

GENERAL CONDITIONS
April 2020

DOCUMENT 00700

ABBREVIATIONS AND DEFINITIONS

1. ABBREVIATIONS: Wherever the following abbreviations are used in the contract the meaning shall be as indicated:

AAMA	Architectural Aluminum Manufacturers Association
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADA	Americans with Disabilities Act
AFBMA	Anti-Friction Bearing Manufacturers Association
AGMA	American Gear Manufacturers Association
AISC	American Institute of Steel Construction
AISE	Association of Iron and Steel Engineers
AISI	American Iron and Steel Institute
AMCA	Air Moving and Conditioning Association
ANSI	American National Standards Institute
APA	American Plywood Association
API	American Petroleum Institute
AREA	American Railway Engineering Association
ARI	Air Conditioning and Refrigeration Institute
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc.
ASME	American Society of Mechanical Engineers

Abbreviations and Definitions

ASNT	American Society for Nondestructive Testing, Inc.
ASTM	American Society for Testing and Materials or ASTM International
AWG	American Wire Gage
AWPA	American Wood-Preservers' Association
AWS	American Welding Society, Inc.
AWWA	American Water Works Association
BMP	Best Management Practices
Cal/OSHA	California Department of Industrial Relations Division of Occupational Safety and Health
CBC	California Building Code
CFC	California Fire Code
CMAA	Crane Manufacturer Association of America
CMC	California Mechanical Code
CPC	California Plumbing Code
CPMB	Concrete Plant Manufacturer's Bureau
CRD	Department of the Army, Corps of Engineers, Handbook for Concrete and Cement
CSFM	California State Fire Marshal
CSI	The Construction Specification Institute
DIR	California Department of Industrial Relations
EIA	Electronic Industries Association
FM	Factory Mutual Testing Lab
ICEA	Insulated Cable Engineers Association
ICC	Interstate Commerce Commission
IEEE	Institute of Electrical and Electronics Engineers

Abbreviations and Definitions

ISO	International Organization for Standardization
MSS	Manufacturer's Standardization Society of Valve and Fittings Industry, Inc.
NACE	National Association of Corrosion Engineers
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NIST	National Institute of Standards and Technology
NFPA	National Fire Protection Association
NRCA	National Roofing Contractors Association
NSF	National Sanitation Foundation or NSF International
SAE	Society of Automotive Engineers
SDS	Safety Data Sheets
SMACNA	Sheet Metal and Air Conditioning Contractors' National Association, Inc.
SSPC	Steel Structures Painting Council
UL	Underwriters' Laboratories Inc.
USBR	United States Bureau of Reclamation
WCLB	West Coast Lumber Inspection Bureau
WWPA	Western Wood Products Association

2. DEFINITIONS: Wherever the following terms are used in the contract the meaning shall be as indicated:

Acceptance	The formal written acceptance of the Work by the Director or their authorized representative.
Approved, Directed, or Ordered	Approved, directed, or ordered by the Engineer, unless otherwise indicated.

Abbreviations and Definitions

Bid	The offer of a bidder to perform the Work in accordance with the Contract.
Bid Documents	The Notice to Contractors, Bid Form, and Bidder's Agreement and all documents attached thereto or described therein and any affiliate agreement entered into for the purpose of bidding on the project.
Caltrans Specifications	The Standard Specifications of the State of California Department of Transportation (Caltrans) in effect as of the date of award of the Contract.
Change	A modification to the Work ordered in writing by the Engineer.
Change Order	A written order issued by the Engineer used to determine adjustments in the Contract based on a Change or an adjustment in compensation or time.
Construction Equipment	Equipment used for performance of the Work, but not incorporated into the Project.
Contract	The written agreement between the Contractor and the Department that includes and incorporates by reference, the Notice to Contractors, Introductory Information, Bidding Requirements, Bid Form, Bid Documents, the Contract Bonds, and any affiliate agreement entered into for the purpose of bidding on the project, the Drawings, Contracting Requirements, General Conditions, Division 1 (General Requirements) through Division 16 (Electrical), and all Appendices, Addenda, Information Letters, and Change Orders.
Contractor	The entity which has entered into the Contract with the Department.
Contract Prices	The prices for the Work set forth in the Contract.
Critical Path	The longest path of activities associated with each specified time of completion listed in the Contract and any adjustments thereof, where the total float is less than or equal to zero.
Days	Calendar days, unless otherwise indicated.

Abbreviations and Definitions

Department	California Department of Water Resources (DWR).
Deputy Director	The Department's Deputy Director who is delegated the responsibility for coordinating and directing the activities and functions under the Contract.
Department-owned Float	Time saved on the Critical Path by actions of the Department.
Director	Director of the Department
Drawings	Drawings shown on the list of drawings; or included in Document 00015 – Drawings; and addenda; supplemental drawings; and revised drawings.
Engineer	The Department's Division Chief delegated by the Deputy Director acting either directly or through authorized representatives within the scope of delegated authority.
Equipment	Equipment incorporated or to be incorporated into the Project.
Float	The amount of time that an activity in the project schedule can be delayed without causing a delay to the Critical Path.
Materials	Materials incorporated or to be incorporated into the project.
Project	All Work to be accomplished under the Contract.
Shown	Shown on the Drawings, unless otherwise indicated.
Specifications	The instructions and requirements complemented by the Drawings, provided by the Department, as found in Division 1 (General Requirements) through Division 16 (Electrical), including all Appendices and Addenda thereto, which describe the work to be performed, standards of workmanship, and the quantities, qualities and types of materials to be furnished.
State	The State of California.
State Contract Act	Public Contract Code Sections 10100 through 10285.5.

Abbreviations and Definitions

Subcontractor	An entity that contracts with the Contractor or another subcontractor to perform work.
Supplier	An entity that contracts with the Contractor, a subcontractor, or another supplier to furnish materials or equipment for the Project.
Work	Everything required to fulfill the obligations of the Contract or any portion thereof including, but not limited to, all field work including labor, materials, equipment, services, plant establishment, and maintenance; submittals; schedules; reports; information; data; spare parts; guarantees; warranties; and all other deliverables and obligations required under the Contract to the satisfaction of the Engineer.
Working Drawings	Drawings prepared by the Contractor to complete the Project.
Work Site	The area to be occupied by the Project and areas occupied or used by the Contractor, subcontractors, or suppliers for performance of the Work.

END OF DOCUMENT

DOCUMENT 00701

SAFETY

1. **SAFETY VISION:** Safety is integrated into the Department's culture. The Department is committed to the safety of our employees, partners, and the public. The Department's goal is to eliminate occupational injuries and illnesses.
2. **SAFETY PREQUALIFICATIONS:** If the specified pre-bid safety prequalification thresholds were not met, the Contractor shall provide a competent, full-time person or representative responsible for safety throughout performance of the Work. The Contractor is not relieved of this requirement based on the results of any subsequent pre-bid safety prequalification that may occur during the performance of the Work under this Contract. The Contractor shall submit to the Engineer the name, qualifications, and contact information for the responsible safety person prior to the start of sitework.
3. **APPLICABLE LAWS AND REGULATIONS:** The Contractor shall remain informed of, and shall comply with all ordinances, rules, regulations and laws applicable to performance of the Work including, but not limited to, California Code of Regulations (CCR) Title 8, Industrial Relations.
4. **CONTROLLING EMPLOYER:** The Contractor is the controlling employer and must ensure hazardous conditions are corrected in accordance with Labor Code Section 6400. The Department is not responsible for the health and safety of the Contractor's, Subcontractors, or Suppliers personnel or any other persons present at the job site at the request of the Contractor or its Subcontractors.
5. **FAILURE TO COMPLY WITH SAFETY REQUIREMENTS:** The Engineer may order immediate action, including a Stop Work Order, to correct conditions which endanger any person or property, or any cultural, paleontological, environmental, or biological resource including plants and animals. Such order may be verbal or written. If the Contractor fails to immediately comply with such order, the Engineer may take any action necessary to prevent or mitigate injury, loss, or damage. The Contractor's failure to comply with specified safety requirements, laws, or regulations will be considered Defective Work under Document 00705, Paragraph 9.
6. **INJURY AND ILLNESS PREVENTION**
 - A. **Injury and Illness Prevention Plan (IIPP):** The Contractor shall prepare and submit to the Engineer, a written Cal/OSHA compliant IIPP 15 days prior to the start of sitework. The IIPP shall designate a single point of

contact for all safety related communications. The IIPP shall be made available at the Work Site.

- B. Written Safety Program and Code of Safe Practices: The Contractor shall submit to the Engineer a copy of its Written Safety Program and the Code of Safe Practices 15 days prior to the start of sitework. The Code of Safe Practices shall be made available at the Work Site.
- C. Incident Reports:
 - 1) The Contractor shall submit to the Engineer reports of injury and illness at the Work Site which result in death, injury, hospitalization, damage to property, or cases of occupational disease. An initial report shall be submitted to the Engineer within 24 hours of the incident followed up by a detailed report that addresses causation and measures implemented to prevent future occurrences.
 - 2) "Near Miss" incidents shall be reported to the Engineer within 8 hours of the incident. A near miss incident is a close call that has the potential for injury or property loss.
 - 3) Reports will be considered confidential to the extent permitted by law and will be used solely to develop information for use in prevention of future injury and illness.
- D. Monthly Summary Reports:
 - 1) The Contractor shall submit to the Engineer as of the 20th of each month on Department-furnished forms for Contractor and its Subcontractors, a summary report showing:
 - a. Number of employees;
 - b. Employee-hours of work exposure;
 - c. Number of OSHA recordable incidents;
 - d. Number of lost-time injuries; and
 - e. Work days lost.
- E. Training/Safety Instructions for Employees: Contractor shall provide effective training to workers and meet Cal/OSHA training requirements that apply to the Work activities being performed. The Contractor shall submit copies of any and all training records within 48 hours of the Department's request.

7. PRE-WORK SAFETY PLAN (PWSP): Fifteen days prior to beginning sitework, the Contractor shall submit a site-specific PWSP that includes a site description, scope of Work, sequence of events, identification of potential risks and hazards, discussion of mitigation or risk reduction methods, and a list of actionable measures. A sample PWSP form is located in Appendix I. The Contractor shall make the PWSP available at the Work Site.
8. SITE-SPECIFIC EMERGENCY RESPONSE PLAN: Fifteen days after receipt of the Notice to Begin Work, the Contractor shall submit a site-specific Emergency Response Plan (ERP). The ERP shall describe the procedures to be followed in case of any emergency, injury, or illness, and shall include at a minimum, the identification and telephone numbers of: 1) emergency medical, police and fire services; 2) personnel trained in First Aid/CPR/AED and hazmat spill response; and 3) the Contractor's emergency response representative. The ERP shall also include the location of first aid supplies and hazardous material spill containment equipment and supplies. The Contractor shall make the ERP available at the Work Site.
9. FIRE PREVENTION AND CONTROL PLAN
 - A. Fifteen days prior to beginning sitework, the Contractor shall submit a Fire Prevention and Control Plan (FPCP) in compliance with the California Fire Code (CFC) Chapter 33. The FPCP shall include measures, policies, and emergency procedures developed in consultation with state and local fire protection services for preventing and controlling any fire that may occur at the Work Site and shall include the following:
 - 1) Fire prevention procedures during the alteration or demolition of any structures, including underground locations.
 - 2) Current emergency telephone numbers, an area map, and access for firefighting and other fire prevention and control services.
 - 3) Procedures for maintaining contact with local firefighting services for updates on fire conditions, and how such fire conditions will be communicated to the Contractor's employees and the Department during times of elevated fire danger.
 - 4) The following requirements shall also be included in the FPCP, or the Contractor shall explain why the below requirements have not been included:
 - a. Combustible debris, rubbish, and waste materials shall be removed from buildings at the end of each work shift and not be disposed of by burning.

