



A Tradition of Stewardship
A Commitment to Service

Department of Public Works

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Steven E. Lederer
Director

June 18, 2021

Re: Carneros Fire Station 210, PW 20-27 –Addendum No. 2

Dear Prospective Bidders,

Enclosed here within is Addendum Number 2 for the above-referenced project. This Addendum Number 2 forms a part of, and modifies, the original Carneros Fire Station 210, PW 20-27, bid package. All other requirements remain the same.

ADDENDUM NUMBER 2

Item 1 - REVISIONS TO SPECIFICATIONS:

1. Add a new section 12. Hot Mix Asphalt to Special Provisions – Section ‘B’ General Requirements and updated the table of contents to reflect this

Item 2- RESPONSES TO BIDDERS QUESTIONS:

1. Is recycled Class 2 Baserock acceptable for this project?

Answer: Civil Engineer takes no exception to use of recycled class II AB if acceptable to the Geotechnical Engineer. The Geotechnical Engineer takes no exception to the use of recycled class II AB in exterior paving sections of HMA or PCA.

2. Sheet S-001 in the wind data calls for the ultimate wind speed to be 103 mph, section 13 34 00.2.2.B.2.a calls for the basic wind speed to be 115 mph. Please confirm what wind speed is to be used.

Answer: It is structurally acceptable to use 103 mph per A/S-001

3. Does the roof or wall panel systems require any finish warranties? If so is a 25 year timeframe acceptable?

Answer: Yes. Finish warranties are required. The warranty for the panels are inherent in the material specified, thus it is not separately indicated in the spec. The finish warranty shall match the basis of design wall and roof panels published warranties including (2) year standard material workmanship

warranty, (20) year standard finish warranty for KS Granitestone wall panels and (30) year standard finish warranty for KingRib roof panels.

4. Does the roof system require a weather tightness warranty? If so please advise on the timeframe and if a specific coverage amount is required in dollars per sq. ft.

Answer: As per the Special Provisions/General conditions, section 19.c, a 12 month contractor warrantee/guarantee is required for all work including roof system. Other inherent product warranties for basis of design roof panel shall apply, including for weathertight installation (2) year standard warranty for KingRib roof panel and (30) year warranty for coatings.

END OF ADDENDUM NUMBER 2

Thank you for your interest in this project. If you have any questions relating to this correspondence, please submit those questions in writing to Daniel Basore at Daniel.Basore@CountyofNapa.org.

Very truly yours,

STEVEN E. LEDERER
Director of Public Works

by: _____
Daniel Basore, P.E.
Engineering Supervisor

Attachments

1. Addendum 2 – Updated Table of Contents
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Carneros Fire Station 210, PW 20-27

SPECIAL PROVISIONS SECTION A - GENERAL CONDITIONS

1. **LOCATION**

5260 Old Sonoma Road, Napa CA 94559

2. **DESCRIPTION OF WORK**

Work generally consist of, but is not limited to, all labor and materials for the site preparation and construction of a new 1,860 square foot pre-engineering steel volunteer fire station building, site paving, sidewalks, asphalt parking, and driveway approach on a currently undeveloped lot. Construction consists of all labor and materials as indicated in Contract Documents.

3. **DEFINITIONS AND TERMS**

As used herein, unless the context otherwise requires, the following terms have the following meaning:

Contractor. The successful Bidder whose Bid Proposal is accepted by the Board of Supervisors of the County of Napa or the Public Works Director and to whom the Contract is awarded.

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

Department of Transportation. The Napa County Board of Supervisors.

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 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, Sacramento. Room 101, Administration Building, 1195 Third Street, Napa, California 94559.

State Highway Engineer. The County Engineer.

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

4. **CONTRACT DOCUMENTS**

The Contract Documents shall include the Standard Specifications of the State of California, Department of Transportation, dated 2018, insofar as same may apply, the Special Provisions, the Notice to Contractors, the Proposal, the Contract (“C”) pages, the two contract bonds required herein, any supplemental agreements amending or extending the work, and pertinent portions of other documents included by reference thereto in the Special Provisions or the Contract pages.

5. **TIME OF COMPLETION**

Attention is directed to all of the provisions of Section 8, “Prosecution and Progress,” of the Standard Specifications and these Special Provisions. Due to the long lead-time in procuring Pre-Engineered Structures, the time of completion is as follows:

Site work:

The Contractor shall begin work upon receiving notice that the contract has been executed and approved and shall diligently prosecute the same completion of all work in the Plans and Specifications including but not limited to demolition, grading, concrete, landscaping, paving, underground utilities, and foundation not including the vertical construction of the Pre-Engineered Structure before the expiration of **One hundred (100)** working days from the start of work.

Pre-Engineered Structure:

The Contractor shall complete installation of the Pre-Engineered structure within **fifty (50)** working days following receipt of metal building.

No working days will be held against the contractor from completion of site work until receipt of the Pre-Engineered Structure.

6. **LIQUIDATED DAMAGES**

Attention is directed to the provisions of Section 8-1.10 of the Standard Specifications. The Contractor shall pay to County the sum of **\$3,000 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.

7. **SPECIALTY EXTRA WORK**

Attention is directed to Section 9-1.05 of the Standard Specifications.

8. **PREVAILING WAGES**

In accordance with the provisions of Section 1774 of the Labor Code of the State of California, the Board of Supervisors of the County of Napa has ascertained from the Director of Industrial Relations the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) applicable to the work to be done. These rates of wages are on file and may be seen at the County of Napa, Department of Public Works, 1195 Third Street, Room 101, Napa, California.

