



REQUEST FOR PRICING (RFP)

RFP NO. 2017-001

Date: 09/26/2017

Project Description: Purchase and Installation of Fifty-Eight (58) Manufactured Home Units at Mountain View Estates Mobile Home Park

Location: 68990 Harrison Street, Thermal, CA 92274

REQUEST FOR PRICING INFORMATION AT A GLANCE

CONTACT PERSON FOR QUESTIONS/INTERPRETATIONS:	Robert Lane, Contracting Coordinator Housing Authority - Procurement 5555 Arlington Ave. Riverside, CA 92504 Phone: (951) 343-5439 / Fax: (951) 688-6873 Email: rlane@rivco.org
HOW TO OBTAIN THE REQUEST FOR PRICING DOCUMENTS:	1. Access www.harivco.org 2. Scroll down and select: RFP 2017-001: Purchase and Installation of Fifty-Eight (58) Manufactured Home Units at Mountain View Estates Mobile Home Park 3. Download the Request for Pricing
VENDORS MUST SUBMIT ONLY ONE FORM PRIOR TO THE DUE DATE DEADLINE TO SATISFY THE REQUEST FOR PRICING SUBMISSION	FORM OF PRICING (page 12)
NON-MANDATORY JOB WALK:	October 12, 2017 at 10:30 AM
PROJECT LOCATION:	Mountain View Estates Mobile Home Park 68990 Harrison Street Thermal, CA 92274
REQUEST FOR PRICING DEADLINE (DUE DATE)	October 26, 2017 at 2:00 PM 5555 Arlington Avenue Riverside, CA 92504
NOTE: HACR reserves the right to deviate from this timeline and/or modify the Scope of Work at any time!	Notices of any such decisions or modifications will be located at: www.harivco.org

PROCEDURE: All pricing must be submitted and time-stamped received in the designated HACR office by no later than the submittal deadline (due date) stated herein (or within any ensuing amendment). A total of 1 original signature copy (marked "ORIGINAL") of the pricing submittal shall be placed unfolded in a sealed package and addressed to:



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Housing Authority of the County of Riverside (HACR)

**Attention: Robert Lane
Contracting Coordinator
5555 Arlington Avenue
Riverside, CA 92504**

The package exterior must clearly include the following, "**Request for Pricing No. 2017-001: Purchase and Installation of Fifty-Eight (58) Manufactured Home Units at Mountain View Estates Mobile Home Park**" and must have the vendor's name and return address. Submittals received after the published deadline will not be accepted. Vendors must submit pricing on the **FORM OF PRICE only!** The Housing Authority of the County of Riverside (HACR) will not accept the pricing by fax or email. The HACR will **NOT** accept proposed pricing verbally or by telephone!

- 1.0 **HACR CONTACT:** All questions pertaining to this Request for Pricing shall be addressed to Robert Lane (hereinafter, the Contracting Coordinator or CC), 5555 Arlington Avenue, Riverside, CA 92504, Telephone: (951) 343-5439; Email: rlane@rivco.org
- 2.0 **APPLICABILITY:** By submitting pricing to the HACR, the firm or individual doing so is automatically agreeing to abide by all terms and conditions listed herein, including those terms and conditions within the *HASA General Conditions for Construction Contracts*, which are attached hereto.
- 3.0 **PROGRAM BACKGROUND:** The HACR has an established Mobile Home Tenant Loan (MHTL) program that provides owners of existing unsafe and unpermitted manufactured homes located in an unpermitted park, financial assistance for the purchase of a new manufactured home to be installed in a permitted manufactured home park. A requirement of the MHTL program is the family must surrender their unpermitted manufactured home that will be demolished in exchange for a new manufactured home.

Each approved family will receive Pre-Qualification Letter issued by the MHTL program manager. The manufactured home dealer will be issued a copy of the Pre-Qualification Letter that will include information such as the family name and address, family size, credit limit and authorized manufactured home size the family will order.

4.0 **HACR RESERVATION OF RIGHTS:**

- 4.1 Reject any or all prices, to waive any informalities in the Request for Pricing process, or to terminate the Request for Pricing process at any time, if deemed by the HACR to be in the best interest of the HACR;
- 4.2 Terminate a contract awarded pursuant to this Request for Pricing at any time for its



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convenience upon delivery of a written notice within ten (10) calendar days to the apparent or successful vendor;

- 4.3 Determine the days, hours and locations that the successful vendor shall provide the items or services called for in this Request for Pricing;
- 4.4 Reject and not consider any pricing that does not, in the opinion of the CC, meet the requirements of this Request for Pricing, including but not necessarily limited to: incomplete pricing, offering of alternate items or services (not including "or equal" items), or non-requested items or services.
- 4.5 The HACR reserves the right to require of responder information regarding financial responsibility and viability or such other information as the HACR determines is necessary to ascertain whether a response is in fact the lowest responsive and responsible submitted.
- 4.6 The HACR reserves the right to determine the days, hours and locations that the successful responders shall provide the services called for in this Request for Pricing.
- 5.0 **VENDOR'S RESPONSIBILITY:** Each vendor must carefully review and comply with all instructions provided herein, and those provided within any named attachments or addenda.
- 6.0 **PERFORMANCE PERIOD:** All work as described in the plans, specifications, and/or scope of work must be completed within sixty (60) calendar days after the home is delivered to the mobile home park. Successful vendor shall only perform services Monday through Friday, 8:00AM to 5:00PM unless vendor has obtained written authorization from the CO to deviate from this schedule.
- 7.0 **DEADLINE:** Each vendor shall submit his/her proposed costs, prior to the posted deadline, as provided for herein. Whereas this is an informal solicitation process, the HACR reserves the right to extend the posted deadline at any time prior to the deadline, if, in the opinion of the CC, it is in the best interests of the HACR to do so, in his sole and absolute discretion.
- 8.0 **QUANTITIES (if applicable):** All quantities entered within the preceding table (if applicable) and within the corresponding pricing items are for calculating purposes only. As may be further detailed herein, the HACR does not guarantee any minimum or maximum amount of work as a result of any award ensuing from this Request for Pricing. The HACR shall retain one contractor only and shall retain the right to order from that contractor (successful vendor), on a task order basis, any amount of services or items that the HACR requires during the ensuing contract period. This means that if the HACR decides that it is in its best interests to delete



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from the ensuing contract any quantities or work from the preceding table, then the HACR has the right, in its sole and absolute discretion, to do so at any time during the contract period.

9.0 **HOLD PRICES/NON-ESCALATION:** By submitting a price, and whereas the price submitted is a firm-fixed price, each vendor thereby agrees to "hold" and not increase the proposed price during the term of this solicitation and for ninety (90) days thereafter.