- b. Flammable substances and materials susceptible to spontaneous ignition shall be stored in an approved storage or disposal container.
- c. Fires shall not be allowed at the Work Site.
- d. Smoking shall be allowed only in enclosed vehicles or in areas designated for smoking that have been cleared of vegetation.
- e. Maintenance of appropriate fire suppression equipment at the Work Site, including an all-wheel drive water truck or fire truck with a water tank of at least 3,000-gallon capacity. The truck's water tank shall be maintained full and shall not be used as a source of construction water without prior written approval by the Engineer. Fire extinguishers, shovels, and other firefighting equipment shall be required to be inventoried and available at the Work Site and on construction equipment. Each vehicle on the right-of-way shall be equipped with a minimum 20-pound (or two 10-pound) fire extinguisher(s) and a minimum of 5 gallons of water in a firefighting apparatus (e.g., bladder bag).
- f. A sealed fire toolbox shall be located at area point accessible in the event of fire. The fire toolbox shall contain a minimum of one backpack pump-type fire extinguisher filled with water, two axes, two McLeod fire tools, and four shovels.
- g. Internal combustion engines shall be equipped with spark arrestors. Motorized construction equipment shall be located such that the exhausts do not discharge against combustible materials. Exhausts shall be piped to the outside of buildings. Equipment shall be fueled while in non-operation and fuel shall be stored in an approved area.
- h. Gasoline-powered construction equipment with catalytic converters shall be equipped with shielding or other acceptable fire prevention features.
- i. Vehicles shall be restricted to flagged right-of-way or temporary construction easement unless otherwise allowed in fire control procedures.
- j. Disturbance to the terrestrial or aquatic environment through the use of heavy construction equipment shall be kept to a minimum. If a fire should start, the appropriate fire protection agencies shall be contacted immediately, and heavy construction equipment should be utilized only as necessary to contain the fire or protect a structure from damage. Hand

crews, firefighting water trucks, or other fire control measures may be used as a first defense.

- B. Welding, Cutting and Other Hot Work: The Contractor shall have a Hot Work Program in place. Hot Work permits shall be completed and a fire watch established when welding, cutting, grinding, and other hot work is to be performed when fire hazards, sparks, and combustible exposures are present. Fire watch personnel shall be trained in the use of portable fire extinguishers. Welding sites and rigs are required to be equipped with fire prevention provisions, specifically a minimum 20 lb. (or two 10 lb.) fire extinguishers.
10. PUBLIC SAFETY: The Contractor shall protect the public from the hazards of the construction site including, but not limited to, staging and storage areas, vaults, tunnels, and open trenches. Measures shall include appropriate security (including the use of security guards), covering trenches, posting warning signs, installing temporary fencing, barricades, safety lights, and other measures as appropriate. Gates shall be kept closed except when construction equipment and the Contractor's employees are passing through. At the end of the work day, all Work areas shall be secured to prevent unauthorized public access.
11. JOB HAZARD ANALYSIS (JHA): Before the start of each Work shift, the Contractor shall survey the jobsite for hazards and use necessary safeguards to ensure that the Work is performed safely. Such hazards and safeguards are to be recorded on a JHA form and communicated to all persons at the job site including laborers, visitors, Department staff and representatives. The Contractor shall keep a record of all JHA forms at the Worksite.
12. ENVIRONMENTAL HAZARDS
- A. Heat Illness Prevention Plan (HIPP): The Contractor shall comply with the Cal/OSHA Heat Illness Prevention Standard, CCR, Title 8, Section 3395 to protect its workers against the effects of heat illness. This includes submitting an HIPP in compliance with the Cal/OSHA Heat Illness Prevention Standard. A copy of the Contractor's HIPP shall be submitted to the Engineer fifteen days prior to the start of sitework and shall be made available at the Work Site. The Contractor shall submit copies of any and all HIPP training records within 48 hours of the Department's request.
 - B. Valley Fever: Valley Fever is an infection caused by the fungus *Coccidioides*. Valley Fever fungus has been identified by the California Department of Public Health as endemic (consistently present) in the soil in many California Counties. The Contractor's Pre-Work Safety Plan shall include an assessment of its Valley Fever risk at the job site

and shall identify adequate protection measures to be implemented by its workers and Subcontractors. When working at Work Sites in counties where Valley Fever is highly endemic (the incidence rate of Valley Fever is greater than 20 cases per 100,000 persons per year), the Contractor shall comply with Labor Code Section 6709, which includes provisions for providing effective Valley Fever awareness training to all of its employees. The Contractor shall make its Valley Fever awareness training records available at the Work Site. Additional information can be found at the California Department of Industrial Relations website at: <https://www.dir.ca.gov/dosh/valley-fever-home.html>.

13. EXPOSURE HAZARDS

- A. Silica Dust: Where the risk of exposure to respirable Crystalline Silica has been associated with a particular product or material or a specific process task or activity, the Contractor shall develop a plan to minimize or eliminate worker exposure to airborne respirable crystalline silica that is in compliance with and implements the control methods specified in CCR, Title 8, Section 1532.3. A copy of the Contractor's plan shall be made available at the Work Site.
- B. Lead: Any construction activities that involve demolition, modification, or other disturbance of possible lead containing coatings and materials shall comply with CCR, Title 8, Section 1532.1. Modification or demolition of structures shall also comply with the requirements of CCR, Title 17. All existing paint or surface coating affixed to a component in or on a structure constructed prior to 1978 shall be assumed to contain lead unless it can be determined otherwise.
- C. Asbestos:
 - 1) Pursuant to Labor Code Section 6501.5, any Contractor that engages in asbestos-related Work, as defined in Labor Code Section 6501.8, shall be registered to engage in such Work with the California Department of Industrial Relations (DIR), Division of Occupational Safety and Health (Cal/OSHA). Such registration requires the Contractor to be certified by the Contractors State License Board.
 - 2) Should the Contractor find asbestos-containing material and is not registered pursuant to Labor Code Section 6501.5, the Contractor shall stop Work in this area and notify the Engineer immediately.
 - 3) The Contractor shall comply with CCR, Title 8, Section 1529 when dealing with construction and other materials containing asbestos.

- D. Safety Data Sheets (SDS): The Contractor shall provide workers information on the hazardous chemicals in their Work areas, access to SDS, and training on how to use hazardous chemicals safely. The Contractor shall submit to the Engineer an SDS for hazardous chemicals and products used in the course of the Work. All training records shall be submitted within 48 hours of the Department's request.

14. STRUCTURAL HAZARDS

A. Confined Spaces:

- 1) Fifteen days prior to entering any confined spaces, the Contractor shall submit to the Engineer its program for Confined Space Entry and Permit Required Confined Space Entry in compliance with CCR, Title 8, Sections 1950 through 1962 or Sections 5156 through 5157, as applicable.
- 2) The Contractor shall provide Confined Space Training to its workers and shall keep all training records on site. For Permit Required Confined Space Entry, the Contractor shall also provide rescue services.

- B. Fall Hazards: If the Work involves fall hazards, the Contractor shall submit its Fall Protection Plan to the Engineer 15 days prior to beginning sitework. The Plan shall include detailed site-specific information concerning the fall protection system and equipment, including the location of anchors and use of guardrails, and the name of the Competent Person as defined in CCR, Title 8, Section 1504. The Contractor shall make the Fall Protection Plan available at the Work Site.

C. Trenching and Excavation:

- 1) At least 48 hours prior to conducting excavation, the Contractor shall obtain a ticket from the regional notification center pursuant to Government Code Section 4216, et seq. The telephone number for Underground Service Alert (USA) for Northern California is (800) 642-2444 or 811 and for Southern California is (800) 422-4133 or 811.
- 2) Prior to conducting excavation, Contractor shall obtain all necessary excavation permits. A Cal/OSHA permit is required for construction of trenches or excavations of 5-feet or deeper into which any person is required to descend. All permits shall be made available at the Work Site.

- 3) The Contractor shall retain the responsibility for the determination, design, and installation of the sloping, shoring, bracing and other measures required for safe excavations.
 - a. Pursuant to Labor Code Section 6705, before beginning excavation for a trench 5 feet or more in depth, the Contractor shall furnish to and receive acceptance from the Engineer detailed plans showing design of shoring, bracing, sloping, or other provisions to be made for worker protection from hazard of caving ground during the excavation of such trench or trenches. If plans vary from the shoring system standards established by the Safety Orders, the plans shall be prepared by a civil or structural engineer currently registered in California. Nothing herein shall be deemed to allow use of shoring, sloping, or protective systems less effective than those required by the Safety Orders. Plans shall be furnished at least 5 days before the Contractor intends to begin trench Work.
 - 4) The Contractor shall submit to the Engineer the name of the Competent Person responsible for inspections of the excavations, protective systems, and taking any prompt corrective actions.
- D. Scaffolds: The design and construction of scaffolds must conform to applicable standards and requirements of CCR, Title 8. Scaffold erection and dismantlement must be supervised by a Qualified Person. The Contractor shall submit to the Engineer the name, qualifications, and contact information for the qualified person. A Cal/OSHA permit is required for erecting and dismantling scaffolds that exceed three stories or 36 feet in height and shall be made available at the Work Site.
- E. Formwork, Falsework, and Vertical Shoring: The design and construction of formwork, falsework, and vertical shoring must conform to applicable standards and requirements of CCR, Title 8, Section 1717. At least 30 days prior to their use, the Contractor shall submit to the Engineer any formwork, falsework or vertical shoring system calculations and drawings and any certifications of such system required by the Safety Orders. The formwork, falsework or shoring layout shall be made available at the Work Site.
15. MECHANICAL HAZARDS
- A. Cranes: When cranes will be used in the performance of the Work, the Contractor shall comply with CCR, Title 8, Sections 1610-1619. A thorough site inspection shall be performed to determine the proximity of powerlines and necessary safety measures to be implemented. Operator qualifications and certification, and crane inspection records shall be made available at the Work Site. A pick plan shall be prepared

by a qualified person on behalf of the Contractor and discussed on site with all affected workers. The pick plan shall be made available at the Work Site.

- B. Industrial Trucks, Lift Trucks, and Forklifts: When industrial trucks, lift trucks, and forklifts will be used in the performance of the Work, the Contractor shall certify that each operator has been trained or evaluated, and shall post and enforce a set of operating rules for forklift use in compliance with CCR, Title 8, Sections 3664 and 3668. The driver must inspect the vehicle once during the shift. All training and inspection records shall be submitted within 48 hours of the Department's request.

END OF DOCUMENT

DOCUMENT 00702

INTERPRETATION OF THE CONTRACT

1. CORRELATION: The Contract documents are complementary. A requirement occurring in one shall be as binding as though occurring in all.
2. REFERENCES: References in the Contract to the Specifications, standards, codes, or test methods published by governmental or private authorities shall be to those in effect on the date of the Notice to Contractors, unless otherwise specified or required by law.
3. INTERPRETATION
 - A. Notification Requirement: Should the Contractor discover any of the following, the Engineer shall be notified, in writing, as soon as it comes to the Contractor's attention and prior to proceeding with Work affected:
 - 1) Ambiguities, conflicts, discrepancies, omissions, differing site conditions, or errors in the Contract.
 - 2) Conflicts between the Contract and laws, ordinances, rules or regulations.
 - 3) Conflicts between the Contract and standards, codes, or test methods published by governmental or private authorities.
 - 4) Questions concerning interpretation of the Contract.
 - 5) Lack of sufficient detail or explanation in the Contract.
 - B. Resolution: The Engineer will provide instructions concerning interpretation of the Contract. Should the Contractor proceed with Work affected before resolution, the Contractor shall be responsible for the resultant damage to Work or added cost and shall remove and replace or adjust Work not in accordance with the Engineer's subsequent instructions.
 - C. Omissions: If any detail for materials, equipment, or systems, or the manner of combining or installing parts, materials or equipment is missing, those equal in quality to those specified or shown shall be required.
 - D. Brand or Trade Names: Wherever an item is specified by brand, trade name, or specific concern, the item shall be deemed to be followed by the term "or equal" unless the item listed is required and meets the criteria of Public Contract Code Sections 3400 and 10129.

- E. Additional Instructions: The Department may furnish additional detailed written instructions and supplemental Drawings to further explain Work. If the Contractor believes such instructions constitute Work in excess of that required by the contract, the Contractor shall furnish written notice to the Engineer prior to commencement of Work thereon, but not later than 15 days following receipt. Such notice shall provide in detail what Contract requirements would be exceeded and shall furnish an estimate of the cost of the excess Work.
- 4. GOVERNING ORDER: The Contract governs in the following order:
 - A. Document 00800 – Supplementary General Conditions, control over;
 - B. Documents 00700 through 00709 – General Conditions, which control over;
 - C. Division 1 – General Requirements, which control over;
 - D. Division 2 – Site Construction through Division 16 – Electrical, which control over;
 - E. Detail Drawings, which control over general Drawings;
 - F. Numerals control over scaled measurements.
 - 5. MODIFICATIONS: Modifications last in time shall have precedence over any earlier-in-time provisions as to the same subject matter, in accordance with governing order specified above.
 - 6. GOVERNING LAW: This Agreement is to be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed wholly within such State, and without regard to the conflicts of laws principles thereof.