9. **PAYROLL RECORDS**

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

Access to Records/Retention. COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Secretary General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Contract for the purpose of making audit, examination, excerpts and transcriptions. Original records shall be forwarded to the COUNTY after Contract completion or retained for a period of 6 years after Contract completion.

10. **PROPOSAL REQUIREMENTS AND CONDITIONS**

Attention is directed to Section 2 of the Standard Specifications.

(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 at least 5 working days before the scheduled bid opening, and if approved, 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.

11. **AWARD AND EXECUTION OF THE CONTRACT**

Attention is directed to Section 3 of the Standard Specifications, contract bonds. 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 9550 of the Civil Code in an amount equal to one hundred percent (100%) of the contract price of the work contemplated. The bonds shall be issued by one or more surety companies acceptable to the County and the Agencies.

12. **SCOPE OF WORK**

Attention is directed to Section 4 of the Standard Specifications.

The intent of the Plans and Specifications is to cover the complete 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 bids 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.

13. **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 4.05 of the Standard Specifications.

(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.

14. **CONTROL OF THE WORK**

Attention is directed to Section 5 of the Standard Specifications.

Deviations from the approved Plans and Specifications shall be approved by the Engineer and all changes shall be by written permission only.

15. **LEGAL RELATION AND RESPONSIBILITY**

Attention is directed to Section 7 of the Standard Specifications.

(a) Prevailing Wages. In-lieu of the prevailing wage rates being set forth in the Notice to Contractors as provided in Standard Specifications Section 7-1.02K(2) "Prevailing Wages", see Section 8 and 9 of these Special Provisions.

(b) Public Safety. Furnishing and maintenance of barricades, flashing lights and other 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 frequently inspect and maintain lights and barricades in proper operating condition when in use on the roadway, 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.

All expenses incurred by the County because of emergency "call-outs" and for resetting or supplementing the Contractor's barricades or warning devices, will be charged to the contractor and may be deducted from moneys due him.

(c) Acceptance of Contract. Attention is directed to Section 7-1.17 of the Standard Specifications. Acceptance will consist of the execution and filing with the County Recorder of a Notice of Completion in accordance with Civil Code section 9204.

Should it become necessary due to developed conditions to occupy any portion of the work before the contract is fully completed, such occupancy shall not constitute acceptance.

(d) Hold Harmless/Indemnification. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY, and project funding agencies 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 active or sole negligence or willful misconduct 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.

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

(1) Workers' Compensation insurance. If and to the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement; including but not limited to, coverage for workers' compensation, employer's liability and a waiver of subrogation, and shall provide 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 do business in California and having an A.M. Best rating of A VII or better or equivalent self-insurance:

(i) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than **ONE MILLION DOLLARS (\$1,000,000)** combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the

property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the occurrence limit.

(ii) Professional Liability/Errors and Omissions. RESERVED

(iii) 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. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the occurrence limit.

(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.

(i) The certificate(s) or other evidence of coverage 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.

(ii) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 2(i) and, for the comprehensive automobile liability insurance coverage referenced in 2(iii) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(iii) 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.

(iv) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(4) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be approved by, 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 if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents, and volunteers or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

(i) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 15.

16. **PROSECUTION AND PROGRESS**

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

(a) Progress Schedule. The contractor, promptly after being awarded the contract, shall prepare and submit for the Owner's and Engineer's information a Contractor's construction schedule for the work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the work and project or when requested in writing by the Engineer, shall be related to the entire project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the work.

(b) Schedule Of Submittals. The Contractor shall prepare and keep current, for the Engineer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Engineer reasonable time to review submittals.

(c) Current Progress Schedule. The Contractor shall perform the work in general accordance with the most recent schedules submitted to the Owner and Engineer.

(d) Termination of Contract. In-lieu of the provisions of Section 8-1.13 of the Standard Specifications the following shall apply.

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.

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 the County of Napa.

17. **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.

18. **MEASUREMENT AND PAYMENT**

Attention is directed to Section 9 of the Standard Specifications.

(a) Force Account Payment. In connection with Section 9-1.04D "Equipment Rental", the following shall apply:

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

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

On behalf of Contractor:

Title

Title

Name

Name

Signature

Signature

Address

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 Potential Claims procedures set forth in 5-1.43 of the Standard Specification and any subsequent claims that did not fail to comply with any portion of those Potential Claim procedures 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.*
- (B) *"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.

(e) 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.

(f) 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.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) 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.

(i) 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; mediation 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.

The final estimate shall be conclusive and binding against both parties to the contract on all questions relating to the performance of the contract and the amount of work done thereunder and compensation therefore.

19. **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 these Special Provisions as if set forth herein in full and the work and materials shall be in accordance therewith.
- (c) Guarantees. All work performed and equipment or material furnished shall be guaranteed for one (1) year from date of acceptance against any inherent or developed defects of materials or workmanship in manufacture or installations.

All guarantees normally provided by manufacturers of equipment or material installed under this project shall be furnished to COUNTY and shall remain in force for their normal life.

- (d) Ownership of Plans and Specifications. All drawings, specifications and copies thereof provided to the Bidder by COUNTY shall remain the property of 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 his bid, shall be covered in the bid and shall be made a part of the contract. The Bidder shall acknowledge receipt of addenda in the space provided in the Proposal.

