the protesting bidder.

(3) The party filing the protest shall concurrently transmit a copy of the protest and all supporting documents by fax or by e-mail, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

(4) The protested bidder may submit a written response to the protest, provided the response is received by the County before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address and telephone number of the person representing the protested bidder if different from the protested bidder.

(5) The procedure and time limits set forth in this section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. The bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

It is the intention of the County to award a contract, if at all, to the lowest bidder who demonstrates the attributes of trustworthiness, as well as quality, fitness (including financial qualifications), capacity and experience to enable it to prosecute the work successfully and properly, and to complete the work within the time period named in the Contract Documents.

To determine the degree of responsibility to be credited to the bidder, the County will weigh any evidence that the bidder has performed satisfactorily other contracts of like nature and magnitude, and comparable difficulty and rates of progress, to the Work. The County shall have sole discretion to determine what contracts are of like nature and magnitude, and comparable difficulty and rates of progress.

///

NONCOLLUSION DECLARATION TO BE EXECUTED  
BY BIDDER AND SUBMITTED WITH BID

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

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

Executed on \_\_\_\_\_ at \_\_\_\_\_  
(DATE) (PLACE)

\_\_\_\_\_  
SIGNATURE

Accompanying this proposal is a \_\_\_\_\_  
[Insert the words "cashier's check", "certified check", or "bidder's bond" as the case may be.]  
A personal check is not an acceptable form of security. ]  
in an equal amount to at least ten percent of total bid.

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Licensed in accordance with an act providing for the registration of Contractors License No. \_\_\_\_\_  
Expiration Date \_\_\_\_\_ Classification \_\_\_\_\_

\_\_\_\_\_  
Signature of bidder

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

Business Address \_\_\_\_\_

Place of Residence \_\_\_\_\_

Dated \_\_\_\_\_, \_\_\_\_\_ Phone \_\_\_\_\_

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

**Instruction for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

***Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions***

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

---

Contractor Signature

---

Date

## ADDENDUM ACKNOWLEDGEMENT

Bidder acknowledges receipt of the following addendums which are attached to the proposal:

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_



### DBE Subcontractor Utilization Form

This project does not have a DBE utilization requirement however a Good Faith effort to solicit DBE subcontractors is required to be documented if subcontractors will be used. This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>2</sup> subcontractors<sup>3</sup> and the estimated dollar amount of each subcontract. Prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

|                         |   |                  |
|-------------------------|---|------------------|
| Prime Contractor Name   |   | Project Name     |
| Bid/Proposal No.        | Assistance Agreement ID No. ( If known) | Point of Contact |
| Address                 |   |                  |
| Telephone No.           | Email Address                           |                  |
| Issuing/Funding Entity: |   |                  |

| I have identified potential DBE certified subcontractors | <input type="radio"/> YES   | <input type="radio"/> NO |                          |
|--|-----------------------------|--------------------------|--------------------------|
|  |                             |                          |                          |
| Subcontractor Name/<br>Company Name                      | Company Address/Phone/Email | Est. Dollar Amt          | Currently DBE Certified? |
|  |                             |                          |                          |
|  |                             |                          |                          |
|  |                             |                          |                          |

<sup>2</sup> A DBE is a Disadvantaged, Minority, Small or Woman Business Enterprise that has been certified as described in 40 CFR 33.204-33.205.

<sup>3</sup> Subcontractor is defined as a company, firm, joint venture or individual who enters into an agreement with a contractor to provide services.

**DBE Subcontractor Performance**

I certify under penalty of perjury that the foregoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CRF Part 33 Section 33.302(c).

|                                   |                   |
|-----------------------------------|-------------------|
| <b>Prime Contractor Signature</b> | <b>Print Name</b> |
|                                   |                   |
| <b>Title</b>                      | <b>Date</b>       |
|                                   |                   |

### DBE Subcontractor Performance

This form is intended to capture the DBE<sup>4</sup> subcontractors'<sup>5</sup> description of work to be performed and the price of the work submitted to the prime contractor. Prime contractor is required to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package unless subcontractors will not be used.

|                       |   |                         |
|-----------------------|---|-------------------------|
| Subcontractor Name    |   | Project Name            |
| Bid/Proposal No.      | Assistance Agreement ID No. ( If known) | Point of Contact        |
| Address               |   |                         |
| Telephone No.         |   | Email Address           |
| Prime Contractor Name |   | Issuing/Funding Entity: |

| Contract Item Number   | Description of Work Submitted to the Prime Contractor Involving construction, Services, Equipment or Supplies | Price of Work Submitted to the Prime Contractor                                  |
|--|---|--|
|  |   |  |
| BDE Certified by <input type="radio"/> DOT <input type="radio"/> SBA |   | Meets/ exceeds FEMA certification standards:                                     |
| <input type="radio"/> Other: _____                                   |   | <input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> Unknown |

<sup>4</sup> A DBE is a Disadvantaged, Minority, Small or Woman Business Enterprise that has been certified as described in 40 CFR 33.204-33.205

<sup>5</sup> Subcontractor is defined as a company, firm, joint venture or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

I certify under penalty of perjury that the foregoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CRF Part 33 Section 33.302(c).

|                                   |                   |
|-----------------------------------|-------------------|
| <b>Prime Contractor Signature</b> | <b>Print Name</b> |
|                                   |                   |
| <b>Title</b>                      | <b>Date</b>       |
|                                   |                   |

|                                |                   |
|--------------------------------|-------------------|
| <b>Subcontractor Signature</b> | <b>Print Name</b> |
|                                |                   |
| <b>Title</b>                   | <b>Date</b>       |
|                                |                   |

Note: Bid Bonds to be on this form or on a form supplied by a licensed surety insurer

BIDDERS BOND  
NAPA COUNTY  
STATE OF CALIFORNIA

KNOW ALL PERSONS BY THESE PRESENTS,

That we \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ as PRINCIPAL, and

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ as SURETY,

are held and firmly bound unto NAPA COUNTY, hereinafter called the COUNTY, in the penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID of the Principal above named, submitted by said Principal to the Napa County Board of Supervisor, for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the surety hereunder exceed the sum of \$

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS the Principal has submitted the above mentioned bid to the Board of Supervisors of the County of Napa for the in Napa County, in accordance with the Specifications entitled **LNU FIRE EMERGENCY OPENING TREES DEBRIS REMOVAL, RDS 20-44** and the Standard Specifications of the State of California, Department of Transportation, dated, 2018, therefore, heretofore adopted by the Napa County Board of Supervisors.

NOW THEREFORE, if the aforesaid Principal is awarded the contract and within the time and manner required under the Specifications, after the prescribed forms are presented to him for signature, enter into a written contract, in the prescribed form, in accordance with the bid, and files and two bonds with the Clerk of the Board of Supervisors, one to guarantee faithful performance and the other to guarantee payment for labor and materials, as required by law, then this obligation shall be null and void; otherwise, it shall be and remain in full force and virtue.

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

SEALED with our seals and dated this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Principal (contractor):

\_\_\_\_\_  
Surety:

By: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Attorney in Fact

By: \_\_\_\_\_

**Signatures for Principal and Surety must be acknowledged before a Notary Public**

APPROVED AS TO FORM: JOHN L. MYERS,  
Napa County Counsel

By: John L. Myers (e-sign)

**NAPA COUNTY  
PERFORMANCE BOND**

**KNOW ALL PERSONS BY THESE PRESENTS THAT WE,** \_\_\_\_\_,  
whose address is \_\_\_\_\_ as Principal, and \_\_\_\_\_  
\_\_\_\_\_, duly authorized under the laws  
of the State of California to become sole surety on bonds and undertakings, as Surety, are jointly and  
severally held and firmly bound unto NAPA COUNTY, a political subdivision of the State of California,  
as Obligee, in the full and just sum of \_\_\_\_\_  
(\$\_\_\_\_\_) lawful money of the United States of America, to be paid to the said Obligee, successors  
or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors,  
successors, administrators and assigns, jointly and severally, firmly by these presents.

**THE CONDITION** of the foregoing obligation is such that; whereas, the above bounden Principal has  
entered into a contract, or is about to enter into a contract with the Obligee to do and perform the  
following work, to-wit: **LNU FIRE EMERGENCY OPENING TREE DEBRIS REMOVAL, RDS  
20-44** as is more specifically set forth in said contract, to which contract reference is hereby made.

**NOW, THEREFORE,** if the said Principal shall well and truly do the said work, and fulfill each and  
every of the covenants, conditions and requirements of the said contract in accordance with the plans and  
specifications, then the above obligation shall be null and void, otherwise is shall remain in full force and  
effect.

**THE SURETY** does hereby consent to any and all alterations, modifications and revisions to the  
agreement secured by this bond including but not limited to, any extension of time for performance or  
modifications in manner of performance which may be agreed upon and between NAPA COUNTY as  
Obligee and the Principal, and the Surety does hereby waive notice of any alterations, modifications,  
revisions, or extensions.

**SEALED** with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Principal (contractor): \_\_\_\_\_ Surety: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_

By: \_\_\_\_\_

, Attorney in Fact

**Signatures for Principal and Surety must be acknowledged before Notary Public**

APPROVED AS TO FORM: JOHN L. MYERS,  
Napa County Counsel

By: John L. Myers (e-sign)

**NAPA COUNTY  
LABOR AND MATERIAL BOND**

**KNOW ALL PERSONS BY THESE PRESENTS THAT WE,** \_\_\_\_\_, as Principal, and \_\_\_\_\_, duly authorized under the laws of the State of California to become sole surety on bonds and undertakings, as Surety, are held and firmly bound unto any and all materialmen, persons, companies or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contracted to be executed or performed under the contract hereinafter mentioned, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said work to be done, and all persons who performed work or labor upon the same, and whose claim has not been paid by the contractor, company or corporation, in the just and full sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION** of the foregoing obligation is such that; whereas the above bounden principal has entered into a contract, or is about to enter into a contract with NAPA COUNTY, a political subdivision of the State of California, to do and perform the following work, to-wit: **LNU FIRE EMERGENCY OPENING TREE DEBRIS REMOVAL, RDS 20-44.**

**NOW THEREFORE,** if the above bounden Principal, contractor, person, company or corporation, or his or its subcontractor fails to pay for any materials, provisions, provender, other supplies, or terms used in, upon for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or the subcontractors of the Principal pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, then the Surety of this bond will pay the same, in an amount not exceeding the sum specified in this bond as well as a reasonable attorney's fee, which shall be fixed and awarded by the court to the prevailing party in said suit, said attorney's fee to be taxed as costs in said suit and to be included in the judgment therein rendered.