END OF DOCUMENT

DOCUMENT 00703

COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

1. GENERAL: The Contractor shall remain informed of, and shall comply with applicable federal, state, county and municipal laws, ordinances, rules, permits and regulations, including but not limited to those specifically cited herein.
2. STATE AUDITOR: The Contractor shall retain records that pertain to the performance of the Work for a period of three years after final payment for examination and audit by Department or its delegate, or by the California State Auditor under Government Code Section 8546.7.
3. PERMITS AND LICENSES: The Contractor shall obtain all necessary permits and licenses and pay charges and fees applicable to perform the Work, except as otherwise specified. Such permits and licenses shall be obtained in sufficient time to prevent delay to the project.
4. LABOR LAW REQUIREMENTS
 - A. Prevailing Wage: The Contractor shall comply with prevailing wage requirements and shall be subject to restrictions and penalties in accordance with Sections 1770 et seq. of the Labor Code. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR) pursuant to Labor Code Section 1776(h).
 - 1) Posting: The Department will furnish the Contractor a copy of DIR's prevailing wage rates which the Contractor shall post in a conspicuous place at the Work Site.
 - 2) Additional Classifications: If it becomes necessary to employ work classifications for which no rate has been determined, the Contractor shall notify the Engineer immediately, who will obtain the additional prevailing wage rate which shall be applicable from the time of initial employment.
 - 3) Prevailing Wage Monitoring and Enforcement:
 - a) DIR Registration of the Contractor and Subcontractors: The Contractor shall remain registered with the DIR pursuant to Labor Code Section 1725.5 ("DIR registered contractor") at all times during the performance of the Work. The Contractor shall independently verify that all Subcontractors of every tier are DIR registered contractors at all times during the performance of the Work.

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- b) Certified Payroll Records: The Contractor shall comply with the Certified Payroll Record (CPR) requirements of Labor Code Sections 1771.4 and 1776 and shall require and verify that all Subcontractors of every tier comply with such CPR requirements.
- c) Posting of Job Site Notices: Pursuant to Labor Code Section 1771.4(a)(2), the Contractor shall post any job site notices prescribed by the DIR.
- d) Penalty Assessment for Non-compliance with CPR Requests: The Contractor and its Subcontractors shall comply with all legal requirements regarding inspection and furnishing of CPRs. Among other requirements, CPRs must be produced within ten (10) days of written request by the Department. Failure to do so shall result in a penalty forfeiture of one hundred dollars (\$100) per calendar day or portion thereof, for each worker, until there is full compliance with this requirement. Upon request of the DIR, these penalties shall be withheld from progress payments then due to the Contractor. The Contractor is not subject to a penalty assessment for failure of a Subcontractor to comply with this requirement.
- e) Per Diem Wages: Per diem wages shall be deemed to include employer payments to workers needed for performance of the Work in accordance with Labor Code Section 1773.1.
- f) Apprentices: Prior to commencement of Work, the Contractor shall contact the Division of Apprenticeship Standards and shall comply with all applicable laws and regulations regarding compliance with apprenticeship requirements including those contained in Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Code of Regulations Title 8, Sections 200 et seq.
- g) Department DIR Certification Listing Requirements:
 - 1. Within 10 days of the Contractor's receipt of the Notice to Begin Work and prior to the first of every month thereafter, the Contractor shall update and furnish to the Engineer the Department of Industrial Relations (DIR) Registration Certification List (form at Appendix II) to include each and every Subcontractor, regardless of tier or amount, and any other service provider that requires a DIR registration that has or will be performing Work on the project. The Contractor shall furnish this list to the Engineer on a monthly basis even if there are no additional Subcontractors or service providers listed from the previous month.
 - 2. In addition to any other potential remedies, the Engineer may withhold all or part of any payment due if the Contractor fails to

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furnish the required updated monthly DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION CERTIFICATION LIST until compliance therewith.

- h) Contractor Responsibilities: The Contractor shall be responsible for any and all costs and delays associated with compliance with Labor Code requirements including those contained in Sections 1725 et seq. and 1770 et seq. There will be no compensation or time allowed for the Contractor to comply with such requirements.
 - i) Withhold Provision: The Engineer must withhold any final payment due the Contractor until at least 30 days after the required DIR registration information has been submitted to the DIR in compliance with Labor Code Section 1773.3(d).
 - B. Hours of Labor: The Contractor shall comply with Labor Code Sections 1810 through 1815, which pertain to the maximum hours of Work, records to be kept, penalties, and overtime.
 - C. Workers' Compensation: The Contractor shall secure the payment of workers' compensation in accordance with Labor Code Section 3700, and prior to performing Work, shall file with the Department the certification required by Labor Code Section 1861.
- 5. CHILD SUPPORT COMPLIANCE ACT: The Contractor acknowledges in accordance with Public Contract Code Section 7110, that: (a) the Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and (b) the Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 6. NONDISCRIMINATION
 - A. The Contractor shall comply with California Code of Regulations Title 2, Section 11105 as follows:
 - 1) *During the performance of this contract, the recipient, contractor, and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of*

Compliance with Applicable Laws and Regulations

race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

- 2) *Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.*
 - 3) *Contractor or recipient shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.*
 - 4) *Recipient, contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.*
 - 5) *The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.*
- B. The Contractor shall comply with California Code of Regulations Title 2, Section 11122, which is entitled Standard California Nondiscrimination Construction Contract Specifications (Gov. Code Section 12990). These specifications are applicable to all state contractors and subcontractors having a construction contract or subcontract of \$5,000 or more.
- 1) *As used in the specifications:*
 - a) *“Act” means the Fair Employment and Housing Act.*
 - b) *“Administrator” means Administrator, Office of Compliance Programs, California Department of Fair Employment and Housing, or any person to whom the Administrator delegates authority;*

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- 2) *Whenever the contractor or any subcontractor subcontracts a portion of the work, it shall include in each subcontract of \$5,000 or more the nondiscrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.*
- 3) *The contractor shall implement the specific nondiscrimination standards provided in paragraphs 6(a) through (e) of these specifications.*
- 4) *Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer members of any group protected by the Act shall excuse the contractor's obligations under these specifications, Government Code section 12990, or the regulations promulgated pursuant thereto.*
- 5) *In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.*
- 6) *The contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor must be able to demonstrate fully its efforts under steps a. through e. below:*
 - a) *Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the contractor's employees are assigned to work. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment.*
 - b) *Provide written notification within seven days to the director of the DFEH when the referral process of the union or unions with which the contractor has a collective bargaining agreement has impeded the contractor's efforts to meet its obligations.*
 - c) *Disseminate the contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the*

Compliance with Applicable Laws and Regulations

contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.

- d) Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general foremen, on-site foremen, etc., are aware of the contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.*
- e) Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the contractor's obligations under these specifications are being carried out.*
- 7) Contractors are encouraged to participate in voluntary associations that assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on equal employment opportunity in the industry, ensures that the concrete benefits of the program are reflected in the contractor's workforce participation, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's.*
- 8) The contractor is required to provide equal employment opportunity for all persons. Consequently, the contractor may be in violation of the Fair Employment and Housing Act (Government Code section 12990 et seq.) if a particular group is employed in a substantially disparate manner.*
- 9) The contractor shall not use the nondiscrimination standards to discriminate against any person because race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.*
- 10) The contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code section 12990.*

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- 11) *The contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code section 12990 and its implementing regulations by the awarding agency. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code section 12990.*
 - 12) *The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.*
- C. The Contractor shall also comply with all other applicable law relating to nondiscrimination, including Labor Code Section 1735, Public Contract Code Section 2010, and Civil Code Section 51.
7. SUBLETTING AND SUBCONTRACTING FAIR PRACTICES ACT: Contractor shall comply with the Subletting and Subcontracting Fair Practices Act commencing with Public Contract Code Section 4100. Violations shall subject Contractor to penalties described in this Act.
 8. RETENTIONS FOR STOP PAYMENT NOTICES AND ASSESSMENTS
 - A. The Department will retain out of funds due or that become due to Contractor sums sufficient to cover stop payment notice claims filed pursuant to Civil Code Sections 9350 et seq.; tax demands filed in accordance with Government Code Section 12419.4; DIR Civil Wage and Penalty Assessments under Labor Code Section 1727; claims of State agencies offset under Government Code Section 12419.5; and other claims, penalties and forfeitures for which the Department is authorized to retain money or for which the Department is ordered by a governmental agency to retain money.

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- B. The Contractor shall inform every Subcontractor and Supplier to inform each person who furnishes labor, service, equipment or materials for the Work that preliminary notices and stop notices submitted to the Department shall be sent to the following address:

State of California
Department of Water Resources
Payables Office
P.O. Box 942836
Sacramento, CA 94236-0001

9. UNFAIR BUSINESS PRACTICES: Pursuant to Public Contract Code Section 7103.5, the Contractor agrees and will require its Subcontractors and Suppliers to agree to assign to the State all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), or under the Cartwright Act (commencing with Section 16700 of the Business and Professions Code), arising from the purchase of goods, services or materials, pursuant to the Contract or any subcontract thereunder. An assignment made by the Contractor, and additional assignments made by Subcontractors and Suppliers, shall be deemed to have been made and will become effective at the time the State tenders final payment to the Contractor, without further acknowledgment of the parties.
10. AIR POLLUTION CONTROL: Contractor shall comply with air pollution control rules, regulations, ordinances, and statutes applicable to performance of the Work including those specified in Government Code Section 11017.
11. USE OF DEPARTMENT'S PROPRIETARY INFORMATION: As set forth in California Business & Professions Code Section 17533.6, the Contractor shall not use any Department logo, image, symbol, photograph, video, or testimonials which could be construed as implying state endorsement of any product or service, without the Department's prior written consent consistent with this law.
12. BUY CLEAN CALIFORNIA ACT
- A. Pursuant to Public Contract Code Sections 3500 through 3505, the Contractor shall submit a current facility-specific Environmental Product Declaration (EPD) for contracts requiring the use of one or more of the following eligible materials: carbon steel rebar, flat glass, mineral wool board insulation, or structural steel.
- B. The EPD(s) shall be compliant with the International Organization for Standardization (ISO) standard 14025 and the appropriate Product Category Rules located on the Department of General Services (DGS) Buy Clean California Act website at: <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Buy-Clean-California-Act>.

Compliance with Applicable Laws and Regulations

- C. The EPD(s) shall be submitted at least 15 days prior to installing the eligible material.”.

END OF DOCUMENT

DOCUMENT 00704

CONTRACTUAL RELATIONSHIP OF PARTIES

1. AUTHORITY OF ENGINEER

A. General: The Engineer will decide questions as to interpretation and fulfillment of contract requirements, and the prosecution, progress, quality, and acceptability of the Work. The Engineer will implement and enforce decisions by issuing written orders, directives, instructions and notices to the Contractor. Any failure by the Contractor to comply with such orders, directives, instructions and notices will be subject to the provisions of Document 00705 – Prosecution of Work, Paragraphs 9 and 10.

B. Delegations: The Engineer will advise the Contractor of current delegations of authority.

2. AUDIT AND INSPECTION RIGHTS: The Contractor shall keep and retain records that pertain to the project for a period of three years after Acceptance or until the final resolution of any and all claims and disputes. At all times during performance of the Work and for a period of three years after final payment the Contractor shall provide electronic copies of all documents requested by the Department within 10 days of written notice, or if requested, the Contractor shall provide access to the Department during normal business hours, and the Department shall be allowed to make copies, at the Department's expense, of the Contractor's books, documents, and project records. The Contractor shall provide adequate facilities, acceptable to the Department, for the audit during normal business hours. The Contractor shall cooperate with the auditors.

A. Contractor records subject to audit in Paragraph 2 include, but are not limited to, bid documents (e.g., all take-offs, quantity evaluations, bid spreadsheets, bid schedule, internal bid documentation, Subcontractor bids, cost proposals, notes and other related material), job budgeting information, job cost reports for all costs (direct and indirect), estimates and related back-up documentation, cost accounting data, accounting records, payroll records, time sheets, canceled checks, profit and loss statements, balance sheets, daily reports, purchase orders, subcontracts, project correspondence (electronic and non-electronic), daily logs/notes, photographs and video files, survey data, project files, original schedule files, schedule narratives and associated back-up documentation, and other project related writings, as defined in California Evidence Code Section 250. The purpose of such audit is to verify and evaluate the accuracy of Contractor submitted costs and credits, Contractor requests for additional time, and/or in relation to any

dispute, Potential Claims under Document 00709 – Potential Claims and Claims, Paragraph 1, or Claims under Document 00709 – Potential Claims and Claims, Paragraph 2.