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 Napa County Public Works Department, which will send a written instruction to all bidders. COUNTY will not be responsible for oral instructions.

20. **OWNER'S RIGHT TO DO WORK**

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.

21. **EQUAL OPPORTUNITY EMPLOYMENT**

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

(a) **Non-Discrimination.** During the performance of the work required by the Contract, the Contractor and its subcontractors shall not deny the benefits thereof to any person on the basis of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), nor shall they discriminate unlawfully against any employee or applicant for employment because of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40),

mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or use of family care leave. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, the Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Contract subcontracts to the Contractor work required of the 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.

22. **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 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 Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

23. **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.

24. **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 Owner and 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.

25. **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.

26. **SECTIONS OF THE 2018 STANDARD SPECIFICATIONS EXPRESSLY INAPPLICABLE.**

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

27. **FORCE MAJEURE**

In the event the work is delayed due to causes which are outside the control of both parties and their subcontractors, consultants and employees, and could not be avoided by the exercise of due care, which may include, but is not limited to, delays by regulating agencies, wars, floods, adverse weather conditions, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, fires, terrorism, the COVID-19 pandemic or other incidence of disease or illness that reaches outbreak, epidemic and/or pandemic proportions or otherwise affects the area in which the Project is located and the Contractor’s labor or supply chain, unusual delay in deliveries, riots, civil commotion or other unavoidable casualties, and other acts of God, both parties will be entitled to an

extension in their time for performance equivalent to the length of delay. Neither party will be entitled to compensation from the other for *force majeure* events.

28. **COVID-19**

Some or all of the work will be performed during a state of emergency due to the COVID-19 pandemic. Minimizing the risk of transmission among workers is essential. Contractor shall take reasonable efforts to follow these guidelines to increase hygiene on the jobsite:

- (a) Add sanitary facilities (toilet and hand washing stations with soap and hand sanitizer provided). Workers should both wash their hands with soap for twenty seconds and use hand sanitizer often.
- (b) Perform deep cleaning on jobsites including disinfecting handrails, doorknobs, equipment handles and tools on an accelerated basis.
- (c) Instead of having group safety meetings, and to keep the suggested social distance, hold smaller individual safety meetings at the jobsite maintaining social distancing guidelines.
- (d) Keep separation of at least 6 feet as feasible while on the job and always during rest and break periods and lunches; there should not be any group gatherings.
- (e) Ask workers to consider bringing a lunch made at home and stay away from congested lunch trucks and coffee shops. Ask workers to try and go directly from work to home and vice versa with as little contact with the general public as possible.
- (f) Ensure workers wear and utilize all safety equipment available on the jobsite. Contractors should provide all protective equipment as available.
- (g) Instruct sick workers to stay at home.
- (h) Remind workers not shake hands when greeting others.
- (i) Remind workers not to touch their eyes, noses, or mouth with unwashed hands.

SPECIAL PROVISIONS - SECTION 'B'

GENERAL REQUIREMENTS

1. GENERAL

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 County roads, and shall not disturb private property beyond the areas of work.

The Contractor shall provide access to private properties at all times.

The Contractor shall maintain continuous access to the United States Postal Service and emergency services. The Contractor shall notify the local postmaster and emergency services at least 48 hours before work will commence.

Personal vehicles of the Contractor's employees shall not be parked on the traveled way or shoulders, including any section closed to public traffic. Temporary "NO-STOPPING," "NO PARKING," and "TOW-AWAY" signs shall be posted by the Contractor upon authorization of the County.

Weekend Work: Contractor shall provide an advance written notice to the County, Construction Manager at least five days prior to working on the weekend. Contractor shall also provide the specific scope of work that will be occurring on the weekend.

The Contractor shall provide to the Engineer the names, address and telephone numbers of at least two emergency contacts for the duration of the contract.

2. GENERAL REQUIREMENTS

(a) LAYOUT OF WORK – The Contractor shall lay out the work as directed by the Engineer in the field.

(b) TRAFFIC CONTROL PLAN – The Contractor shall prepare the Temporary Traffic Control Plan (TCP) for Engineers review and approval. The TCP shall be submitted to the Engineers at the preconstruction meeting and at the minimum shall include number and location of all Construction Area Signs, Temporary Traffic Control Signs including Portable Changeable Message Signs, number of flaggers, pilot cars, etc.

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

(d) PROTECTION OF EXISTING FACILITIES AND PROPERTY – Protection of existing facilities shall conform to Section 5-1.36, "Property and Facility Preservation," of the Standard Specifications and these Special Provisions.

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-Northern California (USA)	1-800-642-2444 1-800-227-2600
Underground Service Alert-Southern California (USA)	1-800-422-4133 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.

(e) 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.

(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 –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 CONSTRUCTION – Construction water shall conform to Section 10-6, "Watering," of the Standard Specifications and these Special Provisions.

Water for construction activities shall be provided by the contractor. The Contractor shall contain all water within the limits of the project and prevent discharge to adjacent wetland, ditches, creeks and other facilities.

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) COOPERATION – The Contractor shall cooperate with the occupants of the existing facilities adjacent to the project and coordinate the work in such a manner as to minimize the disruption to the existing facilities.

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.