10.0 **CONTRACT AND AWARD CONDITIONS:**

10.1 **PURCHASE ORDER (PO):** The HACR will procure the applicable goods or services by issuance of a PO (which shall have the same meaning as a "contract"). PO's will be issued on an as-needed basis only. By submitting a price, the successful vendor thereby agrees to confirm receipt of the PO in the manner directed by the HACR.

10.2 **AWARD CRITERIA:** If an award is completed pursuant to this Request for Pricing, and unless otherwise instructed in writing by the CC, the award shall be made to the responsive and responsible vendor that submits the lowest cost. The results of the solicitation will not be released until the contract is executed between the HACR and the lowest responsive and responsible vendor.

10.3 **CONTRACT FORM:** By completing, executing and submitting the Form of Price form, (last page), the proposer is thereby agreeing to "abide by all terms and conditions pertaining to this Request for Pricing as issued by the HACR, in hard copy, including an agreement to execute the Sample Contract form or any other form substantially approved as to form and substance by HACR." A copy of the Sample Contract form will be made available to any vendor upon written request.

10.4 **SCOPE OF WORK:** All Technical Specifications or Scope of Work listed within the subject HACR contract will generally be the same as listed within this Request for Pricing's Technical Specifications or Scope of Work section (19.0). Any vendor that believes the listed Technical Specifications or Scope of Work (Section 19.0) are unreasonable or incomplete shall address such issues with the HACR CC or designee, in writing during the solicitation period, prior to the posted price deadline. Once the price deadline has passed, revision of the specifications set forth will not occur (no negotiations after the price submittal deadline!).

10.5 **PROFESSIONAL SERVICES EXCLUSION:** Contracts for certain professional services are excluded from coverage by HUD-determined or HUD-adopted prevailing wage rates. Hourly rates charged by the vendor must be reasonable and reflect fees that are normally charged within the vendor's community.



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- 11.0 **INVALID OR ALTERNATE PRICES:** Failure to complete and submit all required information, or to add any additional requirements not acceptable to the HACR, may invalidate the price submitted. Furthermore, the HACR shall reserve the right to reject, without consideration, alternate prices, meaning those that do not meet the requirements of this Request for Pricing.
- 12.0 **PRICE COSTS:** There shall be no obligation for the HACR to compensate any vendor or prospective vendor for any costs that he/she may incur in responding to this Request for Pricing.
- 13.0 **ALL INCLUSIVE:** Each price submitted shall include all costs, including but not limited to: sales tax, shipping, delivery, recordation, reprographic, mailings, inspections, and/or completion or assembly of the specified product or services at the HACR site or location, as specified within this Request for Pricing or on the PO issued. The HACR will not pay any additional costs above those on the Form of Price form.
- 14.0 **ASSIGNMENT OF PERSONNEL:** The HACR shall retain the right to demand and receive a change in personnel assigned by the successful vendor to provide services to the HACR if the HACR believes that such change is in the best interest of the HACR and the completion of the work or provision of the items.
- 15.0 **LICENSING AND INSURANCE REQUIREMENTS:** Prior to award (but **not** as a part of the price submission) the *Successful vendor* will be required to provide the following proofs of insurance, **if applicable** to the Project and vendor's profession and the Scope of Work to complete the Project:
- 15.1 **WORKERS' COMPENSATION:**
If the vendor has employees as defined by the State of California, the Vendor shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.
- 15.2 **COMMERCIAL GENERAL LIABILITY:**
Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Vendor's performance of its obligations hereunder. Policy shall name the HACR as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general



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aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

15.3 VEHICLE LIABILITY:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Vendor shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the HACR as Additional Insured.

15.4 PROFESSIONAL LIABILITY:

If Vendor is providing services or expertise that falls under a quasi-professional role, Vendor shall maintain Professional Liability Insurance providing coverage for the Vendor's performance of work, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Vendor's Professional Liability insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of the performance period and Vendor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Contract; or 3) demonstrate through Certificates of Insurance that Vendor has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

15.5 The Vendor shall possess all of the required state and local licenses, and certifications required to perform work of the type required by this Request for Pricing in the ***State of California, and/or the County of Riverside.***

15.6 A copy of the Vendor's business license allowing that entity to provide such services within the ***State of California, and/or the County of Riverside.***

15.7 LICENSE:

A copy of the **dealer license (OL #) issued by the Department of Housing and Community Development (HCD)** and the license issued by the Contractors State License Board (CSLB) allowing the bidder to provide the installation services detailed herein. To be considered, a potential vendor must pose ***all***, or subcontract with a contractor(s) who possesses the following license classification types; **a "B" – General Contractor or "C-47" - General Manufactured Housing Contractor**, or for work covered in its price when price is submitted. Contractor shall be licensed as required by



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the jurisdiction in which the service is to be performed and the license shall be current and in good standing. This includes a joint venture formed to submit a price.

16.0 DOCUMENTS THAT APPLY TO THIS REQUEST FOR PRICING:

16.1 Form of Price form (last page);

16.2 *HASA General Conditions for Construction Contracts* (included by reference – a copy will be delivered by the HACR to any firm upon submission to the CC of a written request for such), incorporated herein by this reference.

16.3 The HACR reserves the right to require the successful Vendor/contractor to utilize any form required by the HACR or the California Department of Industrial Relations to complete the required work and by submitting his/her price each Vendor/contractor agrees to do so at no additional charge.

17.0 TECHNICAL SPECIFICATIONS OR SCOPE OF WORK (TS/SOW):

17.1 **Mobile Home Unit Specifications:** The minimum manufactured home specifications shall be those set forth in Mobile Home Unit Specification Sheet (Attachment B), Mobile Home Unit Floor Plan (Attachment C) or an equivalent make and model, however the proposed make and model may not have any specifications that are less than those listed in Attachment B and C and the following specifications:

17.1.1 2.5 ton A/C unit

17.1.2 Elevated block pad for A/C minimum height must be equal finish to the home

17.1.3 Sprinklers per Ordinance 787

17.1.4 Range & heat to be converted to propane gas

17.1.5 Block for perimeter foundation with two (2) access panels and ventilation (per State, County, and CVWD flood requirements)

17.1.6 Hardiepanel skirting to be painted to match home

17.1.7 Lap siding to be completed on hitch end to match home

17.1.8 One (1) hose bib in addition to the one (1) included from the factory



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17.1.9 11' x 40' Attached aluminum awning

17.2 Mobile Home Unit Installation:

17.2.1 All work is to be performed by qualified, competent trained personnel. The selected vendor is to be licensed and responsible for providing supervision of the work by appropriately identified personnel. The HACR may require the vendor to remove from the work such employees as the local authority deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the HACR to be contrary to the public interest. The vendor shall ensure full cooperation of all workers and suppliers and shall be confined to this work only. The vendor and his personnel shall respect the rights of tenants in the surrounding dwellings where work is being performed. The office hours for all locations of the HACR are 8:00 am – 5:00 pm Monday through Friday, or as otherwise specified in the Scope of Work. The vendor's working hours may vary depending upon the type of work being performed. Vendor may work longer hours if approved in advance by the HACR.