- B. The Contractor's failure to comply with Paragraph 2 shall constitute a material breach of Contract.
3. CONTRACTOR'S RESPONSIBILITY FOR WORK AND PERSONS OR ENTITIES ENGAGED IN WORK: The Contractor shall be responsible for the Work and for persons or entities engaged in the Work, including but not limited to Subcontractors, Suppliers, and providers of services. The Department will not mediate disputes between the Contractor and any other person or entity concerning responsibility for performance of the Work.
4. INDEMNIFICATION
- A. To the fullest extent permitted, the Contractor shall indemnify, hold harmless, protect and defend State and its officers, employees, agents and representatives from any and all loss, lawsuits, actions, demands, damages, costs, expenses, actual attorneys' fees, losses, liabilities, or claims in law or in equity, arising out of or in connection with the performance of this Contract for:
 - 1) Bodily injury: Bodily injury includes but is not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to the public, any employees or agents of the Contractor, the State, or any other contractor.
 - 2) Property damage: Damage to property of anyone including loss of use thereof; caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of the Contractor or anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable.
 - 3) Economic damage: Claims by any third party to have been harmed economically or financially by any act of the Contractor or any of its Subcontractors or Suppliers of any tier.
 - B. Except as otherwise provided by law, the requirements of Paragraph 4.A apply regardless of the existence or degree of fault of the State. The Contractor is not obligated to indemnify the State for claims arising from conduct delineated in Civil Code Section 2782. The Contractor's defense and indemnity obligation shall extend to claims arising after the Work is completed and accepted if the claims are directly related to alleged acts or omissions by the Contractor that occurred during the course of the Work. Any inspection of the Work by the State is not a waiver of full compliance with these requirements.

- C. The Contractor's obligation to defend and indemnify is not excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. The Contractor must respond within 30 days to the tender of any claim by the State for defense and indemnity, unless this time has been extended by the State. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, the Department may withhold such funds the State reasonably considers necessary for its defense and indemnity until disposition has been made of the claim or until the Contractor accepts or rejects the tender of defense, whichever occurs first.
- D. With respect to third-party claims against the Contractor, the Contractor waives all rights of any type to express or implied indemnity against the State, its officers, employees, or agents (excluding agents who are design professionals).
- E. Nothing in the Contract is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these indemnification Specifications.
- F. The Contractor is responsible to the fullest extent allowed by law, to defend and indemnify the State for any and all injury, illness, disease, or death arising out of or caused by an organism, including but not limited to animals, microscopic bacteria, fungi, plants and the like, to which persons, including but not limited to the public, any employees or agents of the Contractor, the State, or any other contractors that are exposed in connection with the Work on the project.

5. INSURANCE

- A. Certificates of Insurance: Within 15 days after receipt of Notice to Begin Work, and thereafter throughout the performance of the Work, the Contractor shall furnish to the Engineer certificates of insurance naming the State, its officers, employees, agents and representatives as additional insureds on any Contractor's liability insurance, excess policy, and builder's risk insurance which cover operations under the contract. The Contractor shall furnish to the Engineer certificates of insurance showing all other required coverages.
- B. The certificates of insurance shall provide that the coverage shall be primary, the State will not be responsible for premiums, assessments or other costs of the insurance, and coverage shall not be canceled or modified without 15 days' prior written notice to the Engineer.

Contractual Relationship of Parties

- C. Except for completed operations coverage, the Contractor shall keep all insurance in full force and effect from the Notice to Begin Work through Contract Acceptance.
- D. All insurance must be with an insurance company with a rating from A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VII or better.
- E. Completed Operations Coverage: The Contractor shall maintain completed operations coverage through the expiration of the patent deficiency in construction statute of repose set forth in Civil Procedure Code Section 337.15.
- F. Workers' Compensation: The Contractor shall secure the payment of workers' compensation under Labor Code Section 3700. If the Contractor uses any form of self-insurance for workers' compensation in lieu of an insurance policy, the Contractor must submit a certificate of consent to self-insure under Labor Code Section 3700.
- G. Employer's Liability: The Contractor shall provide Employer's Liability Insurance in amounts not less than \$1,000,000 for each accident for bodily injury by accident and \$1,000,000 for each employee for bodily injury by disease.
- H. General Liability and Umbrella or Excess Liability Insurance: The Contractor shall maintain General Liability and Umbrella or Excess Liability Insurance covering all operations by or on the Contractor's behalf, for bodily injury liability and property damage liability, which includes: coverage for premises, operations and mobile equipment; products and completed operations; broad form property damage (including completed operations); explosion, collapse, and underground hazards; personal injury and contractual liability. The limits of liability must be at least the values shown in the General Liability Limits table below:

Contractual Relationship of Parties

General Liability Limits				
Total bid	For each occurrence ^a	Aggregate for products/ completed operation	General aggregate ^b	Umbrella or excess liability ^c
≤ \$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$5,000,000
> \$1,000,000 ≤ \$10,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
> \$10,000,000 ≤ \$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
> \$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000
^a Combined single limit for bodily injury and property damage. ^b This limit must apply separately to Work under the Contract. ^c The umbrella or excess policy must contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.				

- I. Builder’s Risk: The Contractor shall name the State, its officers, employees, agents and representatives as an additional insured on any builder’s risk policy applicable to the Work.
 - J. Automobiles: The Contractor shall maintain automobile liability insurance, including coverage for all owned, hired, and non-owned automobiles. The primary limits of liability must be not less than \$1,000,000 combined single limit for each accident for bodily injury and property damage. The umbrella or excess liability coverage required above also applies to automobile liability.
 - K. Additional Insurance: If directed, the Contractor shall provide additional insurance for the State. Limits of coverage and terms of such insurance shall be as directed. The Department will reimburse the Contractor for actual direct cost of such additional insurance, plus one percent.
6. PATENTS COPYRIGHTS, AND TRADEMARKS
- A. The Contractor shall assume costs of, and agrees to indemnify, hold harmless, protect and defend the State, its officers, employees, agents and representatives from loss, lawsuits, actions, or claims arising from use of patented materials, equipment, devices, or processes on or in the Work.

7. GUARANTEE

- A. The Contractor guarantees that the Work is in accordance with the Contract and fit for use as specified. Guarantee period shall be one year unless otherwise specified or a longer period is provided by law. Guarantee period shall commence upon Acceptance, except guarantee period shall commence for that portion of the project upon use by the Department prior to Acceptance pursuant to Document 00706 – Control of Work, Paragraph 13. Guarantee periods for corrective Work shall commence anew upon completion of corrections.
- B. Corrective Work under guarantees shall be performed as specified in Document 00705 – Prosecution of Work, Paragraph 9.

8. ASSIGNMENTS

- A. Performance of the contract shall not be assigned in whole or in part without written consent of the Department. The Contractor may assign funds due or that become due to the Contractor, and assignment will be recognized by the Department if given notice thereof, in writing, to the extent permitted by law. Such assignments of funds earned by the Contractor shall be subject to proper retention in favor of the Department and to all deductions and withholds provided for in the Contract or as allowed by law.
- B. Should the Department terminate the Contractor's control over the Work under Document 00705 – Prosecution of Work, Paragraph 10, the Department may elect to take legal assignment of subcontracts, purchase orders, and other contractual rights. In such an event, the Contractor shall execute and deliver to the Department all papers and take all steps, including the legal assignment of its subcontracts, purchase orders, and other contractual rights of the Contractor, as the Department may require. This will be done to fully vest in the Department all rights and benefits of the Contractor under such subcontracts, purchase orders, or other contractual rights in order that the Department may proceed to finish the Project.

END OF DOCUMENT

DOCUMENT 00705

PROSECUTION OF WORK

1. COMMENCEMENT OF WORK AND TIME OF COMPLETION
 - A. Time is of the essence of the Contract. The Department will issue to the Contractor a Notice to Begin Work designating the starting date on which the Contractor shall begin Work. The Contractor shall diligently prosecute the Work from such date to completion within time specified or any adjustments thereof.
 - B. Should the Contractor begin Work in advance of receiving Notice to Begin Work, such Work may be considered as having been done at the Contractor's sole risk as a volunteer.
 - C. The Contractor shall comply with the scheduling requirements of the Contract. No requests for time extensions shall be allowed until an acceptable baseline schedule is submitted by the Contractor and then reviewed and determined by the Engineer to be in compliance with the Contract requirements.
2. LIQUIDATED DAMAGES: If Work is not completed, as determined by the Engineer within the time(s) specified or any adjustments thereof, damage will be sustained by the Department. It is and will be extremely difficult and impracticable to determine the actual damage which the Department will sustain by reason of such delay. Pursuant to Public Contract Code Section 10226, for each day after the specified completion date(s) that the Contractor has not completed the Work, the Contractor shall pay to the Department, as liquidated damages, and not as a penalty, the amount specified. The Department has reasonably evaluated the damages which may be sustained as a result of late completion and the liquidated damages set forth in the Contract reflect this evaluation.
 - A. The Department will deduct liquidated damages from funds due or that become due to the Contractor.
 - B. The Department may withhold liquidated damages before the accrual date if the Engineer determines that anticipated liquidated damages will exceed the value of the remaining Work.
3. PROSECUTION OF WORK
 - A. The Contractor shall timely furnish schedules and schedule updates, as specified in the Contract. The Contractor may perform Work at a time earlier than shown in such schedules, provided such action is approved by the Engineer. No claim for extension of time or adjustment in

compensation will be allowed for delays to Work scheduled for completion earlier than and completed within the time specified in the Contract or any adjustments thereof.

- B. The capacity of the Contractor's construction equipment and plants, the sequence and methods of operation, and the forces employed shall be such as to achieve completion of the Work within time specified in the Contract or any adjustments thereof. All such means and methods, and conduct, shall be the Contractor's responsibility.
 - C. If the Engineer determines that the Contractor's progress is insufficient to achieve completion of the Work within the time specified or any adjustments thereof, the Engineer may order the Contractor to improve progress by doing any or all of the following:
 - 1) Furnish a plan or schedule for improving progress.
 - 2) Take steps as necessary to improve progress and advise the Engineer thereof in writing.
 - 3) Increase the personnel employed, add overtime operations, increase the number of shifts, increase the capacity of construction equipment and plants, change the sequence of operations, change the methods of operation, or take other steps to improve progress.
 - D. An order to improve progress pursuant to Paragraph 3.C shall be at no additional cost to the Department and shall not be considered an order to accelerate under Paragraph 6 or a notice of default within the meaning of Public Contract Code Section 10253.
4. DELAY AND TIME EXTENSIONS
- A. General:
 - 1) If the Contractor believes an occurrence will delay the Work, the Engineer shall be notified, in writing, as soon as it comes to the Contractor's attention, and in any event not later than 15 days following its discovery.
 - 2) If the occurrence may delay the Work beyond the time specified or any adjustments thereof, the Contractor shall furnish to the Engineer written documentation and analysis of the occurrence and extent of the delay in accordance with the scheduling provisions of the Contract. The Engineer will issue a time extension for that part of the occurrence that causes a delay to the Critical Path and is due to the causes specified in Paragraph 4.B. A time extension will be allowed only if the cause is beyond the control and without the fault

or negligence of the Contractor. The Contractor will be notified if the Engineer determines that a time extension is not justified.

B. Causes for Time Extension:

- 1) Changes ordered in writing by the Engineer.
- 2) Discovery of an unforeseen archaeological, historical, cultural, biological, or environmental resource as determined by the Engineer.
- 3) Failure of the Department to timely furnish necessary access, right of way, completed facilities of related projects, Drawings, materials, equipment, or services for which the Department is responsible.
- 4) Survey error by the Department.
- 5) Differing site conditions under Document 00706 – Control of Work, Paragraphs 1.B and 1.C.
- 6) An increase in the quantity of a unit price item of Work above 125 percent of the quantity estimated in the bid schedule.
- 7) Force majeure occurrences of a severe and unusual nature, which may include, but are not limited to, earthquakes in excess of 3.5 on the Richter Scale, tidal wave, fire, flood, cloudburst, wildfire smoke, dust storms, cyclone, or inclement weather.
 - a. Force majeure occurrences will not be considered severe and unusual unless the occurrence prevents the Contractor from performing Work on the Critical Path for at least 50 percent of the scheduled work shift with at least 50 percent of the scheduled labor and equipment.
 - b. In addition, inclement weather resulting in precipitation at the Work Site must, either in amount, frequency, or duration, equal or exceed what has occurred at the location and during the time of year in question on an average of more than once in ten years, as determined by the Engineer.
- 8) Act of the public enemy, act of terrorism, unforeseeable act of another governmental entity, epidemic, quarantine restriction, freight embargo, strike or labor dispute.
- 9) Suspension of Work pursuant to Paragraph 8.A.1 or Paragraph 8.A.3.