(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) DISPOSITION OF REMOVED MATERIALS – Attention is directed to section, the Contractor shall be responsible for the disposal of all surplus excavation materials off the site. The Contractor shall not dispose of any materials from demolition or removal by sale, gift or in any manner whatsoever, to the general public at the site. Disposal operations shall comply with all applicable laws and ordinances and must be approved by the Engineer.

(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) CLEAN UP – Clean up shall be performed to prevent accidents to personnel, protect all work in place, and to effect completion of the project in an orderly manner. Excess debris shall be removed from the work area immediately so as not to clutter the existing facilities. Access to all other properties within the project area shall be unobstructed and passable between the hours of 7:00 p.m. and 7:00 a.m. weekdays, on weekends and holidays, and whenever work is not actively in progress.

(o) 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.

(p) WORKING HOURS REQUIREMENTS – Normal work week shall be Monday through Friday 7:00 a.m. to 7:00 p.m. unless otherwise approved by the Engineer.

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

3. ORDER OF WORK

Order of work shall conform to these Special Provisions.

The Contractor shall prepare and submit a work plan and schedule in accordance with Section 8, “Prosecution and Progress,” of the Standard Specifications and 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 owners 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.

4. MOBILIZATION

Mobilization shall conform to Section 9 of the Technical Specification.

5. SUBMITTALS

Attention is directed to Section 5-1.23 “Submittals,” of the Standard Specifications and these Special Provisions. 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, six 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.

Submit at Contractor's expense, in six (6) sets, Schedule of Shop Drawing and Sample Submittals, Safety Plans, Progress Schedule, Product Data, Shop Drawings, Samples, Substitution Requests, Quality Control Plan, Operations and Maintenance Manuals, Warranties, and Project Record Documents, and all other submittals required by the Contract Documents.

Submit these submittals to Engineer, for review and approval in accordance with accepted schedule of Shop Drawings and Samples submittals. All Shop Drawing, Samples and product data submittals shall be submitted to and approved by the Engineer prior to ordering of material or commencement of work. The Engineer shall be given adequate time for review of submittals.

6. SUBSTITUTION OF MATERIALS AND PRODUCTS

All substitution requests and submittals must be made in writing, and be submitted to and approved by the Engineer prior to ordering of material or commencement of work. Submittals shall be made in accordance with the above section.

7. CONSTRUCTION AREA SIGNS

Construction area signs will be provided by the Contractor. Contractor shall coordinate with the Engineer on construction area signs and submit for Engineer's review and approval at the pre-construction meeting. Full Compensation for Construction Area Signs will be included in the Contract Lump Sum paid for Mobilization and no additional compensation will be allowed therefore.

8. MAINTAINING TRAFFIC

Maintaining traffic shall conform to the provisions of Section 7-1.03 "Public Convenience", Section 7-1.04 "Public Safety" and Section 12 "Temporary Traffic Control" of the Standard Specifications and these Special Provisions. The Contractor shall prepare a Temporary Traffic Control Plan in compliance with Standard Specifications and these Special Provisions and submit for Engineer's review and approval at the pre-construction meeting.

The Contractor shall install all construction area signs and traffic controls prior to start of work. Construction area signs shall be furnished, installed, maintained and removed when no longer required by the County.

One lane shall be kept open to public traffic **at all times**. Full lane closure is not allowed. Lane closure will require 72 hours' notice to the Engineer and 48 hours' notice to the property owners.

The Contractor shall coordinate and give adequate warning to the public at all times and shall provide such guards necessary to prevent accidents and avoid damage and injury.

If any component in the traffic control system is displaced, or ceases to operate or function as specified, from any cause, during the progress of work, the Contractor shall immediately notify the Engineer and remedy the situation. Full Compensation for Maintaining Traffic will be included in the Contract Lump Sum paid for Mobilization and 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 directed by the Engineer and as specified in these Special Provisions.

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.

10. PRESERVATION OF PROPERTY

Preservation of property shall conform to the provisions of Section 5-1.36, "Property and Facility Preservation," of the Standard Specifications and of these Special Provisions. Attention is directed to Section 9-1.16, "Mobilization".

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.

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

Dust control shall conform to the provisions in Section 14-11.04, "Dust Control," of the Standard Specifications and these Special Provisions.

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 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. HOT MIX ASPHALT

PART 1 – GENERAL

1.01 SUMMARY OF WORK

- A. This section applies to all hot mix asphalt (HMA) for the road pavement section.
- B. Hot mix asphalt shall be Type A and conform to Section 39, “Hot Mix Asphalt,” of the Standard Specifications and these Technical Specifications.
- C. Asphalt Concrete (AC) and HMA may be used interchangeably on the plans and specifications.
- D. The work to be performed includes the preparation of the aggregate base course, application of tack coat, the production, transporting, placing, compacting of the HMA and all other required incidental work.
- E. The Contractor shall produce Type A HMA using a WMA additive technology.

1.02 SUBMITTALS

- A. The Contractor shall submit HMA source and mix design prepared by a certified laboratory to the Engineer for review and approval.
- B. The Contractor shall submit their QA/QC plan for approval by the County, including testing requirements.
- C. Accompanying mix design, submit materials certificates signed by material producer and Contractor, certifying that each material item complies with, or exceed, specified requirements.
- D. The Contractor shall submit tickets for each load of asphalt concrete.
- E. Submit certificate of compliance for tack coat per Section 94 and Section 39-2.05A(2)(b), "Asphaltic Emulsions," of the Standard Specifications.