17.2.2 Site preparation shall be in accordance with the manufacturer's instructions and County of Riverside, Building and Safety requirements

17.2.3 Vendor to provide desert landscaping which is to include: one (1) tree (minimum 24" box), shrubs, decomposed granite (DG), sprinkler timer and sprinkler valve for irrigation system to match existing homes

17.2.4 Vendor to provide and install 5' wrought iron fencing for front of mobile home unit to match existing fencing with a man gate and one set of drive gates

17.2.5 Vendor to install 11' x 50' concrete driveway with 6" x 6" steel mesh reinforcement

17.2.6 Foundation will be installed in accordance with the manufacturers and County of Riverside Building and Safety instructions and requirements

17.2.7 Units can be delivered and installed concurrently as long as installation conditions are equal for the fifty-eight (58) spaces



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- 17.2.8 Successful vendor is to confirm with TLMA setback requirements for manufactured homes
- 17.2.9 All pedestals will be equipped with 100 amp breakers by owner (if not currently equipped) prior to installation
- 17.2.10 Vendor to install infrastructure connections for washer and dryer (laundry room)
- 17.2.11 All manufactured homes must be equipped for connection to propane with propane gas connections and fittings for all applicable appliances and/or utilities
- 17.2.12 Vendor is to verify domestic water pressure (PSI) with the Coachella Valley Water District for fire sprinkler requirements. Vendor will be responsible for correcting excessive water pressure for fire sprinkler requirements
- 17.2.13 Steps and landings for all units are to meet minimum County of Riverside Building and Safety requirements
- 17.2.14 Vendor will be responsible for ensuring that each unit is able to be connected to satellite dish, cable, and/or telephone service if the owner wishes to have these services connected
- 17.2.15 All units may be placed on grade level using a standard pier system. Road base is not required as long as drainage is adequate and conforms to the minimum County of Riverside code requirements.
- 17.2.16 Vendor must receive final Certificate of Occupancy from the Riverside County Transportation Land Management Agency for the new manufactured home
- 17.3 **Mobile Home Park Information:**
 - 17.3.1 The mobile home units will be installed within the permitted Mountain View Estates Mobile Home Park
 - 17.3.2 The basic/minimum infrastructure is available at the Mountain View Estates Mobile Home Park



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- 17.3.3 The compaction at the Mountain View Estates Mobile Home Park should be sufficient for the installation of the manufactured homes, vendor to field verify conditions prior to installation
- 17.3.4 The Mountain View Estates Mobile Home Park is not in a “high fire” area designation
- 17.3.5 The Mountain View Estates Mobile Home Park is in a “flood zone” area designation
- 17.4 Escrow will not close until a final occupancy permit is issued on the unit. Payment will be processed within 14 calendar days from close of escrow.
- 17.5 Vendor will be readily accessible to families ordering a unit. Vendor will be required to travel, as often as needed, to the Mecca, Thermal and Oasis area to offer onsite assistance to families. Families applying for assistance may not have a means of transportation to meet vendor and coordinate the escrow process.
- 17.6 The selected vendor will meet with each one of the families so that the families are able to select home options. Vendor shall have bilingual (Spanish) person on staff to assist.
- 17.7 The selected vendor is responsible for opening escrow and managing the escrow process with the respective families. It is the responsibility of the vendor to select an escrow company to work with that has the experience in working with the community that is being assisted. Escrow office should be located within Riverside County desert cities area and have bilingual staff. Pricing should not include escrow costs.
- 17.8 Vendor will assist each of the property owners with obtaining a reasonable insurance quote, the amount will be paid thru escrow by the new home owner.
- 17.9 Utility Service and Temporary Services: Vendor will be responsible for communication with utility, electric, and any other provider of utility services. Vendor will be responsible for and will pay for all hook-ups for all services, including all tap and connection fees. The vendor will provide and pay for temporary electric and water services, when those services are necessary to complete the installation project. Selected vendor is responsible for ensuring all utilities are reinstalled and shall pay for the hook-ups for all services to the new home including IID mandrel inspection.
- 17.10 Vendor to furnish all labor, material, services and permits to ensure that the new manufactured homes are installed per County of Riverside, Building and Safety



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requirements and State regulations. Selected vendor will include all taxes, permits, licensing, utility connections, hookups and/or new supply or drain lines in their pricing.

17.11 Warranty: All items installed/provided under any contract resulting from this Request for Pricing must include a minimum of a one (1) year warranty from the Vendor for labor, materials, and installation except as specified otherwise herein. The period will begin on the date of "FINAL" acceptance by HACR.

17.12 The services provided under the contract shall conform to all information contained within the Request for Pricing documents as well as applicable Industry Published Technical Specifications, and if one of the above mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.

17.13 Assignment of Warranty: Vendor shall assign any warranties and guarantees to HACR and provide the Contractor's Warranty for Labor and Installation to HACR along with all Manufacturers' Warranty documents.

17.14 Vendor shall ensure all dirt clods, concrete remnants, rocks and stones larger than a baseball have been removed from the yard, as well as any other construction debris or contractor trash. Vendor must ensure all areas have been filled, smoothed and properly graded.

18.0 **RECAP OF ATTACHMENTS:** It is the responsibility of each Vendor to verify that he/she has downloaded all of the following attachments, which are a part of this Request for Pricing, and incorporated herein by this reference:

Attachment	Attachment Description
A	Form of Price (page 12)
B	Mobile Home Unit Specification Sheet
C	Mobile Home Unit Floor Plan
D	HASA General Conditions for Construction Contracts

~~~~~**ACTION REQUIRED ON PAGE 12**~~~~~



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**FORM OF PRICE**

Each vendor shall submit his/her price on this form only, which shall be completed, executed and returned to the HACR as detailed herein.

\*Contract will be awarded to the lowest responsive and responsible vendor, and the most advantageous to the HACR, in their sole and absolute discretion.

The undersigned vendor hereby provides the below price amounts to complete the required work (print clearly and legibly!). Further, by submitting this price, the undersigned vendor agrees to abide by all terms and conditions pertaining to this Request for Pricing as issued by the HACR, in hard copy, including an agreement to execute the Sample Contract form or any other form substantially approved as to form and substance by HACR.

**COMPLETED BY:** (NOTE: The penalty for making false statements in bids/offers is prescribed in 18 U.S.C. 1001.)

|                     |                                    |                          |
|---------------------|------------------------------------|--------------------------|
| Print Name          | Title                              | Email                    |
| Signature           | Date                               | Telephone Number         |
| Company Name        | Address (Street; City; State; Zip) |                          |
| CSLB License Number | Expiration Date                    | CSLB License Designation |

| <u>Fleetwood Canyon Lake 2443X (or equivalent)</u> |       |                                  |
|----------------------------------------------------|-------|----------------------------------|
| Manufacture                                        | Model | Price for Fifty-Eight (58) Homes |
|                                                    |       |                                  |

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In compliance with Sections 4100-4114 of the Public Contract Code, the Contractor submits the following complete list of each Subcontractor who will perform work or labor or render service in or about the construction/installation in an amount in excess of one half of one percent (1/2 of 1%) of the total bid, and the portion of the work to be performed by that Subcontractor.

Subcontractor Co Name

Address (Street; City; State; Zip)

CSLB License Number

Expiration Date

CSLB License Designation

Type and Portion of Work to be done

Subcontractor Co Name

Address (Street; City; State; Zip)

CSLB License Number

Expiration Date

CSLB License Designation

Type and Portion of Work to be done

Subcontractor Co Name

Address (Street; City; State; Zip)

CSLB License Number

Expiration Date

CSLB License Designation

Type and Portion of Work to be done



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ATTACHMENT B

“Mobile Home Unit Specification Sheet”

| | |
|------------------------|--|
| Manufacture: | Fleetwood Homes (or equivalent) |
| Model: | 2443X (or equivalent) |
| Description: | 3 Bedrooms, 2 Bathrooms |
| Square Footage: | 960 |
| Options: | Plumb & wire washer |
| | Dryer - wire only |
| | Ceiling lights in bedrooms and living room |
| | Meter base – 100Amp |
| | 40 Gal electric water heater |
| | Air conditioner - wire only and run to fuse box on rear end wall |
| | 1 PC. Molded tub/shower M/B & G/B |
| | Foundation ready |
| | Hose bib located at rear of home |
| | Zone III insulation |
| | T.V & phone raceway ¾" conduit |
| | Flush mount telephone box on sidewall |
| | Fire sprinklers |
| | Install fuse box on rear end wall |
| | Door – exterior – 6 panel inswing |
| | Exterior windows in guest and master baths |
| | 11' x 40' Attached aluminum awning |
| | 2.5 ton A/C unit |
| | Exterior front & rear fiberglass steps |
| | |
| | |



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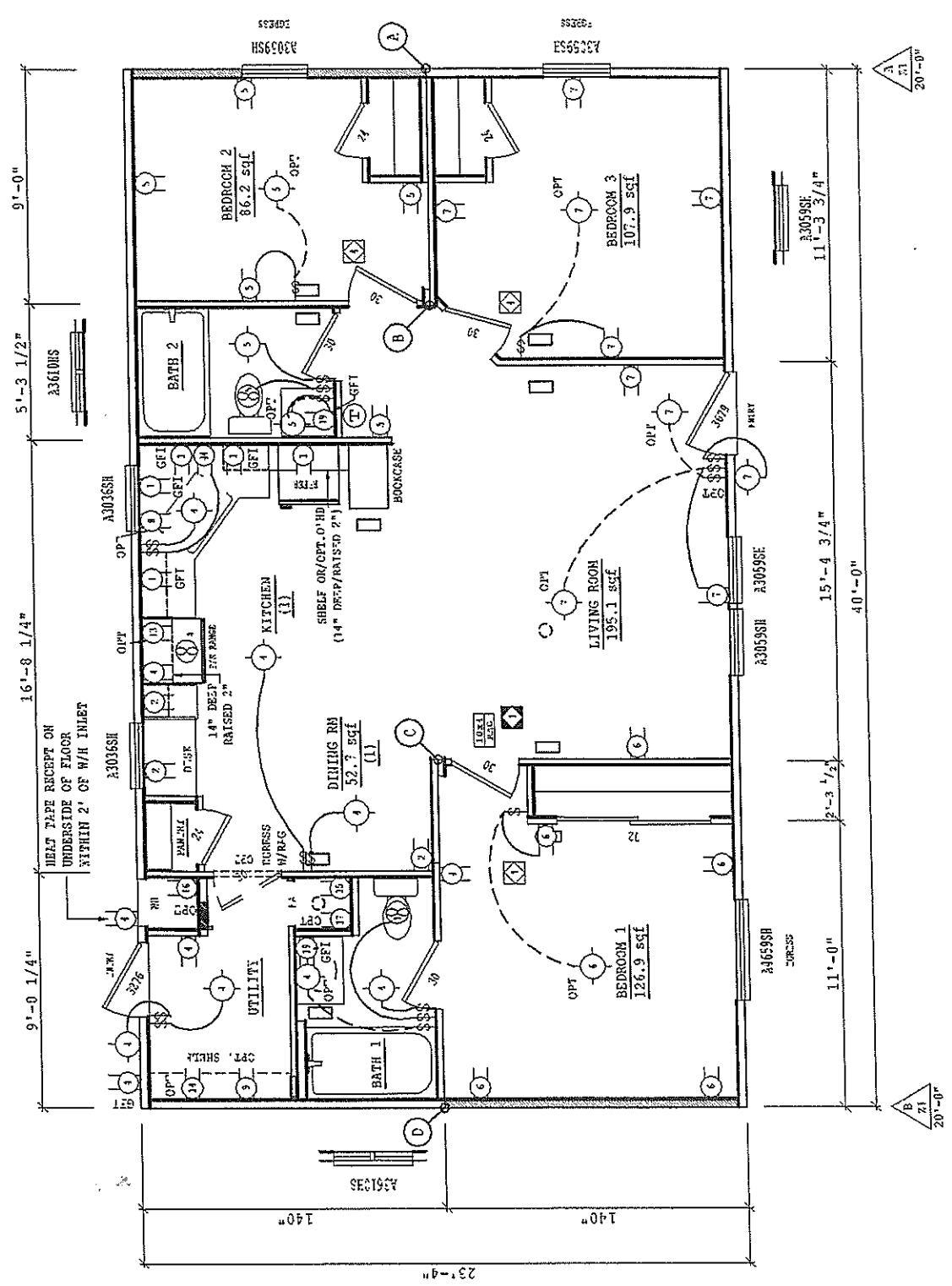
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ATTACHMENT C

“Mobile Home Unit Floor Plan”

(behind this page)





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ATTACHMENT D

“HASA General Conditions for Construction Contracts”

(behind this page)

GENERAL CONDITIONS
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GENERAL CONDITIONS OF THE CONTRACT

ARTICLE 1 GENERAL PROVISIONS

1.1 DEFINITIONS

THE CONTRACT DOCUMENTS - The Contract Documents consist of the Contract, the Performance Bond and Payment Bond and any other bond required by the Contract, the drawings, the specifications, addenda issued prior to execution of the Contract, and all modifications thereto.

THE CONTRACT - The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto, and supersedes all prior negotiation, representations, or agreements, either written or oral, including the bidding documents.

ACT OF GOD - An Act of God is an earthquake of magnitude 4.5 or greater on the Richter scale, flood, tornado, or other cataclysmic phenomenon of nature, or rain, snowstorm, windstorm, high water, or other natural phenomenon in excess of the normal as established by National Oceanic and Atmospheric Administration weather data.

ACCEPTANCE - Acceptance is when the HACR determines all of the Contract requirements have been completed. Execution of the Notice of Completion will signify acceptance. A copy of the Notice of Completion will be sent to the Contractor after execution by the HACR. Upon receipt of the Notice of Completion, the Contractor will be relieved of the duty of protecting the work, and the HACR will initiate final settlement and payment.

ARCHITECT - Architect means the person or other entity engaged by the HACR to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a HACR uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.

BENEFICIAL OCCUPANCY - The right of the HACR to occupy all or any portion of the project prior to final Acceptance of the Work. Such occupancy does not constitute acceptance or completion by the Contractor of the Work or any portion thereof, nor will it relieve the Contractor of the responsibility for correcting defective work or materials found at any time before Acceptance of the Work.

COUNTY - The term County when used herein shall mean the Board of Supervisors of the County of Riverside, a political subdivision of the State of California.

CHANGE ORDER - A Change Order is the document issued by the HACR authorizing any change or adjustment to the Contract Documents in accordance with Article 19 of this Contract.

CONTRACT DRAWINGS - "Contract drawings" or "drawings" means and includes (a) all drawings which have been prepared on behalf of the HACR and are included in the Contract Documents and all clarification drawings issued by notice to the bidders thereto; (b) all drawings submitted pursuant to the terms of the Contract by the Contractor to the HACR during the progress of the Work, which are accepted by the HACR.

CONTRACTING OFFICER – the person delegated the authority by the HACR to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The

term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the HACR in all dealings with the Contractor.

CONTRACTOR'S AGENT - The representative of the Contractor, approved by the HACR, who shall be present at the Work and be authorized to receive and act upon instructions from the HACR and to execute and direct the Work on behalf of the Contractor.

CONTRACTOR - When used herein, Contractor means the prime or principal Contractor licensed to perform work in the State of California, including all joint ventures and entering into the contract with the HACR. References to subcontractor or others are only for convenience and all such references shall be considered to refer to the Contractor. The prime or principal Contractor shall be responsible for all subcontractors, and all subcontractors shall require their subcontractors to comply with the relevant provisions of the prime or principal contract.