5. **APPORTIONMENT OF RESPONSIBILITY FOR DELAYS:** Contractor-caused delays and Department-caused delays shall be apportioned throughout the duration of the Work. Owner-directed changes under Document 00707 and Owner-caused delays under Paragraph 4.B that ultimately extend the time for performance of the Work beyond the Contract-specified completion date or that occur after the Contract-specified completion date, and any combination thereof, shall not relieve the Contractor of its responsibility for any Contractor-caused delays or liquidated damages.
6. **ADJUSTMENTS IN COMPENSATION:** Adjustments in compensation for delays or time extensions for the cause in Paragraph 4.B.1 will be determined by the Engineer in accordance with Document 00707 – Changes, Paragraph 2.B. Adjustments in compensation for delays or time extensions for the causes in Paragraphs 4.B.2, 4.B.3, 4.B.4, 4.B.5 and 8.A.3 will be determined by the Engineer in accordance with Document 00707 – Changes, Paragraph 2.J. There will be no adjustment in compensation for delays or time extensions for the causes specified in Paragraph 4.B.6, 4.B.7, 4.B.8, 8.A.1, or 8.A.2.
 - A. **Concurrent Delays:** No adjustments in compensation will be allowed when Contractor-caused delays to the Critical Path and Department-caused delays to the Critical Path occur concurrently.
 - B. **Unabsorbed Home Office Overhead:** Adjustments in compensation for costs associated with unabsorbed home office overhead will only be considered in relation to delays or time extensions for the cause in Paragraph 8.A.3 and then only when the Contractor sufficiently documents that the suspension of Work prevented the Contractor from seeking replacement work.
7. **ACCELERATION:** The Engineer may order the Contractor to accelerate the Work to decrease the time(s) of completion within the time specified or any adjustments thereof. Such orders shall be in writing. Adjustments in compensation for acceleration will be determined pursuant to Document 00707 – Changes. Change orders for acceleration may include provisions for the assessment of liquidated damages if the accelerated completion date is not achieved.
8. **SUSPENSION OF WORK:** The Engineer may suspend Work by written order to the Contractor. The Contractor shall immediately comply with such order and shall resume the suspended Work only upon the Engineer's written order. No adjustment in compensation or time will be allowed due to the failure or refusal of the Engineer to order suspension.

- A. Suspension may be for any of the following:
 - 1) Conditions unfavorable for the proper prosecution of the Work as determined by the Engineer.
 - 2) Failure of the Contractor to carry out orders or to perform any provision of the Contract.
 - 3) The convenience and benefit of the Department.

9. DEFECTIVE WORK

- A. Any Work not conforming with the Contract will be considered defective Work and may be rejected by the Engineer. Any failure by the Contractor to comply with any orders, directives, instructions or notices issued by the Engineer will also be considered defective Work. Defects may be waived by the Engineer. If a waiver will result in a cost savings to the Contractor in the opinion of the Engineer, it will be made only upon an equivalent adjustment in compensation determined pursuant to Document 00707 – Changes, Paragraph 2.
- B. The Contractor shall commence corrective Work when ordered and shall diligently perform such Work to its completion. The Department may defer commencement of corrective Work until working conditions are satisfactory to the Department. Such deferral will not be cause for a time extension or additional compensation.
- C. The Contractor shall bear all costs and delays associated with the performance of the corrective Work, which shall include, but not be limited to, any necessary disassembly, transportation, reassembly, retesting, repair or replacement of the defective materials or equipment, and any necessary disassembly and reassembly of adjacent work. The Department reserves the right to disassemble and reassemble adjacent materials or equipment not furnished by the Contractor, where necessary to give access to the defective materials or equipment. The costs thereof shall be the responsibility of the Contractor and may be deducted from funds due or that become due to the Contractor. If such funds are not available, the Department will be entitled to recover such costs and all costs and expenses incurred in recovering such costs.
- D. If the Contractor fails to comply promptly with an order regarding defective Work, the Engineer may cause the defective Work, materials or equipment to be corrected, removed or replaced. All resulting costs and delays shall be the responsibility of the Contractor. Costs incurred by the Department may be deducted from funds due or that become due to the Contractor. If such funds are not available, the Department will be entitled to recover such costs and all costs and expenses incurred in recovering such costs.

- E. The rights and remedies of the Department as provided above are not exclusive, and do not preclude the exercise of any other rights or remedies provided by the Contract or by law.
10. TERMINATION OF CONTRACTOR'S CONTROL OVER THE WORK FOR DEFAULT
- A. If the Contractor fails to comply with an order, diligently prosecute the Work, perform Work or furnish materials or equipment of the quality required by the Contract, prosecute orders for changes or in any other respect fails to fulfill the requirements of the Contract, the Director may, after a minimum of 5 days written notice to cure the deficiency, in addition to any other available legal remedy:
 - 1) Provide labor, construction equipment, materials or equipment required for performance of Work and deduct the cost thereof from funds due or that become due to the Contractor; or
 - 2) Assume responsibility for completion of the Work; or
 - 3) Give written notice to the Contractor and the Contractor's sureties, that if the defaults are not remedied, the Contractor's control over the Work will be terminated.
 - B. If the defaults are not remedied within the time specified in the Director's notice, the Contractor's control over the Work shall terminate as of the expiration of that time.
 - C. In the event of such termination of the Contractor's control over the Work for default, the Contractor shall:
 - 1) Preserve materials and equipment at the Work Site until notified of those items for which the Department will assume responsibility.
 - 2) Remove from the Work Site materials and equipment not designated for use as directed by the Engineer in writing.
 - 3) Assist the Engineer in making an inventory of materials and equipment in storage at the Work Site, enroute to the Work Site, in storage or manufacture at other locations and on order from Suppliers.
 - 4) Assign to the Department or its designee construction equipment, subcontracts and supply contracts as designated by the Engineer.

- D. In the event of termination of the Contractor's control over the Work for default, the Director may:
 - 1) Permit the surety to complete;
 - 2) Cause the contract Work to be completed; or
 - 3) Direct that all or any part of the Work be completed by day's labor, or by employment of other contractors under informal contracts, or both.
 - E. The Contractor's liability to Department upon termination of the Contractor's control over the Work for default shall be as provided in Public Contract Code Sections 10253 et seq., and shall include, as part of those damages sustained or to be sustained by the Department, liquidated damages for delay through the time of completion of the Project.
 - F. If the Department subsequently determines that grounds for termination of the Contractor's control over the Work under Paragraph 10 do not exist, then the Department shall proceed to close-out the Contract for convenience under Paragraph 11.
11. CLOSE-OUT OF THE CONTRACT FOR CONVENIENCE
- A. The Department reserves the right to close-out the Contract at any time if Department determines that to do so would be in its best interest or for conditions unfavorable for the proper prosecution of Work as determined by the Engineer, or as required by law.
 - B. The Department will issue to the Contractor a written notice that the contract is to be closed-out for convenience. Upon receipt of notice, except as otherwise directed, the Contractor shall:
 - 1) Stop all Work.
 - 2) Take action as necessary to protect materials and equipment and all Work from damage.
 - 3) Notify all Subcontractors and Suppliers that the Contract is being closed-out and that their contracts or orders will be closed-out.
 - 4) Provide the Engineer with a full accounting for itself, its Subcontractors and Suppliers including all respective schedules of value, the labor expended, an inventory of materials and equipment previously purchased (whether delivered or ordered, including the storage location), and such other information as the Engineer may require.

- 5) Dispose of materials and equipment as directed by the Engineer and provide the Department with title to all other materials and equipment purchased for Work hereunder, including materials and equipment for which progress payment has been made as provided in Document 00708 – Payments and Retentions, Paragraph 2, and with documents of title for materials and equipment.
- C. The Contractor's responsibility for damage to materials and equipment transferred to the Department will terminate when title and delivery of such materials and equipment have been accepted in writing by the Department.
 - D. When the Engineer determines that the Contractor has completed the Work necessary to secure the project for close-out, the Department will proceed with Acceptance of the Work.
 - E. The total compensation under the Contract to be paid to the Contractor shall be determined by the Engineer as follows:
 - 1) The amount due for Work performed prior to receipt of the notice of Acceptance, adjusted for defective work as specified in Paragraph 9, actual quantities, and returned materials and equipment.
 - 2) The necessary and reasonable cost of Work, determined in accordance with Document 00707 – Changes, required for close-out and demobilization and for handling materials and equipment returned to the Supplier, delivered to the Department, or as otherwise directed.
 - 3) An allowance of 4 percent of the portions of the Contract prices allocable to the Work not performed. However, such allowance shall not exceed 4 percent of the difference between the amount that would have been due for the quantity listed in the bid schedule and the amount due under Paragraph 11.E.1.
 - 4) The total compensation to be provided in Paragraphs 11.E.1 through 11.E.3 is subject to withholding of liquidated damages or other amounts to be deducted or retained under the Contract or pursuant to law.

END OF DOCUMENT

DOCUMENT 00706

CONTROL OF WORK

1. SITE CONDITIONS

- A. The conditions expected to be encountered at the Work Site and inherent in the Work are defined by the information that would be obtained by careful examination of the Work as required by Document 00200 – Instructions to Bidders, Paragraph 2 and all related information and data identified in Document 00300 – Information Available, and throughout the Contract documents.
- B. The Contractor shall immediately notify Engineer, in writing, before any of the conditions are disturbed:
 - 1) Subsurface or latent physical conditions at the Work Site differing materially from those indicated by the bid documents provided by the Department about the site that are made available to bidders prior to the deadline for submitting bids.
 - 2) Unknown physical conditions at the Work Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract.
- C. The Engineer will promptly investigate such conditions. If the Engineer determines that such conditions are materially different and cause an increase or decrease in the Contractor's cost or the time required for performance of the Work, an extension of time and adjustment in compensation will be made in accordance with Document 00705 – Prosecution of Work, Paragraph 4 and Document 00707 – Changes, Paragraph 2.

2. CONTRACTOR'S RESPONSIBILITY FOR THE PROJECT

- A. The Contractor shall have charge and care of and bear risk of loss or damage to the project until its Acceptance, except as follows: Pursuant to Section 7105 of the Public Contract Code, Contractor shall not be responsible for cost of repairing or restoring damage to the Work, which damage is determined to have been proximately caused by an act of God, and which damage is in excess of five percent of the contracted amount, provided that the Work damaged is built in accordance with accepted and applicable building standards and the Contract documents. For the purposes of this paragraph only, an act of God

shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves.

- B. The Contractor will be relieved of responsibility for loss or damage to any portion of the project solely caused by the Department's possession and negligent use prior to Acceptance.
 - C. Commercial uses on or of State property or facilities may only be made with written consent of the Engineer.
 - D. The Contractor shall not create or permit the continued existence of any nuisance in or about the Work Site.
 - E. Materials and equipment shall be furnished in sufficient quantities and at such times to ensure the orderly progress of the Work. Materials and equipment shall be stored and protected to guarantee preservation of quality, appearance, and suitability for the project, and stored in a location that facilitates inspection and avoids interfering with the work of others.
3. CONDUCT OF WORK

- A. Contractor's Supervision of Work: The Contractor shall provide competent, full-time, efficient supervision of the Work. Performance of the Work shall be in a skillful and orderly manner.
- B. Contractor's Representative: Before beginning Work, the Contractor shall designate in writing a representative (hereafter "Contractor's Representative") who shall:
 - 1) Be of sufficient experience and possessing the qualifications necessary to properly manage the work in accordance with the Contract. The qualifications and experience of the Contractor's Representative shall be submitted to the Department within 15 days of the Contractor's receipt of the Notice to Begin Work.
 - 2) Have authority to supervise Work.
 - 3) Have authority to receive and implement orders from Engineer.
 - 4) Normally be present full-time during performance of the Work. In the periodic absence of the Contractor's Representative due to vacation, injury, or illness or isolated off-site activities, the Contractor shall have designated an alternate experienced and qualified person who shall serve in such a capacity at all times during performance of the Work.

- 5) Not be removed by the Contractor before another representative meeting all the foregoing requirements is designated.
- C. Execution of Documents: Before beginning Work, the Contractor shall designate in writing a representative who shall have authority to execute and bind the Contractor to change orders, claims, releases and similar documents.
 - D. Removal of Contractor's Personnel: If ordered, the Contractor shall immediately remove from the Work Site any person or entity, including the Contractor's Representative, that fails to prosecute the Work in a manner satisfactory to the Department; or that lacks the requisite qualifications and experience; or that fails or refuses to carry out orders; or that is insubordinate, disorderly, unsafe, or incompetent. In such event, the Contractor shall immediately request the Department's approval of a replacement person or a substitution of the entity.
 - 1) If the entity to be substituted is a Subcontractor listed under Public Contract Code Sections 4100 et. seq., the substitution shall be made in accordance with Public Contract Code Section 4107.
 - E. Cooperation with Others:
 - 1) The Department reserves the right to engage in activities on or near the Project. The Contractor shall cooperate with others and conduct the Work so as to facilitate the activities by the Department or others and prevent delay, additional expense, or hindrance thereto. The Contractor shall request from, and exchange with others, drawings, data and information as necessary to ensure proper completion of the Project and the activities of the Department or others. The Contractor shall furnish to the Engineer copies of correspondence and drawings exchanged with other contractors working nearby.
 - 2) The Contractor shall conduct, adjust, correct, and coordinate Work with the activities of the Department or others to minimize any impacts to the Project.
4. SUBMITTALS
- A. The Contractor shall furnish timely submittals to the Engineer as specified or directed which may include, but not be limited to, Contractor schedules, injury and illness prevention program, quality control program, working drawings, calculations, reports, manuals, data on materials and equipment, samples and resubmittals.