PART 2 – PRODUCTS

2.01 DESCRIPTION

- A. HMA for the road pavement section shall be Type A, placed in lifts not exceeding three inches. HMA aggregate size shall be per project Plans.
- B. Asphalt Binder shall be Steam-refined paving asphalt Grade PG 64-10 per Section 92, “Asphalts Binders” of the Standard Specifications.
- C. Tack Coat shall be applied to the finished surfaces of the aggregate based prior to placement of the HMA, between HMA layers, and to vertical surfaces of curbs, gutters, construction joints, and conform grinds per Section 39-2.01B(10), “Tack Coat” shall be slow setting asphalt emulsion SS1h per Section 94, "Asphaltic Emulsions," of the Standard Specifications.
- D. Raw aggregate may only contain very limited “soft” or “highly absorptive” material. The County may sample the raw aggregate on the days of paving to

perform LA Rattler tests and to determine absorption ratios. The hot plant operator(s) shall assist the County in obtaining belt samples immediately prior to asphalt batching at the County's sole discretion/scheduling. If an absorption ratio of a coarse aggregate sample is greater than 4%, the asphalt placed on that day shall be rejected, and removed and replaced at no cost to County. LA Rattler test results and acceptance criteria shall be per the Standard Specifications. Contractor shall ensure its subcontracts with material suppliers allow the County to enter the facilities and obtain samples in accordance with this paragraph.

E. Unacceptable Asphalt Concrete Containing Soft or Highly Absorptive Material; Liquidated Damages

a. "Soft or highly absorptive" material is defined as material that is generally whitish or light in color (color can vary) and breaks into a powder easily when routed in a dry state with hand tools such as a screw driver and may exhibit clay like characteristics when wet.

b. An unacceptable concentration of material is defined as any location larger than 100 square feet (or locations) where greater than a .096% concentration by area of soft or highly absorptive material occurs.

i. Measurement of the concentration of soft or highly absorptive material may be taken by County at any time and within any area of the work at County's sole discretion.

ii. Discovery of any area of paving work that exceeds the limit of soft or highly absorptive material described in this subsection (b) is defective work which shall be addressed by the Contractor in accordance with subsection (c) below if County notifies Contractor at any time prior to one (1) year from the date of recording of a Notice of Completion for the work, or one (1) year from the date the road is open for public use if no Notice of Completion is recorded.

c. Soft or highly absorptive material can substantially reduce the useful life of the roadway, the extent of which is difficult to determine accurately. For each area, as determined by the County pursuant to subsection (b), that exceeds the maximum allowable amount of soft or highly absorptive material, the Contractor shall pay as liquidated damages, and not as a penalty, the amount calculated at one-half of the Contractor's bid item prices to replace that specified area. Contractor shall pay the County the liquidated damages determined in accordance with this section within sixty (60) days of written demand by the County. If a court determines this calculation of liquidated damages is unenforceable for any reason, the Contractor shall pay the County the actual cost incurred by the County to remove and repave the section of the roadway that exceeds the maximum allowable amount of soft or highly absorptive material.

i. This subsection (c) shall not apply to any area, as determined by the County pursuant to subsection (b), where a concentration of more than .096% by area of soft or highly absorptive material resides in an area of less than 100 square feet, or to any work, other than an area determined by the County pursuant to subsection (b), that contains .096% or less of soft or highly absorptive material.

d. Nothing in this paragraph E shall preclude County from seeking any or all legal and/or equitable remedies upon discovery of soft or highly absorptive material after the one (1) year period specified in subsection (b), or in the event that Contractor fails to tender the liquidated damages specified in subsection (c).

F. Liquid anti-stripping agent (LAS) shall be added to the asphalt binder at a rate of 0.5% by weight of asphalt binder. The LAS shall be AD-here LOF 65-00 or equivalent, and shall be stored, measured, and blended with the asphalt binder in accordance with the anti-stripping agent manufacturer's recommended practice. The LAS can be added at the asphalt plant or at the refinery. When added at the asphalt plant, the equipment shall indicate and record the amount of LAS added. If added at the refinery, the shipping ticket from the refinery shall certify the type and amount of LAS added.

G. In addition to the quality requirements in Section 39-2.02, "Aggregate," of the Standard Specifications, the aggregate for all types of asphalt concrete shall achieve a minimum Durability Index of 35 for contract compliance. The aggregate shall not be treated with lime, cement or other chemical material before the Durability Index test is performed.

H. The eighth paragraph of Section 39-2.02, "Aggregate," of the Standard Specifications is amended to read: No single grading test shall represent more than one day's paving.

I. The last paragraph in Section 39-2.02, "Aggregate," of the Standard Specifications is amended to read: "The combined aggregate shall also conform to the following quality requirements when mixed with an amount of asphalt determined to give 4 percent air voids by the job mix formula in accordance with the section entitled "Job Mix Formula" of these Special Provisions."

J. The area to which paint binder (tack coat) has been applied shall be closed to public traffic. Care shall be taken to avoid tracking binder material onto existing pavement surfaces beyond the limits of construction.