**THE SURETY** does hereby consent to any and all alterations, modifications and revisions to the contract above referred to, and work and labor under which is secured by this bond, including but not limited to, any extension of time for performance or modifications in manner of performance which may be agreed upon by and between NAPA COUNTY and the Principal, and the Surety does hereby waive notice of any alterations, modifications, revisions, or extensions.

**THIS BOND** is executed and filed to comply with the provisions of the act of Legislature of the State of California as designated in Civil Code 9550 et seq., inclusive, and all amendments thereto and shall inure to the benefit of any of the persons named in Civil Code section 9100 so as to give a right of action to those person or their assigns in any suit brought upon the bond.

**SEALED** with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

|                               |                             |
|-------------------------------|-----------------------------|
| Principal (contractor): _____ | Surety: _____               |
| By: _____                     | By: _____, Attorney in Fact |
| By: _____                     |                             |

**Signatures for Principal and Surety must be acknowledged before Notary Public**

APPROVED AS TO FORM: JOHN L. MYERS,  
Napa County Counsel

By: John L. Myers (e-sign)

**SPECIAL PROVISIONS- SECTION "A"**  
**GENERAL CONDITIONS**

**1. LOCATIONS**

See DEFINITION OF BID ITEMS section.

**2. DESCRIPTION OF WORK**

The work required in this project is the removal of woody debris such as cut logs and large tree brush within the County of Napa along roughly 75 miles of various roadways affected by the 2020 LNU Lightning Complex Fires. The debris was generated during the emergency opening period of the LNU Fire by County personnel, located on various locations of these roadways and all within the County right of way. Although some of the debris is in the form of logs, additional cutting of the debris, chipping, etc... may be required. All woody debris must be off hauled to a facility licensed to accept it.

**3. DEFINITIONS AND TERMS**

The following terms when used in these Special Provisions or in the Standard Specifications shall have the following meanings when used in this Contract:

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

County. Napa County, a political subdivision of the State of California.

Department of Transportation. The Board of Supervisors of Napa County, State of California, acting by and through its Director of Public Works.

Department. The Napa County Department of Public Works.

Director of Transportation. The Napa County Public Works Director.

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

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

Owner. Napa County.

State of California. Napa County.

Transportation Building. Napa County Administration Building, 1195 Third Street, Suite 101, Napa, California 94559.

State Highway Engineer. The Napa County Public Works Director, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

Standard Specifications. The 2015 edition of the Standard Specifications of the State of California, Department of Transportation. Any reference therein to the State of California or a State agency, office or

officer shall be interpreted to refer to the County or its corresponding agency, office or officer acting under this contract.

Days. As used in these special provisions, days shall mean working days.

#### **4. CONTRACT DOCUMENTS**

The Contract Documents shall include the Notice to Contractors, Proposal Form, bonds, these special provisions, the Standard Specifications of the State of California and the Standard Plans of the State of California, Department of Transportation, dated 2018 insofar as same may apply, and pertinent portions of other documents included by reference thereto in the Special Provisions or the Contract pages.

#### **5. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES**

Attention is directed to all of the provisions of Section 8, "Prosecution and Progress," of the Standard Specifications and these Special Provisions.

Contractor will provide insurance and bonds seven (7) calendar days after receiving the intent to award.

The Contractor will receive the Notice To Proceed seven (7) calendar days after receiving notice that the contract has been executed and approved by the County which will start the working day calendar. Award is scheduled on October 20, 2020.

This work shall be diligently prosecuted to completion before the fifteen (25) WORKING DAYS beginning the day of issuance of Notice To Proceed. Contractor shall maintain adequate work force and diligently prosecute work to completion.

Attention is directed to the provisions of Section 8-1.10, "Liquidated Damages," of the Standard Specifications and these Special Provisions. The Contractor shall pay to Napa County the sum of **\$1,000** per day for each and every calendar day delay in finishing the work in excess of the number of working days prescribed above and any extension of time granted

#### **6. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS**

The County shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the County, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the County. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

#### **7. TITLE VI ASSURANCES**

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

- (1) Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- (2) Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the California Department of Transportation or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the California Department of Transportation or the FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of CONTRACTOR'S noncompliance with the nondiscrimination provisions of this agreement, the California Department of Transportation shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - (a) withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - (b) cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

MAINTAIN RECORDS AND SUBMIT REPORTS DOCUMENTING YOUR PERFORMANCE UNDER THIS SECTION

**8. SUBCONTRACTING**

Attention is directed to Section 5-1.13, "Subcontracting," of the Standard Specifications.

**9. PREVAILING WAGES**

Attention is directed to Section 7-1.02K, "Labor Code," of the Standard Specifications and these Special provisions.

In accordance with the provisions of Section 1774 of the Labor Code, the County has ascertained from the Director of Industrial Relations the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) is applicable to the work to be done under this Contract.

The general prevailing wage rates and any applicable changes to these wage rates are available:

1. At the Department's Labor Compliance Office of the district in which the work is located
2. From the Department of Industrial Relations' Web site <http://www.wdol.gov/dba.aspx>

Changes in general prevailing wage determinations apply to the Contract when the Director of Industrial Relations has issued them at least 10 days before advertisement. (Labor Code § 1773.6 and 8 CA Code of Regs 16204)

**10. CERTIFIED PAYROLL RECORDS**

Special Attention is directed to the provisions of Section 7-1.02K(3), "Certified Payroll Records," of the Standard Specifications. A copy of all payrolls shall be submitted weekly to the Engineer. Payrolls shall contain the full name, address and social security number of each employee, employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. Submitted payroll shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Department or on any form with identical wording. The Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. Failure to submit will delay processing of progress payments.

**11. BIDDING REQUIREMENTS AND CONDITIONS**

Attention is directed to Section 2, "Bidding," of the Standard Specifications and these Special Provisions.

- (a) Examination of Site. Each bidder shall have examined the site of the work before bidding so he shall have full knowledge of all facilities and difficulties affecting the work which may not be particularly described herein. **No variation or allowance from the contract sum will be made because of lack of such examination or knowledge.**
- (b) State Contract Act. The State Contract Act is not applicable to contracts involving political subdivisions of the State of California. Pre-qualification of bidders will not be required.
- (c) Joint Venture. If two or more Bidders desire to bid jointly on a single project or desire to combine their assets for so doing, they must file an affidavit of joint venture with the County Engineer, and such affidavit of joint venture will be valid only for the specific project for which it is filed. If such affidavit of joint venture is not filed as aforesaid and approved by the Engineer prior to the time for opening

bids on the specific projects for which it is submitted, a joint bid submitted by the said Bidders will be disregarded.

- (d) Registered and Qualified – California Labor Code § 1771.1. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

## **12. CONTRACT AWARD AND EXECUTION (Bonds)**

Attention is directed to Section 3, “Contract Award and Execution,” of the Standard Specifications, contract bonds and these Special Provisions. In-lieu of the bonds specified under Section 3-1.05 of the Standard Specifications, the successful bidder shall furnish a faithful Performance Bond as required by Section 20129 of the Public Contract Code in an amount equal to one hundred percent (100%) of the contract price of the work contemplated and the laborer's and material man's payment bond as required by Section 8182 of the Civil Code in an amount equal to one hundred percent (100%) of the contract price of the work contemplated.

## **13. SCOPE OF WORK**

Attention is directed to Section 4, “Scope of Work,” of the Standard Specifications and these Special Provisions.

The intent of the plans and specifications is to cover the entire project ready for use when completed. The Contractor shall accomplish complete installation of facilities, and any other required items to make the unit complete. All units, facilities, etc., shall be in operating condition to the approval of the Engineer. The quantities and items listed in the proposal form and contract form are given as a basis for the comparison of bid and the Board of Supervisors does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work as may be deemed necessary or expedient by the Engineer.

## **14. CHANGE ORDERS**

### **(a) Limitations Where Contract Price Changes are Involved.**

- i. Overhead and Profit for the Contractor. The Contractor's overhead and profit on the cost of subcontracts shall be a sum not exceeding ten percent (10%) of such costs. The Contractor's overhead and profit on the costs of work performed by the Contractor shall be a sum not exceeding fifteen percent (15%) of such costs. Overhead and profit shall not be applied to the cost of taxes and insurance by Contractor or Subcontractors or to credits. No processing or similar fees may be charged by the Contractor in connection with the Modification.
- ii. Bond Premiums. The actual rate of bond premiums as paid on the total cost (including taxes) will be allowed, but with no markup for profit and overhead.
- iii. Taxes. State and city sales taxes should be indicated.

(b) Procedure. Attention is directed to Section 4-1.05 of the Standard Specifications and definition of bid items.

(c) Authorized Representative / Limits. No Change Order shall be valid or binding against COUNTY unless such Change Order has been executed in writing by (1) COUNTY's Director of Public Works consistent with the authority granted to him by the Board of Supervisors pursuant to the limitations set forth under Napa County Resolution No. 2011-18 and Public Contract Code Section 20142, or (2) by the Board of Supervisors.

## **15. CONTROL OF THE WORK**

Attention is directed to Section 5 of the Standard Specifications and these Special provisions. After contract approval, submit documents and direct questions in writing to the Engineer.

(a) Contract Components. A component in one contract part applies as if appearing in each. The parts are complementary and describe and provide for a complete work.

If a discrepancy is found or confusion arises, request correction or clarification in writing. Any deviations from the approved Plans and Specifications shall be approved by the Engineer and all changes shall be by written permission only.

(b) Acceptance of Contract. Attention is directed to Section 5-1.46, "Final Inspection and Contract Acceptance," of the Standard Specifications and these Special provisions. Acceptance will consist of the execution and filing with the County Recorder of a Notice of Completion as defined in Civil Code Section 8182. Should it become necessary due to developed conditions to occupy any portion of the work before the contract is fully completed, such occupancy shall not constitute acceptance.

## **16. LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC**

Attention is directed to Section 7 of the Standard Specifications and these Special Provisions.