- B. Submittals will be subject to review by the Engineer for conformity with the Contract. The Contractor shall notify the Engineer in writing of any deviations from the Contract that are proposed by the Contractor. Should the Contractor fail to provide such notification, the Contractor shall be responsible for any Work, materials or equipment not in conformance with the Contract under Document 00705 – Prosecution of Work, Paragraph 9.
 - C. Any "Proprietary" or similar designation on submittals may be disregarded by the Department to the maximum extent provided by the law.
5. SUBSTITUTIONS
- A. The Engineer may approve the use of substitute materials, equipment or methods if, as determined by the Engineer, the substitute is equal in quality, capacity and serviceability to the item or method specified and has the required characteristics for the purpose intended. The Contractor shall furnish data and information requested by the Engineer on any substitution. Requests by the Contractor and supporting data shall be furnished in sufficient time to permit decision on the proposed substitution without delaying Work.
 - B. The Department and the Contractor shall share equally cost and time decreases which result from approved substitutions. Adjustments in compensation and time will be determined pursuant to Document 00707 – Changes, Paragraph 2.
 - C. Any substitution requested by the Contractor and agreed to by the Department shall be at no additional cost to the Department.
6. CONSTRUCTION EQUIPMENT AND PLANT: Construction equipment shall be identified by readily visible numbers. If ordered by the Engineer, the Contractor shall remove unsatisfactory construction equipment and discontinue the operation of unsatisfactory plants.
7. MATERIALS AND EQUIPMENT
- A. Furnished by the Contractor:
 - 1) The Contractor shall furnish materials and equipment as specified.
 - 2) Only materials and equipment conforming to the requirements of the Contract shall be incorporated in the Project. Except as otherwise specified or approved, such materials and equipment shall be new and unused.

- 3) Sources of materials shall be subject to approval before delivery from those sources. Approval of a materials source will be withdrawn when such materials are found to be defective, and the Contractor shall stop deliveries from that source.
- 4) The Contractor shall assign and furnish to the Department all manufacturers' and Suppliers' warranties and guarantees.

B. Preparation of Equipment for Shipment:

- 1) The Contractor shall prepare equipment for shipment in such manner as to protect it from damage or loss in transit.
- 2) Each packing unit and major part shall include a packing list and be plainly marked for identification. Such identification shall include the name of the manufacturer, name and location of the manufacturer's plant, manufacturer's shop number, name of the part, package weight, title of the contract and specification number.

C. Furnished by the Department:

- 1) Materials and equipment to be furnished by the Department will be available to the Contractor as designated. The Contractor shall unload, remove and be responsible for such materials and equipment from the time of unloading and removal from the designated location. The Contractor shall bear any damage and storage charges arising from failure to timely remove such materials and equipment.
- 2) The Contractor shall promptly inventory such materials and equipment and notify the Engineer of any shortages or defects discovered. The Engineer may order the Contractor to return defective or unsuitable materials or equipment, or perform corrective Work thereon.

8. TESTING OF MATERIALS AND EQUIPMENT

- A. Materials and equipment shall be tested by the Contractor during the progress of Work, unless otherwise designated. Tests shall be witnessed by the Engineer unless waived. The Contractor shall give Engineer 15 days advance written notice of all such tests unless otherwise specified or approved. The Engineer may perform tests of materials and equipment and the Contractor shall furnish samples as directed.
- B. The Contractor shall test materials or equipment in accordance with designated test method or authority and shall furnish to the Engineer certified copies of the test results unless otherwise specified. Such

materials or equipment shall not be incorporated into the Work until the test results indicate conformance with the Contract, unless waived by the Engineer in writing.

- C. Materials or equipment found unacceptable will be rejected and retesting shall be at the Contractor's expense.
9. **PROPERTY RIGHTS IN MATERIALS AND EQUIPMENT:** Materials or equipment furnished shall, upon progress payment therefor, become the sole property of Department after being attached or affixed to State's property, or after delivery or storage subject to or under the control of Department. Until Acceptance, the Contractor shall continue to bear risk of loss or damage to such property unless such loss or damage arises from the causes for which the Contractor would be relieved of responsibility as specified in Paragraphs 2.A and 2.B.
10. **INSPECTION**
- A. The Contractor at all times shall permit the Engineer to inspect Work. The Contractor shall provide at least 2 working days advance notice to the Engineer where and when Work is ready for inspection. Work shall be accessible until inspected by the Engineer. Should work become inaccessible without inspection, it shall be made accessible at the Contractor's expense.
 - B. When the Contractor intends to perform Work on Saturday, Sunday, a legal holiday, or other than the Contractor's regular Work period, the Contractor shall give notice to the Engineer of such intention at least two working days prior to the end of State's preceding Work period.
 - C. The Engineer will designate materials and equipment to be inspected at the place of production or manufacture. The Contractor shall provide 15 days advance written notice to the Engineer of the start of production or manufacture of such materials or equipment unless otherwise specified or approved. Failure to designate materials and equipment shall not limit the right to inspect them at the place of production or manufacture. The Contractor shall include notice of these requirements in all subcontracts and Supplier contracts.
 - D. Neither inspection nor lack of inspection of Work, nor presence or absence of the Engineer during performance of any Work shall waive any requirements of the Contract or relieve the Contractor of any obligation under the Contract. Defective Work, materials, and equipment may be rejected notwithstanding prior inspection or lack of inspection by the Engineer.

11. **CLEANING:** The Contractor shall keep project and nearby property clean and free from nuisance and accumulation of construction debris, dust, liquid and trash. The Contractor shall remove construction equipment and waste materials, and thoroughly clean the Work Site before requesting the final inspection.
12. **PROTECTION OF PROPERTY AND FACILITIES:** The Contractor shall protect the Work, materials, equipment, property, and facilities from damage and shall immediately report damage to the Engineer.
13. **USE PRIOR TO ACCEPTANCE:** Upon written notice, the Department may take possession of, use, and maintain all or a part of the Project prior to Acceptance. Except as provided in Paragraph 2.B, such action does not relieve the Contractor of any of its obligations under the Contract, including but not limited to, completion of the Work within the time specified or any adjustments thereof, or responsibility for liquidated damages.
14. **FINAL INSPECTION AND ACCEPTANCE:** When work is completed, including the correction of all deficiencies to the satisfaction of the Engineer, the Contractor shall certify in writing and shall request a final inspection. Within 30 days of receipt of certification, the Engineer will make a final inspection. If the Engineer determines that the work has been completed, the Engineer will recommend that the work be accepted. The Contractor will be notified in writing of Acceptance of the Work. If Engineer determines that the work is not complete, the Contractor will be notified of the deficiencies and shall correct any such deficiencies. Thereafter, the Contractor shall promptly initiate procedures for another final inspection. Acceptance shall not affect the Contractor's obligations under the Contract, the bonds, and the law, including but not limited to, latent defects, cooperation with Department audits, indemnification, and warranties.

END OF DOCUMENT

DOCUMENT 00707

CHANGES

1. GENERAL

- A. The Engineer may order Changes, including revisions to the Drawings and Specifications, performance of extra Work, and the deletion of Work. Such orders will be in writing. Changes shall not affect the obligations of the sureties on the contract bonds nor require their consent. The Contractor shall notify the Engineer as soon as it comes to the Contractor's attention whenever it appears a Change is necessary, and when ordered, shall stop Work in the areas that may be affected. Adjustments in time and compensation for ordered Changes will be made in accordance with Paragraph 2.
- B. The Contractor when ordered shall proceed with Changes before agreement is reached on adjustments in compensation or time for performance. In such instances, the Contractor shall keep detailed hourly records for that day signed and furnished on a daily basis by the Contractor on Department form titled Daily Extra Work Report of labor and construction equipment, and itemized records of materials, equipment and services used in performance of the Changes.
 - 1) If the Daily Extra Work Report furnished by the Contractor differs from the Department's records, the Engineer shall notify the Contractor in writing of the discrepancy. It is the Contractor's responsibility to present information sufficient to show that the Contractor's records are accurate. Such information must be furnished within 7 days of the Engineer's notice to the Contractor of the discrepancy. Should the Contractor fail to produce such information or if the information provided by the Contractor is not sufficient to establish that the Contractor's records are accurate, the adjustment in compensation will be determined by the Engineer based on the information shown on the Department's records.

2. ADJUSTMENTS IN COMPENSATION AND TIME

- A. For Variations in Quantities: Adjustments in compensation for unit price items for variations in estimated quantities not covered by a Change will be made as determined by the Engineer in accordance with Paragraphs 2.A.1 and 2.A.2 and Paragraphs 2.D through 2.H. Adjustments in time will be determined in accordance with Document 00705 – Prosecution of Work, Paragraph 6.

- 1) Quantities in excess of 125 percent of the estimated quantity will be paid by an adjusted unit price as determined by the Engineer. The adjustment to the unit price will be the difference between the Contract unit price and the actual unit cost for the total quantity for the item. Fixed costs will be deemed to be recovered by payments made for 125 percent of the estimated quantity and will not be included in determining the adjustment. Fixed costs are necessary labor, materials, equipment and services, and construction equipment costs which remain constant regardless of the quantity of the item.
 - 2) For Work greater than zero but less than 75 percent of the estimated quantity, the adjustment, upon the Contractor's written request, will be the difference between the unit price and the actual unit cost of the total quantity of the item, including fixed costs. In no case will payment exceed that which would have been made for 75 percent of the estimated quantity at the contract unit price.
- B. For Changes, Delays and Time Extensions: Adjustments in compensation for Changes, delays, and time extensions will be made as determined by the Engineer in accordance with Paragraphs 2.B.1, 2.B.2, 2.B.3, or combinations thereof, as follows:
- 1) By agreement on the basis of estimates of increases or decreases in costs.
 - 2) Unilaterally by the Engineer.
 - 3) For actual necessary costs as determined by the Engineer in accordance with Paragraphs 2.D through 2.J.
- C. Supporting Documentation: Department may request any additional records from the Contractor in connection with the adjustment in compensation or time for extra or deleted Work to allow the Department to verify all or a portion of the adjustment in compensation, and the Contractor shall provide such records within 30 days of notice of the request.
- 1) Supporting documentation shall conform to generally accepted auditing standards and may include, but not be limited to, detailed estimates of increases or decreases in costs, itemized cost breakdowns, job cost records, and other supporting data whether or not such Work is performed in whole or in part by a Subcontractor (regardless of tier), certified payrolls, labor classifications, material invoices and requisitions, receipts, cancelled checks, equipment records (list of company equipment including make and model, rates, etc.), equipment rental invoices, Subcontractor and Supplier

quotes (proposals, invoices, payment requests billing records, etc.), accounts payable ledgers, job cost pre-bid records and estimates, accounting data, cancelled checks profit and loss statements, schedules, fragnets, photos, videos and other such data.

- 2) If the Contractor fails to furnish the supporting documentation in compliance with these requirements, the adjustment in compensation or time will be determined by the Engineer based on information shown on the Department's records.
- D. Labor: Compensation for labor shall include the necessary cost for labor, including first level supervision (the appropriate classification of foreman for the Work being performed), directly engaged in performance of the Changes. Wages shall not exceed current prevailing wage rates in the locality for performance of the Changes. Use of a classification which would increase labor cost will not be permitted. Exceptions to the above will be permitted only where the Contractor establishes to the satisfaction of the Engineer, the necessity for payment at higher rates or classifications. The necessary cost of labor shall be computed as follows:
- 1) Wages: The hourly rate paid shall include any employer payments to or on the behalf of the workers for the basic hourly prevailing wage, health and welfare, pension, vacation, and training as recognized by California General Prevailing Wage requirements, and other state and federally recognized fringe benefit payments.
 - 2) Labor Surcharge Rate: The labor surcharge rate shall be the surcharge rate for the type of Work performed, published in the Caltrans Labor Surcharge and Equipment Rental Rates User's Guide in effect during the time of performance of the changed Work. The surcharge rate shall provide full compensation for all costs for worker's compensation insurance, liability insurance, federal unemployment insurance, state unemployment insurance, Medicare, Social Security (FICA), and state training taxes.
 - 3) Subsistence: The necessary and allowable cost for subsistence and travel allowances paid to such workers.
 - 4) Markup: A 35 percent markup will be added to the sum of the costs described in Paragraphs 2.D.1 through 2.D.3. The 35 percent markup shall provide payment for all overhead costs related to labor (but not designated as costs of the labor used in the direct performance of the Work), including home office overhead, field office overhead, bond costs, insurance, other fixed or administrative costs that are not costs of the labor used in the direct performance of the Work, and profit.