CRITICAL PATH METHOD(CPM) - "Critical Path Method" is a schedule technique.

DAY - The use of "day" herein means calendar day and shall include every day including Saturdays, Sundays, and legal holidays.

DIRECTOR - The use of "Director" shall mean the Assistant Director/EDA who acts as the Director of HACR or his/her designated representative.

HACR – means the Housing Authority of the County of Riverside organized under applicable state laws which are a party to this contract.

INSTALL - When used herein, "install" shall mean the complete installation, in place, of any item, equipment or material.

MATERIAL - Material shall be construed to include machinery, equipment, manufactured articles, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract. All materials shall be new.

NOTICE OF COMPLETION - The Notice of Completion ("NOC") shall be issued at that point in the Contract when the Contractor has completed all Work required in the Contract Documents. The time for issuance shall be determined by the HACR through a final inspection. The NOC shall be issued by the Board of Commissioners.

NOTICE TO PROCEED - The Notice to Proceed is the written notification from the HACR giving the Contractor notice to commence with the project. The Notice to Proceed will specify project details such as the mobilization start date, construction start date, and Work completion date.

PROJECT – means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.

REQUEST FOR INFORMATION - (RFI) The form and procedure established for communication between the Contractor and the HACR to clarify or interpret the Contract Documents.

REQUEST FOR QUOTATION - (RFQ) A document consisting of supplemental details, instruction, or information issued by the Architect, through the HACR, for the purpose of obtaining price quotations for possible changes in the Work.

SHALL - When used herein, "shall" means anything, which is mandatory to be performed by the Contractor.

SPECIFICATIONS - The term "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work.

SUBCONTRACTOR - The term "Subcontractor" means a person or firm that has a contract with Contractor or with another subcontractor to perform a portion of the Work. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of any tier, suppliers, manufacturers, and distributors. The term Subcontractor is referred to throughout the Contract Documents as if singular in number.

WORK - The term "Work" comprises the services and materials required by the Contract Documents, as may be amended, and includes all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

1.2 AUTHORITIES AND LIMITATIONS

1.2.1 The Board of Commissioners alone have the power to bind the HACR and to exercise the rights, responsibilities, authorities, and functions vested therein by the Contract Documents, except that they shall have the right to designate authorized representatives to act for them.

1.2.2 Neither the Contract, nor any part thereof, nor moneys due or to become due there under may be assigned by the Contractor without the prior written approval of the HACR, with the exception of the assignments to HACR which may be required under the terms of this Contract.

1.3 LEGAL REQUIREMENTS

1.3.1 Contractor shall keep informed of, and comply with, all federal, state and county laws, ordinances, rules, and regulations applicable to the Work or to those engaged or employed in the Work of this Contract, especially (but not limited to) those laws relating to hours of employment, prevailing wages, payment of wages, sanitary and safety conditions for workers, workers' compensation insurance, type and kind of materials that can be used, non-discrimination in employment and affirmative action programs. Failure to identify a specific provision in these Contract Documents shall not excuse the Contractor from complying with such applicable statutory requirements.

1.3.2 If conflict arises between provisions of the Contract Documents and any such laws, rules, or regulations, the Contractor shall notify the HACR at once in writing. If, before receiving clarification, Contractor performs any portion of the Work affected by such apparent conflict, such performance shall be at Contractor's own risk. Contractor shall not be entitled to any additional compensation or time by reason of the conflict or its later correction.

1.3.3 All work and materials shall be in full accordance with the latest applicable (or otherwise noted) codes, rules, and regulations including, but not limited to, the following:
.Uniform Building Code
.Uniform Plumbing Code
.Uniform Mechanical Code
.Uniform Fire Code

.State Fire Marshal
.State Industrial Accident Commission's Safety Orders
.Rules of Local Utilities

1.3.4 Nothing in the specifications is to be construed to permit work not conforming to the above, and expense incurred complying with the above shall be borne by the Contractor. Whenever the specifications and working details require higher standards than those required by the ordinances, codes and statutes, the specifications and working details shall take priority over the ordinances, codes and statutes.

1.3.5 In submitting a bid on this public works projects, or any subcontractor agreeing to supply goods, services, or materials, and entering a contract pursuant thereto, the contractor and/or subcontractor do offer and agree to assign the HACR all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final acknowledgement by the parties.

1.4 STANDARD REFERENCES

1.4.1 All documents and publications (such as, but not limited to, manuals, handbooks, codes, standards, and specifications) which are cited in this Contract for the purpose of establishing technical (non-administrative) requirements applicable to equipment, materials, or workmanship under this Contract, shall be deemed to be incorporated herein as though fully set forth.

1.4.2 Whenever reference is made to any particular document or publication, the Contractor shall comply with the requirements set out in the edition specified in this Contract, or if not specified, the latest edition or revision thereof, in effect on the date of the solicitation of bid on this project, except as modified by, as otherwise provided in, or as limited to type, class, or grade, in the specifications of this Contract.

1.5 PERMITS, LICENSES, FEES & TAXES

1.5.1 HACR RESPONSIBILITIES

- a. The HACR will apply for all plan checks and will apply for and obtain the Building Permit(s), the Grading Permit and Construction Permits required by the County of Riverside or other local jurisdictions within the County of Riverside, paying all fees in connection therewith.
- b. The HACR will furnish, at no expense to the Contractor, all on-site inspection of the Work and will arrange and pay for off-site inspection only as noted in the Contract Documents.

1.5.2 CONTRACTOR'S RESPONSIBILITIES

- a. The Contractor shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than the HACR.
- b. Exclusive of off-site inspection specified herein to be the HACR's responsibility, the Contractor shall arrange and pay for all off-site inspection of the Work, including certification, required by the specifications, drawings, or by governing authorities.

- c. Before Acceptance of the project by the HACR, the Contractor shall submit all licenses, permits, and certificates of inspection to the HACR.

1.6 SEPARATE CONTRACTS

- 1.6.1** The HACR reserves the right to perform work related to this project with its own forces, and to award separate contracts in connection with other portions of the project or other work on the site. The Contractor shall cooperate with others in the prosecution of all work and shall not interfere with material, appliances or workmen of the HACR or any other contractor engaged by the HACR at the site of the Work. In case of disagreement regarding such use, the matter shall be referred to the HACR whose decision relative to said use shall govern.