Comply with laws, regulations, orders, and decrees applicable to the project. Immediately report to the Engineer in writing any discrepancy or inconsistency between the contract and a law, regulation, order, and decree.

(a) Prevailing Wages. See Section 18 and 19 of these Special Provisions.

(b) Public Convenience and Public Safety.

Attention is directed to Section 7-1.03 and Section 7.1.04 of the Standard Specifications and these Special Provisions.

(1) Safety Devices. Furnishing and maintenance of safety devices shall be the responsibility of the Contractor at all times. The Contractor shall respond promptly to correct improper conditions or inoperative devices. Failure to inspect and maintain all necessary safety devices in proper operating condition when in use, or failure to respond promptly to notification of improperly operating equipment, will be sufficient cause for suspension of the contract until such defects are corrected or termination as otherwise provided in this Contract.

(2) Safety Data Sheets (SDS) – The Contractor shall provide MSDS for each product used on site upon request by the Engineer.

(3) Safety Standards; Suspension of Contract for Unsafe Equipment. The Contractor shall comply with all the applicable provisions of the United States Department of Labor Occupational Safety and Health Act (OSHA), State of California Division of Industrial Safety, Title 8, Safety Orders (Cal-OSHA), the Federal Aviation Administration (FAA) and any other applicable codes and regulations. If, in the opinion of the Engineer, any operation or piece of equipment

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

- (c) Hold Harmless/Indemnification. To the full extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify COUNTY, FEMA, and Cal OES and the officers, agents, employees and volunteers of County from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of Contractor or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of County or its officers, agents, employees or volunteers. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.
- (d) Insurance. Contractor shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:
- (1) Workers' Compensation insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability **and a waiver of subrogation**, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.
  - (2) Liability insurance. Contractor shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to transact business in the State of California and having a A.M. Best rating of A VII or better:
    - (i) General Liability. Commercial or comprehensive general liability [CGL] insurance coverage (personal injury and property damage) of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence and FIVE MILLION DOLLARS (\$5,000,000) aggregate, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of Contractor or any officer, agent, or employee of Contractor under this Agreement.
    - (ii) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with Contractor's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.
  - (3) Certificates. All insurance coverages referenced in (2), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the DEPARTMENT OF PUBLIC WORKS prior to commencement of performance of any of Contractor's duties; shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-

payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

For the commercial general liability insurance coverage referenced in (2)(i), and, where the vehicles area covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in (2)(ii) CONTRACTOR shall also file with the evidence of coverage and endorsement from the insurance provider naming COUNTY, its officers employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent including (if used together ) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request of COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insured to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

- (4) Additional Insured. The general liability and automobile liability policies listed above are to contain, or be endorsed to contain, the following provisions:

Napa County, its officers, agents, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the grantee; and with respect to liability arising out of work or operations performed by or on behalf of the grantee including materials, parts or equipment furnished in connection with the work or operations.

- (5) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be approved by, County's Risk Manager, which approval shall not be denied unless the County's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of Contractor by this Agreement. At the option of and upon request by County's Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

## **17. PROSECUTION AND PROGRESS**

Attention is directed to Section 8, "Prosecution and Progress," of the Standard Specifications, and these Special Provisions.

- (a) Preconstruction Meeting

After award of the contract and prior to the commencement of work at the site, a Preconstruction meeting will be held at a mutually agreed time and place which shall be attended by the Contractor, its Superintendent, and its subcontractors as appropriate.

The conference is required to familiarize all authorized persons involved with policies, regulations and procedures and to discuss construction operations and methods in order to avoid any misunderstanding or conflicts during construction.

Unless previously submitted to the Engineer, the Contractor shall provide each of the following:

1. Draft Schedule.
2. Procurement schedule of major equipment and materials and items requiring long lead time.
3. The Temporary Traffic Control Plan for Engineers review.
4. Letter of Responsibility designating emergency contacts for the Contractor after business hours.

(b) Progress Meetings

The Contractor shall schedule and hold regular on site progress meetings at least weekly and at other times as requested by Engineer. The Contractor, Engineer, Inspector, and all subcontractors active on the site shall be represented at each meeting. The Contractor or Engineer may at its discretion request attendance by the Contractor's suppliers, manufacturer's, and other subcontractors.

The County shall provide for keeping and distribution of the minutes. The purpose of the meetings will be to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop.

(c) Construction Schedule and Progress Schedule

The contractor, promptly after being awarded the contract or upon receiving notice of intent to award, shall prepare and submit a baseline construction schedule for the work and consider priority areas to be determined by the County. The baseline schedule shall not exceed the number of contract working days. The baseline schedule must include the entire scope of work and identify the critical path items and demonstrate how the contractor plans to complete all work contemplated and shall provide for expeditious and practicable execution of the work. The project floats in the critical path schedule belong to the county.

Contractor shall maintain adequate work force and diligently prosecute work to completion. Schedule slips will be addressed by the contractor promptly at no additional cost to the county.

The Contractor shall also incorporate all required permit conditions, quality assurance inspections and testing, submittals reviews, field reviews and request for information reviews and all other coordination into the schedule.

The contractor shall correct any non-compliant work and defective work within the contract working days at no additional cost to the county.

Progress schedules shall be updated and submitted on a weekly basis thereafter. The progress schedule shall be revised at appropriate intervals as required by the conditions of the work and project or when requested in writing by the Engineer. The Contractor shall perform the work in general accordance with the most recent schedules submitted to the Engineer.

(d) Schedule of Submittals

A schedule of submittals shall be provided to the Engineer at the preconstruction meeting. The Contractor shall keep the submittal schedule up to date and ensure that it coordinates with the construction schedule, with adequate time for the Engineer to review the submittals.

(e) Termination of Contract. Attention is directed Section 8-1.13 of the Standard Specifications and these Special provisions.

Whenever, in the opinion of the Board of Supervisors the said work is neglected by the Contractor, or the same is not prosecuted with the diligence and force specified, meant and intended in and by the terms of this contract, it shall be lawful for the Board of Supervisors to make a requisition upon the Contractor for such additional specific force or such additional specific material to be brought into the work under this contract or to remove improper material from the grounds, and its due and faithful fulfillment requires; of which action of the Board of Supervisors due notice in writing of not less than five days shall be served upon the Contractor or his agent having charge of the work; and if the Contractor fails to comply with such requisition within five days, it shall be lawful for the Board of Supervisors to employ upon such work the additional force or supply the materials as specifically required as aforesaid; and the amount paid for such additional force or material shall be charged against the Contractor and be deducted from his next or subsequent estimate and payment, or the same or any part thereof not so deducted may be recovered from the Contractor or his sureties.

Moreover, if the Contractor fails to comply with such requisition within five days, the Board of Supervisors may declare the contract terminated and may itself proceed to complete the work herein specified or may engage any other person or persons to do the same. Upon the completion of such work, the said Board of Supervisors through its proper office or officers shall cause a statement to be made of the default of the Contractor as aforesaid, and in completing the work itself or by any other person or persons. Should the amount in such statement be more than the amount would have been due the Contractor upon the completion of the work by him, the difference shall be paid by the Contractor to Napa County.

#### **18. TERMINATION FOR CONVENIENCE OF THE COUNTY**

Notwithstanding any other provision of this Agreement, 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 CONTRACTOR. Such termination shall be effected by delivery to Contractor of a notice of termination specifying the effective date of the termination and the extent of the work to be terminated. Contractor shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by County. County shall pay Contractor for the work completed prior to the effective date of the termination, and such payment shall be Contractor's sole remedy under this Agreement. Under no circumstances will Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this paragraph. Contractor shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a notice of termination, and shall require subcontractors to insert the same condition in any lower tier subcontracts.

#### **19. MEASUREMENT AND PAYMENT**

Attention is directed to Section 9, "Payment," of the Standard Specifications, these Special Provisions and Definition of Bid Items.

Payment for the various items of the Bid Sheets, as further specified herein, shall include all compensation to be received by the Contractor for furnishing all tools, equipment, supplies, and manufactured articles, and for all labor, operations, and incidentals appurtenant to the items of work being described, as necessary to complete the various items of work as specified and shown on the Drawings, including all appurtenances thereto, and including all costs of compliance with the regulations of public agencies having jurisdiction, including Safety and Health Requirements of the California Division of Industrial Safety. No separate payment will be made for any item that is not specifically set forth in the Bid Sheet(s), and all costs therefor shall be included in the prices named in the Bid Sheet(s) for the various appurtenant items of work.

Section 9-1.06 “Changed Quantity Payment Adjustments” is modified as follows:

All pay line items will be paid for at the unit prices named in the Bid Sheet(s) for the respective items of work. The quantities of work or material stated as unit price items on the Bid Sheet(s) are supplied only to give an indication of the general scope of the Work; the County does not expressly nor by implication agree that the actual amount of work or material will correspond therewith, and reserves the right after award to increase or decrease the quantity of any item of work by an amount up to 100 percent of any bid item, without a change in the unit price, and shall have the right to delete any bid item in its entirety, or to add additional bid items up to an aggregate total amount not to exceed 25 percent of the contract price. FEMA accepted cost data will be used for items not described on the bid sheets.

Section 9-1.07 “Payment adjustments for price index fluctuations,” is deleted.

- (a) Force Account. Attention is directed Section 9-1.04 of the Standard Specifications and these Special Provisions.

Force Account work is for work where there are no bid items of work in the bid sheets and for work that must proceed the same day and a Change Order cannot be processed timely. When there are bid items that can cover the work, the work shall be performed per Section 9-1.06 “Changed Quantity Payment Adjustments” (as modified above).

Force Account work must be authorized in writing by the Engineer. The contractor must submit Daily Force Account Work Reports (DFAWR) at the end of each day the force account work was performed. Acceptance of the DFAWR in the field by the county’s inspector or agent does not constitute agreement with the Force Account Labor, Material and Equipment utilized to perform the work. The Engineer pursuant to Section 9-1.04 FORCE ACCOUNT (9-1.04A General) of the standard specifications will compare the County’s inspection records to the contractor’s DFAWR. When the contractor and the Engineer agree on the contents of the daily force-account work reports, the Engineer accepts the report and the pays for the work. If the records differ, the County pays for the work based only on the information shown on the County's records.