- 5) Subcontractor Markup: If a Subcontractor performs the Work directed by the Change (regardless of the number of tiers), a 5 percent markup will be added to the markup provided in Paragraph 2.D.4, as reimbursement for the Contractor's additional administrative costs.
 - 6) Deleted Labor: For a deduction in compensation due to the deletion of labor, the Engineer will determine the deduction based on the costs described in Paragraphs 2.D.1 through 2.D.3. There will be an additional deduction of 30 percent of the total costs if the labor would have been provided by the Contractor, and 35 percent if the labor would have been provided by a Subcontractor.
- E. Materials: Compensation for materials includes full compensation for materials the Contractor purchases and uses in the Work and shall be computed as follows:
- 1) Purchase Price: The Engineer determines the cost based on the material purchase price, including delivery charges, as reflected in an invoice, purchase order, receipt, or other evidence of the actual cost.
 - 2) Markup: A 15 percent markup will be added to the Purchase Price to provide payment for all overhead costs related to materials but not designated as costs of the material used in the direct performance of the Work including home office overhead, field office overhead, bond costs, insurance, and other fixed or administrative costs, and shall provide full compensation for all delay costs (including loss of productivity, disruption, and cumulative impacts), and profit related to materials.
 - 3) Subcontractor and Supplier Furnished Materials: If the materials are furnished by a Subcontractor or Supplier (regardless of the number of tiers), a 5 percent markup will be added to the markup provided in Paragraph 2.E.2 as reimbursement for the Contractor's additional administrative costs.
 - 4) Deleted materials: For a deduction in compensation due to the deletion of materials, the Engineer will determine the deduction based on the costs described in Paragraph 2.E.1. There will be an additional deduction of 10 percent of the total costs if the materials would have been provided by the Contractor and 15 percent if the materials would have been provided by a Subcontractor.
 - 5) Excessive Material Price: If the Engineer determines the price furnished by the Contractor for materials is excessive or if the Contractor fails to furnish satisfactory evidence of the price within

30 days of billing, the cost shall be the lowest current wholesale price available in the quantities required, or an equivalent to such wholesale price as determined by the Engineer.

- 6) Contractor-Owned Materials: If the Contractor procured the materials from a source that the Contractor, its Subcontractor, or its Supplier wholly or partially owns, payment will be determined based on the lower of the following:
 - a. The price paid by the Contractor for similar materials from that source for original contract items (items not furnished for performance of the extra Work);
 - b. The current wholesale price for those materials.
- 7) Department Furnished Materials: The Department reserves the right to furnish materials and equipment required for performance of Changes and the Contractor shall have no claim for costs or mark-ups for such materials and equipment.

F. Construction Equipment:

- 1) Compensation for construction equipment shall include the necessary cost for use of construction equipment directly required for performance of the Changes and includes full compensation for the cost of fuel, power, oil, lubrication, supplies, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for construction equipment operators), and any and all costs incidental to the use of such construction equipment.
- 2) Any use of equipment for less than 30 minutes shall be considered one-half hour. No costs will be allowed for time while construction equipment is inoperative, idle, or on standby, for any reason, unless such times have been approved by the Engineer. Rental time for construction equipment moved by its own power shall include time required to move construction equipment to Work Site from the nearest available source for rental of such construction equipment, and to return it to the source. If construction equipment is not moved by its own power, loading and transportation costs will be paid in lieu of such rental time therefor. Neither moving time nor loading and transportation costs will be allowed if the construction equipment is used for any Work other than the Changes. No allowance will be made for individual pieces of construction equipment having a replacement value of \$500 or less.
- 3) No construction equipment cost will be recognized in excess of rental rates established by distributors or equipment rental

agencies in the locality for performance of the Changes or Equipment Rental Rates published by Caltrans, whichever is less.

- a. If the equipment invoice cost is not the Equipment Rental Rate established by Caltrans and if the equipment is rented from an equipment business the Contractor does not own (including affiliated companies), a 5 percent markup will be added to the rental cost to provide full compensation for the cost of fuel, power, oil, lubrication, supplies, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for construction equipment operators), and any and all costs incidental to the use of such construction equipment.
- 4) Markup: A 15 percent markup will be added to the rental cost to provide payment for all overhead costs related to Equipment but not designated as costs of the Equipment used in the direct performance of the Work, including home office overhead, field office overhead, bond costs, insurance, and other fixed or administrative costs, and shall provide full compensation for all delay costs (including loss of productivity disruption and cumulative impacts), and profit related to Equipment.
 - a. Subcontractor Furnished Markup: If the equipment is furnished by a Subcontractor or Supplier (regardless of the number of tiers), a 5 percent markup will be added to the markup provided in Paragraph 2.F.4 as reimbursement for the Contractor's additional administrative costs.
 - 5) Deleted Equipment: For a deduction in compensation due to the deletion of equipment, the Engineer will determine the deduction in accordance with Paragraphs 2.F.1 through 2.F.3. There will be an additional deduction of 10 percent of the total costs if the equipment would have been provided by the Contractor and 15 percent if the equipment would have been provided by a Subcontractor.
- G. Services: Compensation for services shall include the necessary cost for technical and professional services approved by the Engineer in advance and directly required for performance of the Changes. No compensation will be allowed under this paragraph for any person or entity that is used to perform any Work other than the Changes. Invoices for services shall be based on current market prices and itemized in accordance with the established practice of the applicable service.
- 1) A 5 percent markup will be added to the invoice cost of services as reimbursement for the Contractor's additional administrative costs.

- H. General Limitations: No payment will be made to the Contractor which exceeds market values prevailing at time and locality of the Change unless the Contractor establishes that all reasonable means for performance of the Changes at prevailing market values have been investigated and excess cost could not be avoided.
- I. Deletion of Bid Item: When an entire bid item is deleted, the Contractor will be paid 4 percent of the total price in the bid schedule for the item as full compensation for such deletion.
- J. Adjustment in Compensation for Delays or Time Extensions: If a delay or time extension is cause for an adjustment in compensation as provided in Document 00705 – Prosecution of Work, Paragraph 6, the Contractor shall furnish supporting data to the Engineer of the effect of the delay on the costs of performing Work and of the amount of additional compensation that may be due. Supporting data shall include a Time Impact Evaluation (TIE) which includes both a written narrative and a fragmentary network (fragnet) depicting how the changed Work or delay impacts the critical path. The TIE shall also include an electronic copy of the schedule in the required format, including a layout to illustrate the fragnet. All additional supporting data shall conform to generally accepted auditing standards and include, but not be limited to, pre-bid records and estimates, job cost reports, and certified cost records for Work performed and for additional costs correlated with the elements of the delay or time extension.
 - 1) The TIE and supporting documentation must be submitted within 30 days after notice of the occurrence. If the Contractor does not submit a TIE within 30 days after notice of the occurrence, the Contractor waives all rights for a time extension for that occurrence.
 - 2) The Engineer will determine the effect of such delay or time extension and, if necessary, issue a Change Order for any adjustment in compensation found due, as provided in Paragraphs 2.D through 2.G for the costs of Work performed as a result of the delay or time extension.
 - 3) The Engineer may also issue a Change Order for any additional compensation found due for the effects of such delay or time extension to cover costs not provided for under Paragraphs 2.D through 2.G.
- K. Adjustment in Time for the Deletion of Work: If the deletion of Work is cause for an adjustment in time as determined by the Engineer, upon the Department's written request, the Contractor shall furnish supporting data to the Engineer to determine how the deleted Work impacts the Critical Path. Supporting data shall include a Time Impact

Evaluation (TIE) which includes both a written narrative and a fragmentary network (fragnet) depicting how the deleted Work impacts the Critical Path. The TIE shall also include an electronic copy of the schedule in the required format, including a layout to illustrate the fragnet.

- 1) The TIE and supporting documentation must be submitted within 30 days after the Department's request. If the Contractor does not submit a TIE within 30 days after notice by the Department, the Engineer will determine the effect of the deletion of Work based on the Department's records.
- 2) The Engineer will determine the effect of the deletion of Work and may issue a Change Order for a decrease in the time to the Contract specified completion of the Work, or any adjustments thereof, or apply the reduction in time as Department-owned Float for the Department's use in the event of Department-caused delays.
 - a. The Engineer may also accrue Department-owned Float by early review completion of any submittal or by any other action if such action saves time on the Critical Path.
 - b. Department-owned Float is a resource for the exclusive use of the Department.
3. EXECUTION OF CHANGE ORDERS: The Contractor's acceptance, in writing, of a Change Order shall constitute final and binding agreement to the provisions thereof and a waiver of all claims, including all losses and damages, in connection therewith, whether direct, indirect, or consequential in nature.

END OF DOCUMENT

DOCUMENT 00708

PAYMENTS AND RETENTIONS

1. CONTRACT PRICES

- A. Unless otherwise specified, items of Work to be paid for at Contract price per unit of measurement will be measured by the Engineer in accordance with United States standard measures.
- B. The Contract prices shall include full compensation for all costs incurred for completion of the Work, including but not limited to taxes, fees, and duties attributable to the Work whether imposed by foreign, federal, state, or local governments. No tax-exempt certification will be furnished by the Department.

2. ESTIMATES AND PROGRESS PAYMENTS

- A. Schedule of Values: For lump sum bid price items, the Contractor shall submit a detailed Schedule of Values consistent with bid pricing within 14 days prior to the first scheduled progress payment, which is subject to review and acceptance by the Engineer. The detailed Schedule of Values shall provide a sufficient breakdown of all lump sum items (excluding mobilization and demobilization) of Work by monthly values to allow appropriate monthly progress payments to be determined. Monthly values shall sum to the total Contract price for each lump sum item. At the Engineer's discretion, progress payments may not include any allocation for lump sum items absent an accepted detailed Schedule of Values. There will be no separate price allocation of preliminary or incidental activities including, but not limited to, administration and overhead, design, formwork, and similar items, but these may be distributed over the appropriate components of Work.
- B. Estimates:
 - 1) The Engineer, once each month, will estimate the value of Work done to the time of such estimate, including Work done under an executed change order, as follows:
 - a. Under unit price items.
 - b. For an allocation of a lump sum bid price item in accordance with Paragraph 2.A.
 - c. If requested by the Contractor and at the discretion of the Engineer, unused materials and equipment furnished and either paid for in full or for which the Contractor has title in writing and

that are subject to or under the control of Department at the time of such estimate. The Contractor shall furnish copies of paid vendors' invoices or other documentation of ownership, satisfactory to the Engineer, that such materials and equipment are stored subject to or under the control of Department.

- 2) Such estimate may include Work done under an order for Change. Estimate for such Work will be actual necessary costs based on records furnished pursuant to Document 00707 – Changes, Paragraph 1.B.
- 3) At the Engineer's request, the Contractor shall furnish an itemized listing of the amounts and values of Work done or materials and equipment furnished to be included in each estimate, consistent with the Contractor's Schedule of Values.

C. Progress Payments:

- 1) Upon completion of each monthly estimate of Work done and materials and equipment furnished, Department, subject to the provisions of Paragraphs 2.A through 2.F, will make progress payments to the Contractor. Each progress payment will be the estimated value of such Work, materials and equipment, less the amount of prior progress payments, liquidated damages, and other amounts to be deducted or retained under the Contract or pursuant to law.
- 2) An estimate or progress payment shall not be considered acceptance of the Work, materials, or equipment. Estimated amounts and values to the Work performed and materials and equipment furnished will be adjusted to the actual amounts and values, as they become available, in subsequent estimates and the final estimate. Progress payments will be subject to correction in subsequent estimates and the final estimate.
- 3) The Engineer may withhold all or part of a progress payment when required or requested by the Engineer, Contractor or Subcontractor certified payroll records are delinquent or inadequate or if Contractor is not in compliance with any requirements of the Contract or the law.
- 4) Progress payments for mobilization shall not exceed that authorized in Public Contract Code Section 10264.

D. No Progress Payments:

- 1) No progress payment need be made when the Engineer determines that the Contractor is not prosecuting the Work in

accordance with the Contract, if there may be cause for termination for default or for other causes specified in the contract, or when the payment would be less than \$1,000.