PART 3 – EXECUTION

3.01 GENERAL

- A. Placement of HMA shall be in accordance with Section 39 of the Standard Specifications, the Revised Standard Specifications dated 4-16-21, and these Special Provisions.
- B. A tack coat treatment shall be applied to finished surfaces of aggregate and concrete surfaces where HMA will meet and shall be applied per Section 39-2.01B(10), "Tack Coat" and 39-2.01C(3)(f) "Tack Coat" of the Standard Specifications.
- C. Total HMA thickness shall be as specified on the plans.
- D. Full compensation for furnishing, placing and maintaining the paint binder (tack coat) shall be considered as included in the contract price paid per ton of asphalt binder and no separate payment will be made therefore.
- E. The Contractor shall have a backup paver and rollers that meet the specifications of the primary equipment, on site, in the event of breakdown of the primary equipment.

3.02 JOB MIX FORMULA

The Contractor shall submit in writing a satisfactory job mix formula for each mixture to the Engineer a minimum of five (5) working days before producing asphalt concrete. The job mix formula shall be in effect until a change is approved in writing by the Engineer.

The job mix formula shall be prepared at the Contractor's expense by a materials testing laboratory approved by the Engineer, and shall be designed in accordance with ASTM Test Methods D1560 and D1561, Hveem Method; D2041, Rice's Method; and D1188, "Bulk Specific Gravity of Compacted Bitumen Mixtures, Using Paraffin-Coated Specimens." The asphalt content shall be calculated on the percentage basis by weight of dry aggregate. The voids in the mineral aggregate shall be computed based upon ASTM Bulk Specific Gravities; minimum values shall be as follows:

1/2 inch Max.	13%
3/4 inch Max.	12%

The job mix formula for each mixture shall establish a single percentage of aggregate passing each required sieve size. If the aggregate is separated into 2 or more sizes, the proposed gradation shall consist of gradations for individual sizes, and the proposed proportions of individual sizes, combined mathematically to indicate one proposed gradation. Such gradation shall meet the applicable grading requirements shown in Section 39-2.02A(4)(b)(ii), "Aggregate." The gradation established for the job mix formula shall produce a smooth curve within the moving average limits designated and shall not vary from the low limit on one sieve to the high limit on the adjacent sieves, or vice versa.

The job mix formula for each mixture shall be designed with sufficient samples to demonstrate the performance of the mixture having a minimum stabilimeter value of

37 at 4 percent air voids, as determined with ASTM Test Methods D2041 and D1188 or D2726.

All individual aggregate cold feed materials, prior to the addition of asphalt binder, shall have a durability of at least 35 as determined by California Test 229.

Upon prior approval of the Engineer, the Contractor may submit, in writing, a job mix formula based on data from actual plant production or recent mix designs from previous jobs using the same mixture.

Regardless of the source, the job mix formula must establish to the satisfaction of the Engineer that it conforms to all the requirements of this Section. The Engineer reserves the right to verify the job mix formula with testing personnel prior to placement of any material.

The Engineer shall specify the percentage of asphalt binder to be used in asphalt concrete and asphalt concrete base using the "Job Mix Formula" data submitted. The specified percentage of asphalt binder chosen shall provide a minimum stabilimeter value required, air voids in the lab compacted samples will be allowed to vary a maximum of one and a half percent (1.5%) below to one and a half percent (1.5%) above the air voids provided in the "Job Mix Formula" for the specified percentage of asphalt binder.

Air voids variation exceeding the above shall be cause to reject the job mix formula, unless otherwise permitted by the Engineer, the paving operation will cease until a new job mix formula is approved.

After the job mix formula is approved, a trial plant mix shall be made to verify compliance of the plant with the job mix formula requirements. Should the trial plant mix fail to conform to these requirements during the trial run or during actual production, production of asphalt concrete shall stop until such compliance is reestablished or until a new job mix formula is approved.

A new job mix formula shall be submitted for approval prior to use of the mixture when there is a change in the character or source of the materials composing the mix, when unsatisfactory results or other conditions make it necessary.

3.03 PROPORTIONING

The Contractor will be allowed to use two or more asphalt concrete plants provided the following conditions are met:

1. The Contractor shall give the Engineer one working day notice prior to using two or more plants.
2. The lab density, hereinafter specified, shall be the highest of the separate densities obtained that day for asphalt mixtures from each of the plants.
3. If asphalt concrete that does not meet these specifications can not be identified in the field, asphalt concrete placed for that entire day will be rejected.

4. Asphalt concrete arriving on the project from separate plants shall not vary more than 10 degrees Fahrenheit in temperature.

3.04 ROADWAY

- A. The 2nd, 3rd, and 4th paragraphs of Section 39-2.01C(5) of the Revised Standard Specifications shall be replaced with the following:
 1. Place HMA on adjacent traveled way lanes so that at the end of each work shift the distance between the ends of HMA layers on adjacent lanes is from 5 to 10 feet. Place additional HMA along the transverse edge at each lane's end and along the exposed longitudinal edges between adjacent lanes. Hand rake and compact the additional HMA to form temporary conforms. You may place Kraft paper or another authorized bond breaker under the conform tapers to facilitate the taper removal when paving operations resume.
- B. Before placing successive lifts of asphalt concrete on any other type of asphalt concrete or on an existing bituminous pavement, paint binder (tack coat) shall be applied in one application at a rate of from 0.08 to 0.10 gallon per square yard of surface covered. The exact rate of application will be determined by the Engineer.