Equipment rental rates shall be those rental rates applicable on contracts advertised FEMA or by the State of California, Department of Transportation on the date of call for bids on this contract.

- (b) Progress Payments. Attention is directed Section 9-1.16 of the Standard Specifications and these Special Provisions.

The contractor shall submit the following Waiver Certificate:

- Conditional Waiver and Release on Progress Payment form with each progress payment request.
- Conditional Waiver and Release on Final Payment form with final payment request.

The contractor shall comply with Prompt Payment of Funds Withheld to Subcontractors:

- With each progress payment request the contractor must certify that the subcontractors have received payment for work satisfactorily completed and accepted by the County.

In lieu of Section 9-1.16 F Retentions, the County will retain 5 percent (5%) of the value of all work done and 5 percent (5%) of the value of the materials so estimated to have been furnished and delivered and unused or furnished and stored as aforesaid as part security for the fulfillment of the contract by

the Contractor to the extent not inconsistent with Public Contract Code Section 20104.50; all such retentions being subject to the following statutory requirements:

Public Contract Code Section 7107. Retention proceeds; withholding disbursement

- (a) *This section is applicable with respect to all contracts entered into on or after January 1, 1993 relating to the construction of any public work of improvement.*
- (b) *The retention proceeds withheld from any payment by the public entity from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.*
- (c) *Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this subdivision, "completion" means any of the following:*
  - (1) *The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.*
  - (2) *The acceptance by the public agency, or its agent, of the work of improvement.*
  - (3) *After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.*
  - (4) *After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.*
- (d) *Subject to subdivision (e), within 10 days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.*
- (e) *The original contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.*
- (f) *In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.*
- (g) *If a state agency retains an amount greater than 125 percent of the estimated value of the work yet to be completed pursuant to Section 10261 of the Public Contract Code, the state agency shall distribute undisputed retention proceeds in accordance with subdivision (c). However, notwithstanding subdivision (c), if a state agency retains an amount equal to or less than 125 percent of the estimated value of the work yet to be*

*completed, the state agency shall have 90 days in which to release undisputed retentions.*

- (h) Any attempted waiver of the provisions of this section shall be void as against the public policy of this state.*

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

- (a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract; however, substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (> 7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.*
- (b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.*
- (c) Securities eligible for investment under this section shall include those listed in > Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency. The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract. For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.*
- (d) (1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.*

- (2) *This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid.*
- (3) *No contractor shall require any subcontractor to waive any provision of this section.*
- (e) *The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.*
- (f) *The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:*

*ESCROW AGREEMENT FOR  
SECURITY DEPOSITS IN LIEU OF RETENTION*

*This Escrow Agreement is made and entered into by and between:*

\_\_\_\_\_ whose address is \_\_\_\_\_  
 \_\_\_\_\_ hereinafter called "Owner,"  
 \_\_\_\_\_ whose address is \_\_\_\_\_  
 \_\_\_\_\_ hereinafter called "Contractor" and  
 \_\_\_\_\_ whose address is \_\_\_\_\_  
 \_\_\_\_\_ hereinafter called "Escrow Agent."

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

- (1) *Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of \_\_\_\_\_, and shall designate the Contractor as the beneficial owner.*
- (2) *The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.*
- (3) *When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.*

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

*On behalf of Owner:*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Address*

*On behalf of Contractor:*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Address*

*On behalf of Escrow Agent:*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Address*

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

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

**“Owner”**

**“Contractor**

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

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

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

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

(d) The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (c).

(e) For purposes of this article:

(1) A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.

(2) A "progress payment" includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings.

(3) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.

(f) Each local agency shall require that this article, or summary thereof, be set forth in the terms of any contract subject to this article.

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

Public Contract Code Section 9204 Claim resolution process for claim by contractor in connection with public works project.

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the

*California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.*

- (C) *"Public entity" shall not include the following:*
  - (i) *The Department of Water Resources as to any project under the jurisdiction of that department.*
  - (ii) *The Department of Transportation as to any project under the jurisdiction of that department.*
  - (iii) *The Department of Parks and Recreation as to any project under the jurisdiction of that department.*
  - (iv) *The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.*
  - (v) *The Military Department as to any project under the jurisdiction of that department.*
  - (vi) *The Department of General Services as to all other projects.*
  - (vii) *The High-Speed Rail Authority.*
- (4) *"Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.*
- (5) *"Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.*
- (d) (1) (A) *Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.*
- (B) *The claimant shall furnish reasonable documentation to support the claim.*
- (C) *If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.*
- (D) *Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.*
- (2) (A) *If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt*

*requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.*

- (B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant 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 of the claim shall be processed and made within 60 days after the public entity 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 public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 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. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.*
- (C) 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 resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.*
- (D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.*
- (E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.*
- (3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a 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 claimant.*
- (4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.*
- (5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity 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 public entity shall furnish reasonable documentation to support the claim. Within 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 public entity and, if the original contractor*

*did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.*

- (a) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.*
- (b) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.*
- (c) This section applies to contracts entered into on or after January 1, 2017.*
- (d) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.*
- (e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.*

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

- (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.*
- (2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.*
- (b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.*
- (2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.*
- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.*
- (d) This article applies only to contracts entered into on or after January 1, 1991.*

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

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

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

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

- (b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
- (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
- (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information whichever is greater.
- (c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claim within 60 days of receipt of the claim, or may request in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
- (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
- (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation. or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
- (d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- (f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

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

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

- (a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived

by mutual stipulation of both parties. The process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

- (b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
- (2) Notwithstanding any other provision of law, upon stipulation of parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
- (3) In addition to Chapter 2.5 (commencing with Section 1141.10) Title 3 of Part 3 of the Code of Civil Procedure, any party who receiving an arbitration award requests a trial de novo but does obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other arising out of the trial de novo.
- (c) The court may, upon request by any party, order any witnesses participate in the mediation or arbitration process.

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

- (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
- (b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.
- (d) Final Payment. Payment will be made in accordance with the provisions of Section 9-1.17 of the Standard Specifications provided however that in no event will the final payment be made within 35 calendar days after the filing of Notice of Completion.

**20. MISCELLANEOUS PROVISIONS**

- (a) Licenses and Permits. Any and all licenses and permits required shall be provided by the Contractor and he shall abide by any and all Federal, State and County laws and rules affecting the work and shall maintain all required protection for property, employees and the public and insurance in connection with same, for all of which he shall bear necessary expense.
- (b) Building Laws, etc. The Contractor shall conform to and abide by all County and State Building, Labor, Sanitary and Electrical Codes, Ordinances, Laws, Rules and Regulations. Such laws and regulations shall be considered a part of this Exhibit "A" as if set forth herein in full and the work and materials shall be in accordance therewith.

- (c) Guarantees. All work performed and equipment or material furnished shall be guaranteed for one (1) year from date of acceptance against any inherent or developed defects of materials or workmanship in manufacture or installations. All guarantees normally provided by manufactures of equipment or material installed under this project shall be furnished to County and shall remain in force for their normal life.
- (d) Ownership of Plans and Specifications. All drawings, specifications and copies thereof provided to Contractor by the County shall remain the property of the County and they shall not be used by the Contractor or its subcontractors on other work.
- (e) Addenda. Any addenda or notices issued during the time of bidding and forming a part of the documents provided to the Bidder for the preparation of the contractor's bid, shall be covered in the bid and shall be made a part of the contract. The Bidder shall acknowledge receipt of addenda in the space provided in the Proposal.

Should a bidder find apparent discrepancies in the drawings or documents, or should he be in doubts to their meaning, he should at once notify the County of Napa, Public Works Department, which will send a written instruction to all bidders. Napa County will not be responsible for oral instructions.

## **21. OWNER'S RIGHT TO DO WORK**

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

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

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

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

## **22. EQUAL OPPORTUNITY EMPLOYMENT**

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

- (a) Non-Discrimination. During the performance of the work required by the Contract, the Contractor and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color,

sex, sexual orientation, religion, age, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its subcontractors will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor and its subcontractors shall post in conspicuous places, available to employees for employment, notices provided by the State of California setting forth the provisions of this Fair Employment section. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, the Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Contract subcontracts to the Contractor work required of the County by the State of California pursuant to agreement between the County and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and the Contractor and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

- (b) Documentation of Right to Work. The Contractor shall abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of the Contractor performing any of the work under the Contract have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. The Contractor shall make the required documentation available upon request to the County for inspection.
- (c) Inclusion in Subcontracts. To the extent any of the work to be performed by Contractor under the Contract is subcontracted to a third party, the Contractor shall include the provisions of (a) and (b), above, in all such subcontracts as obligations of the subcontractor.

**23. COUNTY POLICIES ON WASTE, HARASSMENT, DRUG/ALCOHOL-FREE, VIOLENCE-FREE WORKPLACE.**

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

- (a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.
- (b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work

Environment” revised effective June 20, 2017.

- (c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on May 1, 2009.
- (d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY’s ITS Department prior to receiving such access the certification attached to said Policy.
- (e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in Napa County Policy Manual Part I, Section 37U.

#### **24. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.**

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

Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Engineer, but it is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the contractor shall be reported promptly to the Engineer.

#### **25. SUPERVISION AND CONSTRUCTION PROCEDURES**

- (a) Supervision and Direction of Work. The Contractor shall supervise and direct the work, using the contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Engineer and shall not proceed with that portion of the work without further written instructions from the Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.
- (b) Responsibility of Work. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, subcontractors, and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its subcontractors.

- (c) Subsequent Work. The Contractor shall be responsible for inspection of portions of work already performed to determine that such portions are in proper condition to receive subsequent work.
- (d) Superintendent. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

## **26. DEFECTIVE AND NONCOMPLIANT WORK**

Attention is directed to Section 5-1.30 Noncompliant and Unauthorized work and Section 5-1.39 Damage Repair and Restoration of the Standard Specifications

Per Section 5-1.30 Noncompliant and Unauthorized work of the Standard Specifications, the contractor shall correct or remove and replace work that does not comply with the Contract at contractor's cost. County will reduce payment for non-compliant work left in place until the work has been corrected. If the contractor fails to comply promptly with an order under section 5-1.30, the County may correct, remove, or replace noncompliant or unauthorized work. The County will deduct the cost of this work from the contract.