- 1.6.2** The Contractor shall afford the HACR and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate Contractor's Work with theirs.
- 1.6.3** If any part of the Contractor's Work depends for proper execution or results upon the work of the HACR or any separate contractor, the Contractor shall inspect and promptly report to the HACR any discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the HACR's or the separate contractor's work as fit and proper to receive the Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.
- 1.6.4** Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon due notice, settle with such other contractor by agreement, if both will so settle. If such separate contractor sues the HACR because of any damage alleged to have been so sustained, the Contractor agrees to indemnify and defend the HACR in such proceedings with the HACR retaining the right to select and hire independent counsel for the HACR paid by the Contractor.
- 1.6.5** Any cost caused by defective or ill-timed work shall be borne by the party responsible therefore.

1.7 HACR'S AUTHORIZED REPRESENTATIVE, INSPECTOR(S), & ARCHITECT

1.7.1 AUTHORIZED REPRESENTATIVE

The HACR shall designate a representative during the Work, who shall have the right to be present at the job site during construction and shall supervise any additional representatives appointed by the HACR.

1.7.2 CONTRACTING OFFICER

The Contracting Officer or authorized designed shall have the right to observe the installation of all materials and equipment to be incorporated into the Work and the placing of such material and equipment to determine in general if the Work is proceeding in accordance with the Contract Documents. The Contracting Officer is not authorized to make changes in the Contract Documents. On the basis of his observations, he shall keep the HACR informed as to the progress of the Work. The Contracting Officer shall not be responsible for means, methods, techniques, sequences, or procedures of construction nor for safety precautions and programs in connection with the Work. Nor will the Contracting Officer be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

1.7.3 ARCHITECT

- a. The HACR has retained an Architect for this project. The Architect will advise and consult with the HACR, and the HACR will issue instructions to the Contractor. The Architect will be requested to interpret the requirements of the Contract. When requested by the HACR, the Architect will, within a reasonable time, render such interpretations as he may deem necessary for the proper execution of the Work.
- b. The Architect will make periodic visits to the job site to familiarize himself generally with the progress and quality of the Work and to determine in general whether the work is proceeding in accordance with the Contract Documents. Based on such observations he will recommend approval of applications for progress payments made by Contractor. The Architect shall not be responsible for means, methods, techniques, sequences, or procedures of construction nor for safety precautions and programs in connection with the Work. Nor will the Architect be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

ARTICLE 2 BONDS AND INSURANCE

2.1 BIDS OF \$25,000 OR LESS

2.1.1 If the total amount bid on the Work is \$25,000 or less, the payment bond and performance bond are not required, provided that one payment of all compensation shall be made following Acceptance of all work.

2.2 BONDS

2.2.1 GENERAL REQUIREMENTS

a. Before commencing any Work under this Contract, the Contractor shall file two of each bond with the HACR. These bonds shall be in the amounts and for the purposes specified below. They shall be surety bonds issued by:

- (1) Either a California Admitted Surety OR a current Treasury Listed Surety (Federal Register).

And

- (2) Either a current A.M. Best A VIII rated Surety OR an admitted surety insurer which complies with the provisions of the Code of Civil Procedure, § 995.660.

b. Should any surety or sureties upon said bonds or any of them become insufficient, Contractor shall renew said bond or bonds with good and sufficient sureties within ten (10) calendar days after receiving notice from the HACR that the surety or sureties are insufficient. Cost of bonds shall be included in the bid price.

2.2.2 PERFORMANCE BOND

The successful bidder shall deliver to the HACR an executed Performance Bond on the attached form in an amount equal to 100% of the accepted bid as security for the faithful performance of the Contract.

2.2.3 PAYMENT BOND

The successful bidder shall deliver to the HACR an executed Payment Bond on the attached form in an amount equal to 100% of the accepted bid as security for the payment of all persons performing labor and furnishing

materials in connection with the Work.

2.3 INSURANCE

2.3.1 GENERAL REQUIREMENTS

Before commencing this Work under the Contract, and without limiting or diminishing CONTRACTOR'S obligation to indemnify and hold the HACR harmless, the Contractor shall procure and maintain, or cause to be maintained at its sole cost and expense, the following insurance coverages during the term of this Contract.

2.3.2 WORKERS' COMPENSATION INSURANCE

Contractor shall secure Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed, if applicable, to contain a Waiver of Subrogation in favor of the HACR. Pursuant to Section 3700 of the Labor Code of the State of California, Contractor shall file with the HACR before commencing the Work the following signed certification:

"I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I shall comply with such provisions before commencing the performance of the Work of this Contract."

2.3.3 COMMERCIAL GENERAL LIABILITY:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations if applicable, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Contractor's operations, use, and management of the premises, or the performance of its obligations hereunder. Policy shall name the HACR, County of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured, and contain a Waiver of Subrogation in favor of the HACR and County. Policy limits shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

2.3.4 VEHICLE LIABILITY:

If Contractor's vehicles or licensed mobile equipment are used in the performance of the obligations under the contract, or used in any manner on behalf of the HACR, Contractor shall maintain auto liability insurance for all owned, non-owned and hired automobiles in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this contract or be no less than two (2) times the occurrence limit. Policy shall name the HACR, County of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insured, and provide a Waiver of Subrogation in favor of the HACR and County.

2.3.5 PROPERTY (PHYSICAL DAMAGE):

All-Risk property insurance coverage for the full replacement value of all Contractor's equipment, improvements/alterations, temporary structures, and systems (Care, Custody, and Control of Contractor) used

on HACR property, or used in any way connected with the accomplishment of the Work performed in this contract.

2.3.6 COURSE OF CONSTRUCTION INSURANCE

Contractor shall provide All Risk Builder's Risk (Course of Construction) insurance, including earthquake and flood if in an earthquake or flood zone (required on financed or bond financing arrangements), covering the HACR, the Contractor and every subcontractor of every tier for the entire project including property to be used in the construction of the project while such property is at off site storage locations or while in transit. Policy shall include coverage for collapse, faulty workmanship, debris removal, expediting expense, Fire Department Service charges, valuable papers and records, trees, grass, shrubbery and plants. If scaffolding, falsework and temporary buildings are insured separately by the CONTRACTOR or others, evidence of such separate coverage shall be provided to HACR prior to the start of the work. Policy shall be written on a completed value form. Policy shall also provide coverage for temporary structures (onsite offices, etc.), fixtures, machinery and equipment being installed as part of the construction project.