3.04 SPREADING AND COMPACTING

The first paragraph of Section 39-2.01C(2), "Spreading and Compacting Equipment," of the Standard Specifications is amended to read:

Asphalt pavers shall be self-propelled mechanical spreading and finishing equipment provided with a screed or strike off assembly capable of distributing the material to not less than the full width of a traffic lane, or a traffic lane together with its adjoining shoulder. Screed action shall include any cutting, crowding or other practical action which is effective on the mixture without tearing, shoving or gouging, and which produces a surface texture of uniform appearance. The screed shall be adjustable to the required section and thickness. The paver shall be provided with either a full width roller or tamper or other suitable compacting devices. Pavers that leave ridges, indentations, or other marks in the surface that cannot be eliminated by rolling or prevented by adjustment in operation shall not be used.

Unless otherwise provided in the Special Provisions or directed by the Engineer, all asphalt concrete pavers shall be equipped with a mobile grade reference system capable of averaging the existing grade or pavement profile over a minimum 30 feet distance or by a non-contacting laser or sonar type ski with at least four referencing stations mounted on the paver at a minimum length of 24 feet shall be used. Equipment, which in the judgment of the Engineer, does not perform satisfactorily will be disallowed. The automatic screed controls shall be used for all paving unless otherwise directed by the Engineer.

When paving contiguously with previously placed mats, the end of the screed adjacent to the previously placed mat shall be controlled by a sensor that responds to the grade of

the previously placed mat and will reproduce the grade in the new mat within a 0.01 foot tolerance. The end of the screed farthest from the previously placed mat shall be controlled in the same manner as when placing the initial mat.

Should the methods and equipment furnished by the Contractor fail to produce a layer of asphalt concrete conforming to the requirements, including straightedge tolerance, of the subsection entitled "Compacting" of this section of these Special Provisions, the paving operations shall be discontinued and the Contractor shall modify his equipment or furnish substitute equipment.

Should the automatic screed controls fail to operate properly during the day's work, the Contractor may use manual control of the spreading equipment for the remainder of that day, however, the equipment shall be corrected or replaced with alternative automatically controlled equipment conforming to the requirements in this section before starting another day's work.

Where shown on the plans and/or specified in these Special Provisions the Contractor shall provide a means to place asphalt concrete or asphalt concrete base at the required slope at the edge of the shoulder. This shall be done by some mechanical method concurrently with the placement of the shoulder. The method of placement of the sloped material shall produce a smooth, compacted texture equal to the mat produced by the machine.

Do not allow traffic on new AC pavement until its mid-depth temperature is below 160 degrees Fahrenheit.

Equipment which does not perform satisfactorily in the opinion of the Engineer shall be disallowed and removed from the site of the work.

Unless otherwise allowed or directed by the Engineer or otherwise provided in these Special Provisions, paving shall be performed in the following order:

1. Asphalt concrete base, if any, shall be placed.
2. The base course of asphalt concrete, if any, shall be placed.
3. The top layer of asphalt concrete shall be placed.
4. Where asphalt concrete base or a base course of asphalt concrete is used, all intersecting roads, driveways and ditches shall be paved before commencement of placing the top layer of asphalt concrete.

Section 39-6.03, "Compacting," of the Standard Specifications is superseded by the following:

General Requirements

After the bituminous mixture has been spread, struck off, and surface irregularities adjusted, it shall be thoroughly and uniformly compacted by rolling. Rolling shall be performed in such a manner that cracking, shoving or displacement will be avoided.

The completed surfacing shall be thoroughly compacted, smooth, and free from ruts, humps, depressions, or irregularities. Any ridges, indentations or other objectionable marks left in the surface of the asphalt concrete by blading or other equipment shall be eliminated by rolling or other means. The use of any equipment that leaves ridges, indentations, or other objectionable marks in the asphalt concrete shall be discontinued, and acceptable equipment shall be furnished by the Contractor.

When a straightedge 12 feet is laid on the finished surface and parallel with the center line, the surface shall not vary more than 0.01 foot from the lower edge of the straightedge. The transverse slope of the finished surface shall be uniform to a degree such that no depressions greater than 0.02 foot are present when tested with a straightedge 12 foot laid in a direction transverse to the center line and extending from edge to edge of a 12-foot traffic lane.

If the finished surface of the asphalt concrete does not meet the specified surface tolerances, it shall be brought within tolerance by either (1) abrasive grinding (with fog seal coat on the areas which have been ground), (2) removal and replacement, or (3) placing an overlay of asphalt concrete. The method will be selected by the Engineer. The corrective work shall be at the Contractor's expense.

If abrasive grinding is used to bring the finished surface to specified surface tolerances, additional grinding shall be performed as necessary to extend the area ground in each lateral direction so that the lateral limits of grinding are at a constant offset from, and parallel to the nearest lane line or pavement edge, and in each longitudinal direction so that the grinding begins and ends at lines normal to the pavement centerline, within any ground area. All ground areas shall be neat rectangular areas of uniform surface appearance. Abrasive grinding shall conform to the requirements in Section 42-3 of the Standard Specifications.

Compacting Courses Less Than 0.13 Foot Thick

Compacting equipment shall conform to the provisions of the subsection entitled "Compacting Equipment" of this section of these Special Provisions.

A pass shall be one movement of a roller in either direction. A coverage shall be as many passes as are necessary to cover the entire width being paved. Overlap between passes during any coverage, made to ensure compaction without displacement of material in accordance with good rolling practice, shall be considered to be part of the coverage being made and not part of a subsequent coverage. Each coverage shall be completed before subsequent coverages are started.

Rolling shall commence at the lower edge and shall progress toward the highest portion, except that if directed by the Engineer, rolling shall commence at the center and shall progress outwards.