Per Section 5-1.39 Damage Repair and Restoration of the Standard Specifications, before Contract acceptance, the contractor shall restore damaged work to the same state of completion as before the damage. The County does not adjust payment for repair or restoration that the Engineer determines was caused by the contractor's failure to construct the work under the Contract or protect the work.

The contractor shall submit a repair or restoration work plan and scheduled for the approval of the Engineer prior to proceeding with work. The submittal must comply with the requirements in Section 4 Submittal Procedures of this Special Provisions.

## **27. AUDITS/ACCOUNTING/RECORDS**

The Contractor shall maintain financial accounts, documents, and records (collectively, "records") relating to this agreement, in accordance with the guidelines of "Generally Accepted Accounting Principles" ("GAAP") published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to the construction of the project, and the use, management, operation and maintenance of the real property. Time and effort reports are also required. The Contractor shall maintain adequate supporting records in a manner that permits tracing from the request for disbursement forms to the accounting records and to the supporting documentation.

Additionally, the County or its agents may review, obtain, and copy all records relating to performance of the agreement. The grantee shall provide the County or their agents with any relevant information requested and shall permit the County or their agents access to the Contractor's premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, papers, accounting, and other evidence that may be relevant to a matter under investigation for the purpose of determining compliance with this agreement and any applicable laws and regulations.

The Contractor shall retain the required records for a minimum of three years following the later of final disbursement by the County, and the final year to which the particular records pertain. The records shall be subject to examination and audit by the County and the Bureau of State Audits during the retention periods.

If the Contractor retains any subcontractors to accomplish any of the work of this agreement, the Contractor shall first enter into an agreement with each subcontractor requiring the subcontractor to meet the terms of this section and to make the terms applicable to all subcontractors.

**28. INTERPRETATION; VENUE.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

**29. SECTIONS OF THE 2018 SPECIAL PROVISIONS NOT APPLICABLE.**

Section 5-1.09 “Partnering” and all of its subparts and Section 5-1.43 “Potential Claims and Dispute Resolution” and all its subparts are hereby removed in their entirety and shall have no application apply to this Agreement.

**SPECIAL PROVISIONS - SECTION 'B'**

TECHNICAL SPECIFICATIONS

1. GENERAL REQUIREMENTS

The Contractor shall take all reasonable precautions to restrict operations to the least area of work possible and to minimize interference with traffic along the roads, and shall not disturb private property beyond the areas of work.

(a) **LAYOUT OF WORK** – The Contractor shall lay out all work from the references given and as shown on the plans, set the necessary markers and stakes and shall be responsible for the correctness of the work.

(b) **MATERIAL SAFETY DATA SHEETS (MSDS)** – The Contractor shall provide MSDS for each product used on site.

(c) **RESERVED**

The Contractor shall notify Underground Service Alert (USA) for marking the locations of existing underground facilities at least 2 working days, but not more than 14 calendar days, prior to performing any excavation or other work close to any underground pipeline, conduit, duct, wire or other structure.

Regional notification centers include but are not limited to the following:

| Notification Center                                     | Telephone Number                 |
|---|----------------------------------|
| Underground Service Alert-<br>Northern California (USA) | 1-800-642-2444<br>1-800-227-2600 |

The Contractor shall immediately notify the County Engineer of any facilities found that may interfere with work to be performed. The Contractor shall take all necessary measures to avoid injury to existing surface and underground utility facilities in and near the site of the work. If damage should occur to the existing facilities, the utility company and the County shall be notified immediately and repairs acceptable to the utility company shall be made at the Contractor's expense.

Existing trees, shrubs, and other plants, that are injured or damaged by reason of the Contractor's operations, shall be replaced by the Contractor.

Full compensation for conforming to the requirements of this section shall be considered as included in the contract prices paid for the various contract items of work and no additional compensation will be allowed.

(d) **DAMAGES** – The Contractor shall be responsible for any damages to existing facilities, utilities and roads due to causes attributable to the work, and all such damaged facilities, utilities and roads shall be repaired when directed by the Engineer and as required to place them in as good as condition as existed before commencement of the work.

(e) **OWNER NOTIFICATION** – The Contractor shall notify all property owners and businesses affected by the project's work at least 48 hours before work is to begin. The notice shall

be in writing, placed on doors, and shall indicate the Contractor's name and phone number, type of work, day(s) and time when work will occur. Notice shall be reviewed and approved by the Engineer prior to being sent.

Full compensation for conforming to the requirements of this section shall be considered as included in the contract prices paid for the various contract items of work and no additional compensation will be allowed.

(f) EMERGENCY SERVICE PROVIDERS NOTIFICATIONS – The Contractor shall furnish the name and phone number of a representative that can be contacted in the event of an emergency. Said information shall be reported to the County Sheriff dispatcher, and updated as required to provide 24-hour phone access.

Full compensation for conforming to the requirements of this section shall be considered as included in the contract prices paid for the various contract items of work and no additional compensation will be allowed.

(g) PUBLIC SAFETY – PUBLIC SAFETY –The Contractor shall at all times conduct his work in accordance with Construction Safety Orders of the Division of Industrial Safety, State of California, to insure the least possible obstruction to traffic and inconvenience to the general public, and adequate protection of persons and property in the vicinity of the work.

No access way shall be closed to the public without first obtaining permission from the Engineer

The Contractor shall furnish, erect and maintain all lights, signs, barricades and barriers necessary to give adequate warning to the public at all times and shall provide such guards as may be necessary to prevent accidents and avoid damage and injury.

Should the Contractor fail to provide public safety as specified or if, in the opinion of the Engineer, the warning devices furnished by the Contractor are not adequate, the County may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Contractor's operations and the Contractor shall be liable to the County for all costs incurred plus 100%.

Nothing in this section shall be construed to impose tort liability on the County or Engineer. Full compensation for conforming to the requirements of this section shall be considered as included in the contract prices paid for the various contract items of work and no additional compensation will be allowed.

(h) WATER FOR DUST CONTROL –  
During the performance of the work called for under these Specifications, or any operations appurtenant thereto, the Contractor shall furnish all labor, equipment and means required, and as often as necessary, to prevent his operations from producing dust in amounts damaging to property or causing a nuisance to persons living nearby or occupying buildings in the vicinity.

Full compensation for conforming to the requirements of this section shall be considered as included in the contract prices paid for the various contract items of work and no additional compensation will be allowed.

(i) EXISTING UTILITIES – The Contractor shall notify all utility companies and request field location markings of existing facilities prior to commencing construction. Where potential

conflict with existing underground utilities may constitute a safety hazard or interfere with the progress of work, such facilities shall be hand-excavated to determine their precise location. Contractor shall be liable for damages to all utilities whether so located and marked or not.

It is not the intent of the Plans to show the exact location or extent of existing underground utilities or structures, and the Engineer assumes no responsibility therefor.

It is the Contractor's responsibility to verify all existing utility locations and notify the Engineer in case of conflict.

Full compensation for conforming to the requirements of this section shall be considered as included in the contract prices paid for the various contract items of work and no additional compensation will be allowed.

(j) SCHEDULE OF WORK – The Contractor shall not obstruct the access to lanes within the project area for greater than 15 minutes.

(k) SAFETY – The Contractor shall comply with all the applicable provisions of the United States Department of Labor Occupational Safety and Health Act (OSHA), State of California Division of Industrial Safety, Title 8, Safety Orders (Cal-OSHA) and any other applicable codes and regulations.

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

(l) PRE-CONSTRUCTION CONFERENCE – Prior to the commencement of any work of any kind, the Contractor, or his authorized agent or representative shall attend a pre-construction conference with representatives of the Napa County Engineer. The conference is required to familiarize all authorized persons involved with policies, regulations and procedures and to discuss construction operations and methods in order to avoid any misunderstanding or conflicts during construction.

(m) CONSTRUCTION LIMITATIONS – The Contractor will be expected to conduct his operations in a manner which creates minimum damage to the natural vegetation and landscaping, paving and gravel areas. Care shall be exercised to avoid hazards that may cause injury to persons, animals or property either during working hours or after work hours, which will include dust control, backfilling trenches or placement of steel plates and temporary fencing as required. Equipment will be restricted to the immediate area of construction and trenches will be backfilled as soon as possible.

Receptacles for construction residue, including oil, cleaning fluids and litter, will be covered. Such residues will be disposed of in a proper manner.

Mufflers and/or baffles will be required on all construction equipment.

Construction activity within the existing right-of-way will be scheduled to minimize traffic inconvenience and safety hazards to motorists, pedestrians and cyclists.

(n) EQUIPMENT – Standard construction equipment shall be used and shall be maintained in a safe and satisfactory condition at all times and in compliance with the latest provisions of the

CAL/OSHA regulations. All trucks and other heavy equipment shall be well maintained and in proper working order and in compliance with all applicable laws and regulations. Tracked vehicles shall be rubber tracked only.

(o) **WORKING HOURS REQUIREMENTS** – Normal work week shall be Monday through Friday 6:00 to 4:30 pm unless otherwise approved by the Engineer. No work shall be performed the working day of a County Holiday: Memorial Day: May 28, 2018, Independence Day: July 4, 2018 and no excessive noise is allowed before 8 AM.

(p) **SCOPE** – Contractor shall take into account all costs associated with the improvements, as shown on the plans and discussed in the technical specifications, when preparing the bid and shall take into account the working hour restrictions.

## 2. ORDER OF WORK

Order of work shall conform to these Special Provisions.

The Contractor shall prepare and submit a work plan and schedule in a form provided by, or acceptable to, the Engineer and submit information describing the Contractor's proposed procedures and methods of operation.

No work may begin under the contract until the schedule and description of proposed procedures and methods of operation material have been approved by the Engineer. Time required for review and approval of these items shall not constitute a basis for time extension.

The Contractor shall verify the location of all existing utilities.

No work may begin under the contract until traffic control and construction signage is implemented.

The Contractor shall order work to minimize obstruction to adjacent property owner and inconvenience to the traveling public. The contractor will coordinate with the County and establish traffic control and implement work in a manner which provides the greatest possible access to the property owners adjacent to the work area.

Full compensation for complying with the above provisions shall be considered as included in the contract price for the various bid items, and no separate payment will be made.