- 2) In addition to any other remedy provided by Contract or by law, the Engineer may withhold or deduct all or part of a progress payment when the Contractor has failed to furnish submittals specified in Document 00706 – Control of Work, Paragraph 4; Defective Work specified in Document 00705 – Prosecution of Work, Paragraph 9; or for other causes or deliverables specified in the Contract. The amount of any such withholding shall be identified to the Contractor in writing and may be based on the estimated value of such submittal or other withholding as provided for in the Contract.
- E. Contractor Payments to Subcontractors: The Contractor shall pay Subcontractors within 7 days of receipt of each progress payment, as provided in Public Contract Code Section 10262.
- F. Retention from Progress Payments: The Department will retain from each progress payment, 5 percent of the estimated value of Work done and materials and equipment furnished, as approved by the Engineer pursuant to Paragraph 2.C.
- G. Release of Retention Pursuant to Public Contract Code Section 7107:
- 1) Within 60 days after the date of completion of the Work of improvement performed under the Contract, the retention withheld by the Department shall be released. In the event of a dispute between the Department and the Contractor, the Department may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of Paragraph 2.G.1 only, “completion” means any of the following:
 - a. The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for the testing, startup, or commissioning by the Department, accompanied by cessation of labor on the work of improvement.
 - b. The Acceptance by the Department of the Work pursuant to Document 00706 – Control of Work, Paragraph 14.
 - c. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the Contractor.
 - d. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous

period of 30 days or more, if the Department files for record a notice of cessation or a notice of completion.

- 2) Subject to Paragraph 3, within 7 days from the time that all or any portion of the retention proceeds are received by the Contractor, the 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 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.
- 3) The Contractor may withhold from a Subcontractor its portion of the retention proceeds if a bona fide dispute exists between the Subcontractor and the Contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.
- 4) In the event that retention payments are not made within the time periods required by this section, the Department or the 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.
- 5) If the Department retains an amount greater than 125 percent of the estimated value of the Work yet to be completed pursuant to Public Contract Code Section 10261, the Department shall distribute undisputed retention proceeds in accordance with Paragraph 2.G.1. However, notwithstanding Paragraph 2.G.1, if the Department retains an amount equal to or less than 125 percent of the estimated value of the Work yet to be completed, the Department shall have 90 days in which to release undisputed retentions.

3. FINAL PAYMENT AND EXCEPTIONS

- A. Within 45 days following Acceptance under Document 00706 – Control of Work, Paragraph 14, or within a longer period of time as may be required due to causes within the control or due to the fault or negligence of Contractor, the Engineer will prepare and furnish to Contractor a draft final estimate and Release on Contract. Such draft final estimate will itemize the actual quantities of materials and equipment incorporated into the Work, amounts earned, prior payments and amounts deducted and retained.

- B. If the Contractor wishes to pursue any Potential Claim(s) noticed in accordance with Document 00709 – Potential Claims and Claims, Paragraph 1, the Contractor must state such Claim as an exception in executing the Release on Contract in a definite amount.
 - 1) Not later than 30 days after the return of Release on Contract, the Contractor may furnish a Claim(s) for monetary compensation for any Claim stated as an exception in the Release on Contract. The submission of such Claim(s) must be made in accordance with Document 00709 – Potential Claims and Claims, Paragraph 2.
 - 2) Failure to comply with the requirements stated in Document 00709 – Potential Claims and Claims, shall constitute a waiver of the Contractor's right to assert or pursue any such Potential Claim or Claim.
 - C. If the Contractor concurs with the amount due as stated on the Release on Contract, the Contractor shall insert the words NO EXCEPTIONS on the Release on Contract, execute and return a copy to the Engineer.
 - D. Failure of the Contractor to execute and return the Release on Contract within 30 days after receiving the draft final estimate will constitute agreement by the Contractor that the draft final estimate represents the total amount due.
 - E. Within 30 days after the Contractor returns the executed Release on Contract without exceptions, the Department will issue a final estimate and payment to the Contractor in the amount determined to be due under the contract.
 - F. Within 45 days after claims excepted from the Contractor's Release on Contract have been decided by the Engineer, or a settlement is reached, or final adjudication is obtained, a final estimate will be furnished to the Contractor stating the amount, if any, found due; and the Department will pay the stated amount to the Contractor.
 - G. For a period of three years after final payment, or until the final resolution of any and all claims and disputes, the foregoing final estimate and payment will be subject to audit and inspection as provided in Document 00704 – Contractual Relationship of Parties, Paragraph 2 and corrected for accounting or clerical errors in the calculations. One party shall pay to the other any amount found due as a result of such corrections.
4. **SUBSTITUTION OF SECURITIES:** Pursuant to Public Contract Code Section 10263, the Contractor may request substitution of eligible securities for moneys withheld by the Department and shall receive interest on the securities posted.

5. INTEREST: Interest at the stipulated rate of seven percent per annum will be allowed as required by law. A lower interest rate may be applied where permitted by law.

END OF DOCUMENT

DOCUMENT 00709

POTENTIAL CLAIMS AND CLAIMS

1. POTENTIAL CLAIMS

- A. Notice of Potential Claims: If the Contractor objects to any decision, determination, order, directive, instruction, notice, action, or omission of the Engineer, the Contractor shall, within 15 days after receipt or occurrence of the same, furnish to the Engineer a written Notice of Potential Claim stating such objections.
- 1) The Contractor shall furnish at the end of each Work day detailed hourly records for that day of labor, construction equipment and itemized records of materials, equipment and services used in performance of Work related to the Potential Claim. Records shall be kept on Department form, Daily Disputed Work Report.
 - 2) Failure by the Contractor to furnish either the notice required in Paragraph 1.A, or the records required in Paragraph 1.A.1, or both, shall constitute a waiver of the Contractor's right to file a claim or to pursue any identified Potential Claim under Paragraph 1.A
 - 3) Upon filing a Notice of Potential Claim, the Contractor shall, as applicable, preserve all information, including electronically stored information, that may be relevant to the potential claim. The Contractor shall concurrently notify its affected Subcontractors and Suppliers to do the same.
 - 4) Requests for equitable adjustments or relief are not allowed and will not be considered a valid basis for obtaining an adjustment to the contract whether for time, money or both.
- B. Documentation of Potential Claims: Within 30 days of submitting the documentation required under Paragraph 1.A.1, the Contractor shall furnish all documentation that relates to each and every Potential Claim together with all documents that support the cost and time components, as applicable, for items of the Potential Claim, including, but not limited to, the labor, certified payrolls, benefits, insurance, materials, equipment, and all documentation that establishes the time period, individuals involved, the hours for the individuals, and shall include all relevant Subcontractor and Supplier documentation, and any and all additional relevant documentation required to be produced under the Contract, or requested by the Department pursuant to Paragraph 2.C.

- C. Additional Documentation Requested by the Department: The Department may request in writing, any additional records from the Contractor in connection with the Potential Claim sufficient to allow the Department to verify all or a portion of the Potential Claim. The Contractor shall provide such records within 30 days of the Department's request. Documents requested by the Department shall conform to generally accepted auditing standards and may include, but not be limited to, the following:
- 1) Job cost reports, cost distribution worksheets, earnings records, general ledgers, cash disbursements journals, and canceled checks;
 - 2) Pre-bid records, estimates, and takeoffs;
 - 3) Daily time sheets and supervisor's daily reports, recurring reports, and logs;
 - 4) Schedules, including Subcontractor schedules;
 - 5) Email, letters, and correspondence;
 - 6) Insurance, welfare, benefits, subsistence, and travel records;
 - 7) Payroll tax forms, job payroll ledgers, and union agreements;
 - 8) Subcontracts, material invoices, purchase orders, and requisitions;
 - 9) Equipment records (list of company and equipment rental rates, invoices, etc.);
 - 10) Any other documents specifically described in the Department's written request.

- D. Certification of Potential Claims: All Potential Claims submitted by the Contractor, shall include the following certification, exactly as stated below:

I, _____, BEING THE _____
(MUST BE AN OFFICER OR AUTHORIZED REPRESENTATIVE IDENTIFIED PURSUANT TO DOCUMENT 00706, PARAGRAPH 3.C) OF _____ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED POTENTIAL CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID POTENTIAL CLAIM IS TRUTHFUL AND ACCURATE; THAT ALL SUPPORTING DOCUMENTATION IS COMPLETE AND ACCURATE; AND THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE DEPARTMENT IS RESPONSIBLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTIONS 12650 ET SEQ. PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT, AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

SIGNATURE: _____ DATE: _____

- E. Waiver of Right to Pursue a Potential Claim:

- 1) Each of the requirements stated herein for filing, supporting, certifying, and verifying each Potential Claim are material obligations of this Contract and are intended to enable the Department to evaluate the Potential Claim without the need to resort to formal dispute resolution procedures or legal proceedings.
- 2) The failure of the Contractor to comply with these requirements or to permit the Department access to the books and records of the Contractor, shall constitute a waiver of the Potential Claim and the Contractor's right to pursue any action to recover costs or damages associated with such Potential Claim.

2. CLAIMS

- A. Submission of Claims:

- 1) If the Contractor wishes to pursue any claim(s) that it previously submitted as a Potential Claim(s) noticed in accordance with

Paragraph 1, the Contractor must state such Claim as an exception when executing the Release on Contract pursuant to Document 00708 – Payments and Retentions, Paragraph 3.B.

2) Not later than 30 days after the return of Release on Contract, the Contractor may furnish a Claim for monetary compensation for any Claim stated as an exception in the Release on Contract.

B. Certification of Claims: All Claims submitted by the Contractor, shall include the following certification, exactly as stated below:

I, _____, BEING THE _____
(MUST BE AN OFFICER OR AUTHORIZED REPRESENTATIVE IDENTIFIED PURSUANT TO DOCUMENT 00706, PARAGRAPH 3.C) OF _____ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS TRUTHFUL AND ACCURATE; THAT ALL SUPPORTING DOCUMENTATION IS COMPLETE AND ACCURATE; AND THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE DEPARTMENT IS RESPONSIBLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTIONS 12650 ET SEQ. PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT, AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

SIGNATURE: _____ DATE: _____

C. Additional Documentation Requested by the Department: The Department reserves the right to request any additional documentation, not previously submitted by the Contractor, that is necessary to fully evaluate the Claim. The Contractor shall submit the documentation requested by the Department within 30 days of the Department's written request. All documentation submitted by the Contractor will be covered under the Contractor's Certification of Claims.

D. Waiver of Right to File a Claim: The Contractor's failure to comply with the requirements of Paragraph 2.A through 2.B shall constitute a full and final waiver of the Contractor's right to file a Claim and to pursue

any action or arbitration to recover costs or damages associated therewith.

- E. Decision on Claims: Claims of the Contractor arising under and by virtue of the Contract will be decided by Engineer who will furnish the decision to the Contractor, in writing. Such decision(s) need not be furnished until after Acceptance.
3. FALSE CLAIMS ACT: Should the Contractor be unable to support any part of its Claim(s) and it is determined that there is falsity of such certification or misrepresentation of fact or fraud on the part of the Contractor then, in addition to any other action or remedy including recoupment of damages or reimbursement of Department's costs, the Contractor shall be subject to the False Claims Act (Sections 12650 et seq. of the Government Code).
 4. CUMULATIVE IMPACTS: Notices of Potential Claims or Claims for additional compensation and/or an extension of time due to the cumulative impact of change orders are not allowed and will be rejected by the Engineer.
 5. AUDITS OF POTENTIAL CLAIMS AND CLAIMS: All Potential Claims filed under Paragraph 1 and Claims filed under Paragraph 2, against Department shall be subject to audit pursuant to Document 00704, Paragraph 2 at any time following the filing of the Potential Claim or Claim.
 6. ARBITRATION
 - A. Public Code Sections 10240 et seq., and applicable regulations of the California Code of Regulations Title 1, Sections 1300 through 1393 provide for the resolution of unresolved contract claims. Arbitration shall be initiated by filing a Complaint in Arbitration in accordance with said law and regulations.
 - B. The venue of any arbitration proceedings shall be located in Sacramento, California. Each party hereby agrees that any arbitration proceeding or such court shall have personal jurisdiction over it and consents to service of process in any manner authorized by California law.
 - C. The Arbitration decision will be decided under and in accordance with California law supported by substantial evidence. The decision will be in writing, and will contain the basis for the decision, findings of fact, and conclusions of law.

- D. If the Contractor files a Complaint in Arbitration prior to the issuance of all Engineer's decisions, the Department may, after notice to the Contractor, seek and be entitled to receive a stay of proceedings until all such decisions are issued, or, alternatively, elect to treat the actions of the Contractor as a waiver of any Engineer's requirement to issue a decision on Claim(s). The Engineer shall have the discretion to elect which alternative will be applied.

END OF DOCUMENT