Initial or breakdown compaction shall consist of 3 coverages of a layer of asphalt mixture and shall be performed with a 2-axle or a 3-wheel roller weighing not less than 12 tons

and having rolling wheels with a diameter of 40 inches or more. Fewer coverages than specified above may be ordered by the Engineer if necessary to prevent damage to the layer being compacted.

The initial or breakdown compaction shall be followed immediately by additional rolling consisting of 3 coverages with a pneumatic tired roller. Coverages with a pneumatic-tired roller shall start when the temperature of the mixture is as high as practicable, preferably above 180 Deg F, and shall be completed while the temperature of the mixture is at or above 150 Deg F.

Each layer of asphalt concrete and asphalt concrete base shall be compacted additionally without delay by a final rolling consisting of not less than one coverage with a steel-tired roller weighing not less than 8 tons. Except as otherwise provided for low rates of production, a separate finish roller will be required.

Rolling shall be performed so that cracking, shoving or displacement will be avoided.

Provided it is demonstrated to the satisfaction of the Engineer that one roller can perform the work, the required minimum rolling equipment specified above may be reduced to one 2-axle tandem roller, weighing at least 8 tons, for each paver under any of the following conditions:

1. When asphalt concrete is placed at a rate of 50 tons, or less, per hour at any location.
2. When asphalt concrete is placed at a rate of 100 tons, or less, per hour and at the locations or under the conditions as follows:
 - 2.1. Placed on miscellaneous areas in accordance with the provisions in Section 39-2.01C(9), "Miscellaneous Areas and Dikes".
 - 2.2. When the width to be placed is less than 8 feet.
 - 2.3. When the total thickness to be placed is less than 0.1 foot.
3. When the total amount of asphalt concrete included in the contract is 1,000 tons, or less.

When rolling equipment is reduced as provide in this Section F(2) the rolling requirements may be reduced to a least 3 complete coverages with said tandem roller.

Alternative compacting equipment, approved by the Engineer in accordance with California Test 113, may be used for the initial or breakdown compaction if operated according to the procedures and under the conditions designated in the approval. Such allowance of alternative compacting equipment for breakdown and finish compaction does not waive the requirement for using pneumatic-tired rollers. A vibratory roller may be used as the finish roller provided that it meets the requirements for a finish roller and is operated with the vibratory unit turned off.

During rolling operations and when ordered by the Engineer, the asphalt concrete shall be cooled by applying water. No layer shall be cooled with water unless so ordered or permitted by the Engineer.

Courses 0.13 Foot Thick Or More

The Contractor shall cover the loads of asphalt concrete with tarpaulins. The Tarpaulins shall completely cover the exposed asphalt concrete until the asphalt concrete has been completely transferred into the asphalt concrete paver hopper or deposited on the roadbed.

The Contractor shall use a minimum of three rollers with separate operators: two for breakdown, and one for finish work. These rollers shall conform to the requirements for breakdown rollers as specified in Section 39 of the Standard Specifications, except that vibratory rollers using vibratory mode shall be used for initial breakdown rolling. Backup rollers shall be supplied at all paving sites.

Breakdown compaction shall be completed before the temperature in the mat drops below 250 Deg F.

Asphalt concrete shall be compacted to an average density of not less than 91 percent of the average density of specimens of the asphalt concrete mixture compacted in the laboratory per Section 39-2.01A(4)(i)(ii) of the Standard Specifications.

Average in-place density will be determined by nuclear gauge in conformance with ASTM Test Method D2950. Laboratory specimens will be compacted in conformance with California Test 304.

Nuclear gauge tests for determining average in-place density shall be taken at the locations determined by the Engineer and which represent lots of 500 tons or less of mix. A minimum of five (5) randomly selected locations within the lot shall be tested.

The extent of each lot shall be determined by the Engineer. In determining the limits of each lot consideration will be given to such factors as production rate, location (main line, shoulders, etc.), lift thickness and differences in the asphalt concrete mix.

The field density of asphalt mixtures, for the purpose of deduction, will be determined from a minimum of three drilled specimens per lot.

Standard Specifications Section 39-2.01A(4)(i)(ii) "In-Place Density, Reduced Payment Factors for Percent of Maximum Theoretical Density Table" applies.

The field density will be the average of the required drilled specimens.

The laboratory density, for the purpose of deduction, shall be the average density for all asphalt concrete samples taken for the project that represent the same grading, type and oil content as the material in question.

The amount of asphalt mixture involved will be computed from the field density and the volume of asphalt mixture. The volume of the mixture will be computed from the average thickness of the drilled specimens and the measured area of the asphalt mixture.

The limits of the asphalt mixture in question will be defined by the Engineer.

3.05 SHOULDERS, MEDIANS, AND OTHER ROADWAY CONNECTIONS

A. Add the following to Section 39-2.01C(7) of the Revised Standard Specifications:

1. Pave shoulders and median borders adjacent to the lane before opening a lane to traffic.
2. Place shoulder conform tapers concurrently with the adjacent lane's paving.
3. Place additional HMA along the pavement's edge to conform to road connections and driveways. Hand rake, if necessary, and compact the additional HMA to form a smooth conform taper.

PART 4 – MEASUREMENT AND PAYMENT

A. The contract lump sum price for “Paving” shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work, as shown on the plans, as specified in the Standard Specifications and these Special Provisions, and as directed by the Engineer and no additional compensation will be allowed therefore.