## 3. MOBILIZATION

Mobilization shall conform to these Special Provisions and shall include but not limited to bonds, insurance, construction fencing, office trailers, temporary sheds, temporary utilities, temporary facilities, equipment and supplies, mobilization and demobilization, and all preparatory work prior to the commencement of productive work at the site required under this contract.

Full compensation for conforming to the provisions of this section shall be considered as included in the contract lump sum price. No additional compensation will be allowed therefore.

4. SUBMITTALS

The contractor shall submit products or materials list, specifications and schedule at the pre-construction meeting. The contractor shall submit for the Engineer's approval, four cut sheets for all of the products and materials to be used for all work on the project. The cut sheets submitted by the contractor shall clearly describe how the proposed products or materials meet the specifications of the products and materials requested in the project specifications.

5. SCHEDULE

Progress schedules will be required for this contract. The contractor shall submit schedule at the pre-construction meeting.

6. CONSTRUCTION AREA SIGNS

Contractor shall coordinate with the Engineer on construction area signs.

7. MAINTAINING TRAFFIC

Maintaining traffic shall conform to these special provisions. A traffic control plan shall be submitted to the County at least (10) days prior to commencing operations.

When public traffic is routed through the work, provision for a passageway through construction operations will be at the Contractors expense. Detours used exclusively by the Contractor for hauling materials and equipment shall be constructed and maintained by the Contractor at the Contractor's expense. The failure or refusal of the Contractor to construct and maintain detours at the proper time shall be sufficient cause for closing down the work until the detours are in satisfactory condition for use by public traffic and there will be no reimbursement for the delay to the Contractor. The cost of repairing damage to detours caused by public traffic will be paid for as extra work at FEMA approved rates.

Traffic control shall comply with Part 6 of the MUTCD and of the MUTCD California Supplement. Nothing in this specification is to be construed as to reduce the minimum standards in these manuals.

The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public. Unless otherwise provided in the special provisions, all public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible. Where possible, public traffic shall be routed on new or existing paved surfaces. Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.

Existing traffic signals and highway lighting shall be kept in operation for the benefit of the traveling public during progress of the work, and other forces will continue routine maintenance

of existing systems. Operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses, and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

The Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic.

The Contractor shall furnish a pilot car and driver and flaggers for the purpose of expediting the passage of public traffic through the work under one-way controls if conditions warrant. At locations where traffic is being routed through construction under one-way controls and when ordered by the Engineer, the movement of the Contractor's equipment from one portion of the work to another shall be governed in accordance with the one-way controls.

Water or dust palliative shall be applied if ordered by the Engineer for the alleviation or prevention of dust nuisance.

In order to expedite the passage of public traffic through or around the work and where ordered by the Engineer, the Contractor shall install signs, lights, flares, temporary railing (Type K), barricades and other facilities for the sole convenience and direction of public traffic. Also where directed by the Engineer, the Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the work. The cost of furnishing and installing the signs, lights, flares, temporary railing (Type K), barricades, and other facilities are part of the contract.

It is the Contractor's responsibility to provide for the safety of traffic and the public during construction. Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense and without cost to the State, furnish, erect and maintain those fences, temporary railing (Type K), barricades, lights, signs and other devices and take such other protective measures that are necessary to prevent accidents or damage or injury to the public.

Fences, temporary railing (Type K), barricades, lights, signs, and other devices furnished, erected and maintained by the Contractor, at the Contractor's expense, are in addition to any construction area traffic control devices for which payment is provided for elsewhere in the specifications.

The Contractor shall also furnish such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered.

Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in Part 6 of the MUTCD and of the MUTCD California Supplement. Signs or other protective devices furnished and erected by the Contractor, at the Contractor's expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the specifications. Signs furnished and erected by the Contractor, at the Contractor's expense, shall be approved by the Engineer as to size, wording and location.

The installation of general roadway illumination shall not relieve the Contractor of the responsibility for furnishing and maintaining any of the protective facilities herein before specified.

Construction equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic. All movements of workmen and construction equipment on or across lanes open to public traffic shall be performed in a manner that will not endanger public traffic.

The Contractor's trucks or other mobile equipment which leave a freeway lane, that is open to public traffic, to enter the construction area, shall slow down gradually in advance of the location of the turnoff to give following public traffic an opportunity to slow down.

When leaving a work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

Vehicles and pedestrians shall be protected from falling trees and other objects.

When vertical clearance is temporarily reduced to 15 feet, or less, low clearance warning signs shall be placed in accordance with Part 2 of the MUTCD and the MUTCD California Supplement, and as directed by the Engineer. Signs shall conform to the dimensions, color, and legend requirements of the MUTCD, the MUTCD California Supplement, and these specifications except that the signs shall have black letters and numbers on an orange retroreflective background. W12-2P signs shall be illuminated so that the signs are clearly visible.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

Temporary facilities which the Contractor uses to perform the work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.

Should the Contractor appear to be neglectful or negligent in furnishing warning devices and taking protective measures as above provided, the Engineer may direct attention to the existence of a hazard and the necessary warning devices shall be furnished and installed and protective measures taken by the Contractor at the Contractor's expense. Should the Engineer point out the inadequacy of warning devices and protective measures, that action on the part of the Engineer shall not relieve the Contractor from responsibility for public safety or abrogate the obligation to furnish and pay for these devices and measures.

The fact that any underground facility is not shown upon the plans shall not relieve the Contractor of the responsibility to ascertain the location of those underground improvements or facilities which may be subject to damage by reason of the Contractor's operations.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

## **FLAGGERS**

Flaggers while on duty and assigned to traffic control or to give warning to the public that any dangerous conditions may be encountered, shall perform their duties and shall be provided with the necessary equipment in conformance with Part 6 of the MUTCD and of the MUTCD California Supplement. The equipment shall be furnished and kept clean and in good repair by the Contractor at the Contractor's expense.

The cost of furnishing all flaggers, including transporting flaggers, to provide for passage of public traffic through the work the Contractor. The cost of providing stands or towers for use of flaggers shall be considered as part of the cost of furnishing flaggers.

Traffic-handling equipment and devices damaged from any cause during the progress of the work by the Contractor shall be repaired, including painting if necessary, or replaced by the Contractor at the Contractor's expense.

When traffic control devices furnished by the Contractor are no longer needed for controlling traffic, they shall be removed from the site of the work. Whenever the term "hours of darkness" is used in the specifications it shall be deemed to mean the hours of darkness as defined in Division 1, Section 280, of the California Vehicle Code.

Retroreflective sheeting shall conform to the requirements in ASTM Designation: D 4956 and to the special provisions.

### **BARRICADES**

Barricades shall be constructed of lightweight commercial quality materials, as approved by the Engineer. Stay bracing for "A"-frame designs shall not be rigid.

Markings for barricade rails shall be alternate orange and white stripes. The entire area of orange and white stripes shall be Type-I, engineering grade, or Type-II, super engineering grade, retroreflective sheeting. The color of the orange retroreflective sheeting shall conform to PR No. 6, Highway Orange, of the Federal Highway Administration's Color Tolerance Chart.

Retroreflective sheeting shall be placed on rail surfaces in such a manner that no air bubbles or voids are present between the rail surface and retroreflective sheeting. The predominate color for barricade components other than rails shall be white, except that unpainted galvanized metal or aluminum may be used.

Owner identification shall not be imprinted on the reflectorized face of any rail, but may be imprinted elsewhere.

Ballasting shall be by means of sand filled bags placed on the lower parts of the frame or stays, but shall not be placed on top of the barricade nor over any reflectorized barricade rail face facing traffic.

If the barricades are displaced or are not in an upright position, from any cause, the barricades shall immediately be replaced or restored to their original location, in an upright position, by the Contractor.

### **FLASHING SIGNS**

Flashing arrow signs shall be finished with commercial quality flat black enamel and shall be equipped with yellow or amber lamps that form arrows or arrowheads as required. Each lamp shall be provided with a visor and the lamps shall be controlled by an electronic circuit that will provide between 30 and 45 complete operating cycles per minute in each of the displays and modes specified. The control shall include provisions for dimming the lamps by reducing the voltage to 50 percent,  $\pm 5$  percent, for nighttime use. Type I signs shall have both manual and automatic photoelectric dimming controls. Dimming in both modes shall be continuously variable over the entire dimming range.

Flashing arrow signs shall conform to the following legibility requirements. The minimum legibility distance is the distance at which flashing arrow signs shall be legible at noon on a cloudless day and at night by persons with vision of or corrected to 20/20.

Flashing arrow signs shall be capable of being operated in 4 different display modes as follows. The display to be used shall be as directed by the Engineer:

1. Pass Left Display
2. Pass Right Display
3. Simultaneous Display
4. Caution Display

Flashing arrow signs shall also be capable of operating in one or both of the following modes, at the option of the Contractor:

1. Flashing Arrow Mode
2. Sequential Mode

In the flashing arrow mode, all lamps forming the arrowhead and shaft shall flash on and off simultaneously. In the sequential mode, either arrowheads or arrows shall flash sequentially in the direction indicated. In the simultaneous display mode, the lamps forming both right and left arrowheads and the lamps of the arrowshaft (center 3 on Type I signs) shall flash simultaneously. On Type II signs, the lamps forming the right and left arrowhead, except the center lamp, may be continuously illuminated while the lamps forming the shaft and the center lamp of the arrowheads flash on and off simultaneously. In the caution display mode, a combination of lamps not resembling any other display or mode shall flash. Each flashing arrow sign shall be mounted on a truck or on a trailer and shall be capable of operating while the vehicle is moving and shall be capable of being placed and maintained in operation at locations as shown on the plans, as specified in the special provisions or as directed by the Engineer. Flashing arrow signs shall be mounted to provide a minimum of 7 feet between the bottom of the sign and the roadway. Trailers on which flashing arrow signs are mounted shall be equipped so that they can be leveled and plumbed.

## 8. TRAFFIC CONTROL SYSTEMS FOR LANE CLOSURES

Closures shall conform to the sections "Description of Work" and "Maintaining Traffic" of these special provisions.