CONTRACTOR shall provide a bid price with Course of Construction insurance as outlined herein, and shall also separately provide the cost of the Course of Construction insurance and deductible; and shall declare all terms, conditions, coverages and limits upon request of HACR. HACR RETAINS THE RIGHT TO CHOOSE TO USE ITS OWN COURSE OF CONSTRUCTION PROGRAM. If the HACR program is chosen, CONTRACTOR shall assume the cost of any and all applicable policy deductibles (currently \$50,000 per occurrence), and shall insure its own machinery, equipment, tools, etc., from any loss of any nature whatever. If HACR elects the CONTRACTOR's All Risk Builder's Risk Program, CONTRACTOR shall be responsible for any and all policy deductibles.

2.3.7 GENERAL INSURANCE PROVISION – ALL LINES:

- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and shall have an A.M. BEST rating of not less than an A:VIII unless such requirements are waived, in writing, by the Risk Manager. If the Risk Manager waives a requirement for a particular insurer, such waiver is only valid for that specific insurer and only for one policy term.
- b. The Contractor must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence, each such retention shall have the prior written consent of the Risk Manager before he commencement of operations under this contract. Upon notification of self-insured retention unacceptable to the HACR, and at the election of the Risk Manager, Contractor's carriers shall either 1) reduce or eliminate such self-insured retention as respects this contract, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- c. Contractor shall cause its insurance carrier(s) to furnish the HACR with either 1) a properly executed original Certificates(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by the Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. The HACR, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Commissioners, Board of Supervisors, elected and appointed officials, employees, agents and representatives are named as Additional Insureds. Further, said Certificates(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days written notice be given to the HACR prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, this Agreement shall terminate forthwith, unless the HACR

receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. **CONTRACTOR shall not take possession, or use the Premises, or commence operations under this Agreement until the HACR has been furnished original Certificate(s) of Insurance and certified original copies of Endorsements or policies of insurance including all Endorsements and any and all other attachments as required in this Section. The original Endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.**

- d. It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and the HACR'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

The HACR's Reserved Rights-Insurance. The HACR reserves the right to adjust the monetary limits of insurance coverage's during the term of this agreement or any extension thereof if in the Risk Manager's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.

- e. Contractor shall pass down the insurance obligations contained herein to all tiers of sub-consultants working under this Agreement.

2.4 INDEMNITY AND HOLD HARMLESS

2.4.1 Contractor agrees to and shall indemnify and hold harmless, the HACR, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Commissioners, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees), from any liability whatsoever, including but not limited to property damage, bodily injury or death, based or asserted upon any services of Contractor, its officers, employees, agents, invitees, or any subcontractor of Contractor relating to or in any way connected with the accomplishment of the work or performance of services under this Agreement, regardless of the existence or degree of fault or negligence on the part of the HACR or any officer or employee of said HACR, other than the sole active negligence or willful misconduct of HACR, its Directors and Officers, Special Districts, Board of Commissioners, elected officials, employees, agents or representatives. As part hereto of the foregoing indemnity Contractor agrees to protect and defend at its own expense, including attorneys' fees the HACR, its Directors and Officers, Specials Districts, Board of Commissioners, elected officials, employees, agents or representatives from any and all legal action based upon any acts or omissions, as stated hereinabove, by any person or persons.

2.4.2 If any such claim, action, or proceeding is brought against HACR or HACR's officers, agents, employees, or independent contractors, Contractor, upon notice from HACR, shall defend the same at Contractor's expense by counsel satisfactory to HACR.

2.4.3 HACR shall promptly notify Contractor of any claim, action, or proceeding against HACR or HACR's officers, agents employees, independent contractors, and consultants relating to the performance, or omission to perform, any term or condition of this Contract. HACR shall cooperate fully in the defense of such claim, action, or proceeding.

2.4.4 HACR shall not be liable or responsible for any accident, loss or damage occurring to the Work prior to the completion and Acceptance of same, unless otherwise specifically agreed to at the time of occupancy by the

HACR.

ARTICLE 3 SITE CONDITIONS

3.1 DIFFERING SITE CONDITIONS

- 3.1.1** The Contractor shall have reviewed and ascertained pertinent local conditions such as location, accessibility, and general character of the site and satisfy himself as to the conditions under which the Work is to be performed. No claim for allowances shall be made because of Contractor's error or negligence in acquainting himself with the conditions at the site.
- 3.1.2** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by HACR. The Contractor shall promptly report in writing to HACR any errors, inconsistencies, or omissions in the Contract Documents or inconsistencies with applicable code requirements observed by Contractor.
- 3.1.3** If Contractor performs any construction activity which it knows or should know involves an error, inconsistency, or omission without notifying and obtaining the written consent of HACR, Contractor shall be responsible for the resultant losses, including, without limitation, the costs of correcting defective work.
- 3.1.4** The HACR will furnish surveys necessary to properly locate the property and establish the boundaries thereof with general reference points as well as to enable the Contractor to proceed with the Work.
- 3.1.5** The Contractor shall provide competent engineering services to lay out the Work and all parts thereof and to establish all grades and elevations in accordance with the Contract requirements. He shall verify the figures shown on the survey and approach drawings before undertaking any construction work and shall be responsible for the accuracy of the finished work.
- 3.1.6** The Contractor shall protect and preserve established bench marks and monuments and shall make no changes in locations without the written approval of the HACR. Any bench marks or monuments that are lost or destroyed shall be replaced by the Contractor subsequent to notification and approval from HACR.