### **CLOSURE SCHEDULE**

Contractor may request closure from County in situations where it is warranted but base the bid assuming that full closure is not allowed and at a minimum 1 way traffic is required at all times. A written schedule of planned closures for the next week period, defined as Sunday noon through the following Sunday noon, shall be submitted by noon each Monday. A written schedule shall be submitted at the pre-construction meeting 5 days before the anticipated start of any operation that will:

- (a) Reduce horizontal clearances, traveled way, including shoulders, to two lanes or less due to such operations as temporary barrier placement and paving.
- (b) Reduce the vertical clearances available to the public due to such operations as pavement overlay, overhead sign installation, or falsework or girder erection.

The Closure Schedule shall show the locations and times of the proposed closures. The Closure Schedule request forms furnished by the Engineer shall be used. Closure Schedules submitted to the Engineer with incomplete or inaccurate information will be rejected and returned for correction and resubmittal. The Contractor will be notified of disapproved closures or closures that require coordination with other parties as a condition of approval.

Closure Schedule amendments, including adding additional closures, shall be submitted by noon to the Engineer, in writing, at least 3 business days in advance of a planned closure. Approval of Closure Schedule amendments will be at the discretion of the Engineer.

The Engineer shall be notified of cancelled closures 2 business days before the date of closure. Closures that are cancelled due to unsuitable weather may be rescheduled at the discretion of the Engineer.

Closure is defined as the closure of a traffic lane or lanes, including shoulder, within a single traffic control system. Closures shall conform to the provisions in "Traffic Control System for Lane Closure" of these special provisions.

Under one-way reversing traffic control operations, public traffic may be stopped in one direction for periods not to exceed 10 minutes. After each stoppage, all accumulated traffic for that direction shall pass through the work zone before another stoppage is made.

Not more than 1 separate stationary lane closure will be allowed in each direction of travel at one time. The maximum length of a single stationary lane closure shall be 500 feet.

Personal vehicles of the Contractor's employees shall not be parked on the traveled way or shoulders.

When work vehicles or equipment are parked within 6 feet of a traffic lane to perform active construction, the shoulder area shall be closed with fluorescent orange traffic cones or portable delineators placed on a taper in advance of the parked vehicles or equipment and along the edge of the pavement at 25-foot intervals to a point not less than 25 feet past the last vehicle or piece of equipment. A minimum of 9 traffic cones or portable delineators shall be used for the taper. A W20-1 (ROAD WORK AHEAD) or W21-5b (RIGHT/LEFT SHOULDER CLOSED AHEAD) or C24(CA) (SHOULDER WORK AHEAD) sign shall be mounted on a crashworthy portable sign support with flags. The sign shall be placed where designated by the Engineer. The sign shall be a minimum of 48" x 48" in size. The Contractor shall immediately restore to the original position and location a traffic cone or delineator that is displaced or overturned, during the progress of work. A minimum of one paved traffic lane, not less than 11 feet wide, shall be open for use by public traffic.

Full compensation for conforming to the provisions of this section shall be considered as included in the contract lump sum price. No additional compensation will be allowed therefore.

## 9. STORM WATER POLLUTION PREVENTION MEASURES

Contractor shall comply with all Storm Water Pollution Prevention requirements as required by the Regional Water Quality Control Board and Napa County. The Contractor shall implement water quality control measures to effectively handle storm water run-off both during and after construction. The contractor shall utilize best management practices as outlined in the CA Storm Water Handbook for construction. This can be found at [www.cabmphandbooks.com](http://www.cabmphandbooks.com).

Full compensation for conforming to the provisions of this section shall be considered as included in the contract unit prices paid for the various items of work and no additional compensation will be allowed therefore.

10. PRESERVATION OF PROPERTY

Preservation and Protection of Trees and Plantings: The Contractor shall examine the site and have full knowledge of the conditions and difficulties to be met. No variations or allowance from the contract sum will be made because of lack of knowledge.

The Contractor shall provide the necessary safeguards, shall exercise caution against injury or defacement of existing improvements and plantings and shall be responsible for the damage resulting from operations. Repair or replacement of such damage shall be at no cost to the County.

No vehicles, construction equipment, materials or facilities shall be parked, stockpiled or located within the protected perimeter of the trees. No storage or dumping of oil, gasoline, chemicals or other substances potentially harmful to trees shall occur within the protection perimeter of trees.

Full compensation for conforming to the provisions of this section shall be considered as included in the contract unit prices paid for the various items of work and no additional compensation will be allowed.

Protection of Existing Facilities and Property: The Contractor shall notify Underground Service Alert (USA) for marking the locations of existing underground facilities.

The Contractor shall take all necessary measures to avoid injury to existing surface and underground utility facilities in and near the site of the work. No error or omission of utility markouts shall be construed to relieve the Contractor from his responsibility to protect all underground pipes, conduits, cables or other structures. The Contractor shall indemnify the County, FEMA and CalOES and hold them harmless from any and all claims, demands, or liability made or asserted by any person or entity on account of or in connection with any damage to such surface or underground facilities caused by the Contractor or any of his agents or subcontractors.

The existing underground facilities in the area of work may include telephone, television and electrical cables, gas mains, water mains, sewer mains and drainage conduits. The various utility companies shall be notified before trenching begins and at such other times as required to protect their facilities. Underground facilities shall be located and exposed ahead of trenching to prevent damage to the facilities, and to determine the depth and character of all facilities that cross or infringe on the trench prism. The Contractor shall immediately notify the Engineer of any facilities found. If damage should occur to the existing facilities, the utility company and the Engineer shall be notified immediately and repairs acceptable to the utility company shall be made at the Contractor's expense.

Due care shall be exercised to avoid injury to existing highway improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs and other plants that are not to be removed. Roadside trees, shrubs and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway facilities and any other improvements or

facilities within or adjacent to the highway shall be protected from injury or damage, and if ordered by the Engineer, the Contractor shall provide and install suitable safeguards, approved by the Engineer, to protect the objects from injury or damage. If the objects are injured or damaged by reason of the Contractor's operations, the objects shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by the specifications accompanying the contract, if any of the objects are a part of the work being performed under the contract. The Engineer may make or cause to be made those temporary repairs that are necessary to restore to service any damaged highway facility. The cost of the repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the contract.

Full compensation for conforming to the requirements of this section shall be considered as included in the contract prices paid for the various contract items of work and no additional compensation will be allowed.

11. DUST CONTROL

No separate payment will be made for work performed or material used to control dust resulting from the Contractor's performance of the work, either inside or outside the right of way.

12. CLEARING AND GRUBBING

Work shall not disrupt soil below grade and no stumps will be ground or removed. Only woody debris is part of this contract.

13. DISPOSAL OF SURPLUS MATERIAL

Disposal of surplus materials shall conform to "Miscellaneous Provisions" of these Special Provisions Section A.

The Contractor shall load, haul from the site of work and properly dispose of all surplus excavated material including, but not limited to, rock, concrete and soil prior to the beginning of any earthwork, the Contractor shall make all arrangements for disposal of the surplus material at offsite locations and shall file with the owner the written consent of the owner of the property upon which disposal of surplus material is intended.

Full compensation for Disposal of Surplus Material shall be considered as included in the contract prices paid for the various contract items of work and no additional compensation will be allowed.

14. EXECUTION

(a) Pre-Construction Meeting - A pre-construction meeting shall be held at Napa County's Public Works conference room or Zoom at which time the Contractor is to present their proposed construction method and schedule. The meeting will include the Contractor's representative, the Engineer and Owner's representative.

(b) Removal Of Asbestos And Hazardous Substances

When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and the Contractor encounters materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe. The Contractor shall immediately cease work in the affected area and report the condition to the Engineer in writing.

In conformance with Section 25914.1 of the Health and Safety Code, removal of asbestos or hazardous substances including exploratory work to identify and determine the extent of the asbestos or hazardous substance will be performed by separate contract.

(c) Subcontracting

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

Submit copies of subcontracts upon request by the Engineer.

Before subcontracted work starts, submit a Subcontracting Request form.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations' Web site.

Upon request by the Engineer, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

Each subcontract and any lower tier subcontract that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions. Noncompliance shall be corrected. Payment for subcontracted work involved will be withheld from progress payments due, or to become due, until correction is made. Failure to comply may result in termination of the contract.

(d) Prompt Payment Of Funds Withheld To Subcontractors

Retainage will be withheld by the agency from progress payments due the prime contractor. Retainage by the prime contractor on subcontractors is prohibited and no retainage will be held by the prime contractor from progress due subcontractors. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Contractor or subcontractor in the event of a

dispute involving late payment or nonpayment by the prime contractor or deficient subcontract performance, or noncompliance by a subcontractor.

15. RESERVED

16. TREES DEBRIS

This work shall consist of removing and hauling downed trees, logs, branches and woody debris within the County right of way that are the result of emergency services cutting and clearing to allow opening of roadways. As such, no standing tree removal is part of this project.

Conduct inspections in accordance with Contractor's own Quality Control Plan (QCP). County will provide quality assurance inspections during construction; quality control is the contractor's responsibility. Exercise due care and caution for the safety and welfare of the workmen employed on the job, bystanders and property.

Haul routes must be planned, prior to proposing, observing load limits on bridges or roadways, existing roadway conditions, and Federal, State and local governmental regulations regarding truck traffic and truck routes. The Contractor shall comply with all legal load restrictions in hauling of materials on public roads. Permits as required must be obtained by the Contractor at its cost. Permits will not relieve the Contractor of liability for damage which may result from moving equipment. The operation of equipment of such weight or so loaded as to cause damage to roadways or to structures or to any type of construction will not be permitted. Hauling of materials over unpaved roads shall be only as directed by the County and subject to FEMA approval. The Contractor shall be responsible for all damage done by his hauling equipment. Contractor and suppliers shall also use County designated truck routes for all through traffic, deviating from the route/s only at the point closest to the pick-up or drop-off of goods or materials.

Each vehicle must have a properly serviced fire extinguisher and a minimum of one fire tool per cutting crew member and five gallons of water. All vehicles and motorized equipment must utilize effective manufacturer-certified spark arresters and muffler systems.

Tracked vehicles shall have rubber tracks or contractor will be held responsible for damage.

Furnish all necessary equipment, qualified supervisors, and crews to complete the work. Permits and licenses of any nature, necessary for any and all work, shall be secured and paid for by the Contractor. All work is to be performed in accordance with approved and scientific tree removal practices.

All hazard trees and debris shall become the possession of the Contractor. No hazard tree material not going to a landfill will be moved to any debris management site without prior approval from the County and/or FEMA approval.

Coordinate all work as necessary to complete the project, avoid damages to utilities and maintain utility service with each affected utility company.

Boundary fences must not be damaged and chips or debris must not be propelled onto the neighboring lands. No woody material is to be left on or piled up against boundary fences. Work

may need to be completed by contractor by hand near property boundaries in order to meet this standard.

Roads, trails, and other improvements, including but not limited to gates, fences or signs damaged by contractor will be repaired to a like or better condition as that found prior to the start of work. Repairs may include repairing or replacing drainage control features. Significant damage to existing roads, trails or other improvements, caused by contractor, must be repaired by contractor at contractor's expense within ten (10) working days of notification by the County.

Soil disturbance will be as minimal as possible and any work disturbing soil below grade is allowed. Operations will cease before causing damage which will result in soil erosion or compaction.

All issues and concerns of adjacent property owners and others shall be referred to the COUNTY's construction manager.

# FEDERAL PROVISIONS

## SECTION 'C'

### FEDERAL PROVISIONS

- A. **Government** means the United States of America and any executive department or agency thereof.
- B. **FEMA** means the Federal Emergency Management Agency.
- C. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

### FEDERAL CHANGES

- A. Contractor shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this contract.
- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### ACCESS TO RECORDS

- A. The Contractor agrees to provide the County, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. 44 CFR §13.36(i)(10).
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date County makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. 44 CFR §13.36(i)(11).
- D. The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

### DEBARMENT AND SUSPENSION

- A. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. 44 CFR § 13.35; Gov. Code § 4477.
- B. Contractor agrees to the provisions of Attachment 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Attachment 1, Contractor is the "prospective lower tier participant."
- C. The Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- A. The County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject

to any obligations or liabilities to the County, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE (applicable to all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees; 44 CFR §13.36(i)(3))

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60).

- A. Contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- B. Contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- D. Contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

ANTI-KICKBACK ACT COMPLIANCE (applicable to all contracts and subgrants for construction or repair; 44 CFR §13.36(i)(4))

Contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

DAVIS-BACON ACT COMPLIANCE (applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation; 44 CFR §13.36(i)(5))

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County's expenses incurred in connection with the services provided under this Agreement, Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below. These requirements are in addition to the requirements set forth in Section 19(b) of the Agreement.

- A. The Contractor shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.
- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at [www.wdol.gov](http://www.wdol.gov). Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop down menu for State, select, "California." In the drop down menu for County, select "Napa." In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

CONTRACT WORK HOURS AND SAFETY STANDARDS (applicable to construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers; 44 CFR §13.36(i)(6))

- A. **Compliance:** Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

- B. Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- C. Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

#### NOTICE OF REPORTING REQUIREMENTS

- A.** Contractor acknowledges that it has read and understands the reporting requirements of FEMA stated in 44 CFR § 13.40 et seq., 13.50-13.52 and Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.
- B.** The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A.** Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
  - 1) The copyright in any work developed with the assistance of funds provided under this Agreement;
  - 2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement. 44 CFR §13.34, 13.36(i)(8)-(9).
- B.** The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### PATENT RIGHTS (applicable to contracts for experimental, research, or development projects financed by FEMA; 44 CFR §13.36(i)(8))

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA.
- B.** Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Contractor agree to take the

necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.

- C. The Contractor agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

#### ENERGY CONSERVATION REQUIREMENTS

- A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. 44 CFR § 13.36(i)(13).
- B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### CLEAN AIR AND WATER REQUIREMENTS (applicable to all contracts and subcontracts in excess \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year; 44 CFR §13.36(i)(12))

- A. Contractor agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- B. Contractor agrees to report each violation of these requirements to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.
- C. The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

#### TERMINATION FOR CONVENIENCE OF COUNTY (applicable to all contracts in excess of \$10,000; 44 CFR §13.36(i)(2))

See Paragraph 17 of Section A of the Special Provisions.

#### TERMINATION FOR DEFAULT (applicable to all contracts in excess of \$10,000; 44 CFR §13.36(i)(2))

Contractor's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement.

See Paragraph 16 of Section A of the Special Provisions.

#### LOBBYING

- A. Contractor shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. Contractor agrees to the provisions of Attachment 2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).
- C. Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONTRACTOR shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required by 44 CFR 13.36(e). Failure to perform the "Good Faith Effort" process and submit the DBE Subcontractor Utilization and Performance forms

with the bid shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the contract.

#### PRIME CONTRACTOR RESPONSIBILITIES

All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

#### "GOOD FAITH" EFFORT PROCESS

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a CONTRACTOR fails to take the steps outlined below shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

- A. Place qualified small and minority businesses and women's business enterprises on solicitation lists (44 USC 13.36(e)(2)(i));
- B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources (44 USC 13.36(e)(2)(ii));
- C. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises (44 USC 13.36(e)(2)(iii));
- D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises (44 USC 13.36(e)(2)(iv)); and
- E. Use the services and assistance of the Small Business Administration.

#### INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

The preceding provisions include, in part, certain standard terms and conditions required by FEMA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FEMA, as set forth in 44 CFR Part 13, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FEMA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests that would cause County to be in violation of the FEMA terms and conditions.

**Attachment 1**

**CERTIFICATION REGARDING LOBBYING**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

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

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

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

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

Note: This form is to be included with the contract when it is executed and only by the successful low bidder.

## DEFINITION OF BID ITEMS

### PART 1 - GENERAL

#### 1.01 GENERAL

- A. Unless otherwise specified in other individual sections of these specifications, quantities of work shall be determined from measurements or dimensions in horizontal planes.
- B. Units of measurement shall be in accordance with U.S. Standard Measures.

#### 1.02 PAYMENT PROVISIONS

The contractor shall provide price information on the Price Bid Summary Sheet. The payments to the Contractor shall be for roads listed on page C-2 of the Contract. Additional work that is required as a result of unforeseen conditions such as additional material being placed by County onto the roadway after the bid opening is not considered part of that scope in this contract and would be compensated in addition to the total base bid amount shown on page C-2. Contractors are required to examine all of the work and by bidding the project is accepting the quantities listed in Part 3 below. Other than for bid item 1 and 2, unit price for additional work will be determined by dividing the lump sum price by the estimated price shown in Part 3 "Bid Items". The burden of showing that extra work is required is on the Contractor and shall include disposal tickets, haul truck capacity, field inspection reports, photos, etc... and be sufficient to provide substantiation for FEMA and CalOES reimbursement. The total amount of change orders is limited to 25% of the base bid amount shown on page C-2.

### PART 2 - MATERIALS

- 2.01 The Contractor is reminded that written permission to dispose of any material must be obtained and delivered to the Engineer in advance of any disposal activities. Failure to do so shall result in the contractor accepting all liabilities for the material. All work shall only involve the removal of woody debris material which includes logs, sticks, branches, trunks, downed trees, etc... within the County right of way. Under no circumstances shall the contractor remove material on private property or cut down standing trees regardless of their condition.

### PART 3 – BID ITEMS

- 3.01 In the event that there is question by Contractor if material is in the County right of way, County will provide direction. In most but not all cases the right of way is centered on the roadway centerline. The measurement and payment items are listed below:

## BASE BID ITEMS

Item 1: Mobilization –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for the initial mobilization of equipment to the various sites. In the event that a changer order is needed and Contractor is already mobilized at a certain location there will be no compensation for remobilization.

Item 2: Traffic Control-Measurement of this item will be on a lump sum basis. This work shall include full compensation for furnishing all labor, tools, equipment, and incidentals to provide traffic control as needed on various sites in accordance with the specification.

Item 3: Aetna Springs Road, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 40-60 foot +/- wide right of way on both sides of the road from Aetna Springs Resort to the end, (3.17 miles). The volume of material is estimated at XXXXX cubic yards.

Item 4: Atlas Peak Road, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 50 foot +/- wide right of way on both sides of the road from Old Foss Valley Road to the end of the roadway, (2.7 miles). The volume of material is estimated at XXXXX cubic yards.

Item 5: Berryessa Knoxville Road, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 40 foot +/- wide right of way on both sides of the entire road, (49 miles). The volume of material is estimated at XXXXX cubic yards.

Item 6: Butts Canyon Road, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 66 foot +/- wide right of way on both sides of the road from Pope Creek to the County line, (5 miles). The volume of material is estimated at XXXXX cubic yards.

Item 7: James Creek Road, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 40 foot +/- wide right of way on both sides of the entire road, (1.9 miles). The volume of material is estimated at XXXXX cubic yards.

Item 8: Live Oak Lane, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 48 foot +/- wide right of way on both sides of the entire road, (.1 miles). The volume of material is estimated at XXXXX cubic yards.

Item 9: Mulford Drive, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 50 foot +/- wide right of way on both sides of the entire road, (.25 miles). The volume of material is estimated at XXXXX cubic yards.

Item 10: Pope Canyon Road, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 40-60 foot +/- wide right of way from Valley Road to the end on both sides of the road, (9.2 miles). The volume of material is estimated at XXXXX cubic yards.

Item 11: Rimrock Drive, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 52 foot +/- wide right of way on both sides of the entire road (.5 miles). The volume of material is estimated at XXXXX cubic yards.

Item 12: Snell Valley Road, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 50 foot +/- wide right of way on both sides of the entire road (3 miles). The volume of material is estimated at XXXXX cubic yards.

Item 13: Spanish Flat Loop Road, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 60 foot +/- wide right of way on both sides of the entire road (.75 miles). The volume of material is estimated at XXXXX cubic yards.

Item 14: Steele Canyon Road, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 50 foot +/- wide right of way on both sides of the entire road (6.1 miles). The volume of material is estimated at XXXXX cubic yards.

Item 15: Wragg Canyon Road, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 60 foot +/- wide right of way on both sides of the entire road (4.6 miles). The volume of material is estimated at XXXXX cubic yards.

Item 16: Sugar Loaf Drive, –Measurement of this item shall be on a lump sum basis. This work shall include full compensation for furnishing all labor, materials, tools equipment, and incidentals to gather, remove and haul away tree debris in the 52 foot +/- wide right of way on both sides of the entire road (.25 miles). The volume of material is estimated at XXXXX cubic yards.