3.2 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- 3.2.1** The Contractor acknowledges by submission of his/her bid that he has satisfied himself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including any exploratory work deemed necessary by the Contractor. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the HACR.

3.3 DIMENSIONS AND MEASUREMENTS

- 3.3.1** All dimensions shown for existing conditions and all dimensions required for work that is to connect with work now in place, shall be verified and calculated by the Contractor by actual measurement of the existing work. Any discrepancies between the Contract Documents and the existing conditions shall be referred to the authorized representative of the HACR before any work affected thereby has been performed. Failure to notify the HACR before starting work will be considered acceptance by the Contractor. Where doubts as to dimensions exist, HACR shall determine the correct dimensions.

ARTICLE 4 SPECIFICATIONS AND DRAWINGS

4.1 GENERAL PROVISIONS

4.1.1 SUBDIVISIONS

For convenience, the specifications are arranged into several sections, but such separation shall not be considered as the limits of the work required of any separate trade. The terms and conditions of such limitations are wholly between the Contractor and his subcontractors. Requirements contained in any section are required as if contained in all sections and are the responsibility of the Contractor. The Contractor, prior to awarding subcontracts, will assure the Work required as a whole has been coordinated among the subcontracts.

4.1.2 RECORD DOCUMENTS

- a. The Contractor shall keep on the Work site a copy of the awarded construction documents (drawings and specifications) and shall at all times give the HACR and Architect access thereto.
- b. The Contractor will be given one set of drawings and specifications which shall be kept at the site of the Work at all times and updated weekly. Payment may be withheld if drawings are not kept current. Exact locations of all pipes and conduits and all changes in construction and details shall be indicated and dimensions provided upon these drawings, and all changes in materials and equipment installed shall be indicated in these specifications. Upon completion and prior to Acceptance of the Work, a final reproducible (transparencies) set of project record documents and specifications shall be submitted to the HACR by the Contractor. HACR will furnish a set of reproducibles.
- c. The working details will indicate dimensions, position, and kind of construction, and the specifications, qualities, and methods. Any Work indicated on the working details and not mentioned in the specifications, or vice versa, shall be furnished as though fully set forth in both. Work not particularly detailed, marked, or specified shall be the same as similar work that is detailed, marked, or specified.
- d. In case of discrepancy in the documents, the matter shall be promptly submitted to the HACR, who shall make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The HACR shall furnish from time to time such detailed information as considered necessary to clarify the Work.
- e. Where the word "similar" occurs on the drawings, it shall have a general meaning and not be interpreted as meaning identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.
- f. Standard details or specification drawings are applicable when listed, bound with specifications, noted on the drawings or referenced elsewhere in the specifications. Where the notes on the drawings indicate modifications, such modifications shall govern.
- g. All drawings, specifications and copies thereof furnished to the Contractor are the property of the HACR and shall not be used on other work without its consent. Upon completion of this project, all copies of the drawings and specifications shall be returned to the HACR.

4.2 SUMMARY OF THE ORDER OF THE PROCEDURE

- 4.2.1** In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

- 1) Modifications or changes last in time are first in precedence.
- 2) Addenda.
- 3) HACR-Contractor agreement.
- 4) General Conditions except for specific modifications thereto stated in the Supplementary Conditions.
- 5) Supplementary Conditions.
- 6) Specifications.
- 7) Drawings - as between figured dimensions given on drawings and the scaled measurements, the figured dimension shall govern; as between large-scale drawings and small-scale drawings, the larger scale shall govern.
- 8) Structural drawings
- 9) Architectural drawings.
- 10) As between detailed drawings and typical details bound within the specifications, the detailed drawings govern.
- 11) In the event provisions of codes, safety orders, contract documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive and higher quality shall govern.
- 12) Schedules shown on the drawings take precedence over conflicting information given on other drawings.
- 13) Mechanical drawings.
- 14) Electrical drawings.

4.3 CLARIFICATIONS/REQUEST FOR INFORMATION AND ADDITIONAL INSTRUCTIONS

4.3.1 NOTIFICATION BY CONTRACTOR

- a. Should Contractor discover what he perceives to be conflicts, omissions, or errors in the Contract Documents, or have any question concerning interpretation or clarification of the Contract Documents, or if it appears that the work to be done or any matters relative thereto are not sufficiently detailed or explained in the Contract Documents, then, before proceeding with the work affected, Contractor shall notify HACR's authorized representative in writing, and request interpretation, clarification, or additional detailed information concerning the work. The Contractor shall ask for the clarification (Request for Information) immediately upon discovery but no less than 14 calendar days prior to the start date of the activities related to the clarification, based on the latest updated version of the accepted Progress Schedule. HACR, whose decision shall be final and conclusive, shall resolve such questions and issue instructions to Contractor. Should Contractor proceed with work affected before receipt of instructions from HACR, Contractor shall remove and replace or adjust work which is not in accordance with the instructions from HACR and shall be responsible for resultant damage, defect or added cost. In event of failure to agree as to scope of Contract requirements, Contractor shall follow the procedure set forth in the DISPUTES article.
- b. The Contractor shall not be entitled to any compensation for delays, disruptions, inefficiencies or additional administrative effort caused by the Contractor's untimely review of the Contract Documents for potential conflicts, omissions, discrepancies or ambiguities.
- c. HACR may charge back to the Contractor, time and expense associated with RFI's, as may be reasonably determined by the HACR to be unnecessary.

4.3.2 ADDITIONAL DETAILED INSTRUCTIONS

- a. The HACR may furnish additional detailed written instructions on any Request for Information to further explain the Work. If in the opinion of Contractor, the additional detailed instructions constitute work in excess of the scope of the Contract, he must submit written notice thereof immediately to the HACR, but no later than seven (7) calendar days following receipt of such instruction(s), and in any event prior to commencement of work thereon. The Contractor shall not be entitled to additional compensation due to any additional instructions unless the Contractor shall have given the appropriate written notice. HACR will then consider such notice and, if in its judgment it is justified, the HACR instructions will be revised or extra work shall be authorized by Change Order. In the event of a dispute hereunder, attention is directed to the DISPUTES article.

ARTICLE 5 SHOP DRAWINGS AND SUBMITTALS

5.1 SHOP DRAWINGS, PRODUCT DATA, COORDINATION DRAWINGS AND SCHEDULES

- 5.1.1** Shop drawings are drawings submitted to the HACR by the Contractor showing detail of the proposed fabrication and assembly of structural elements and the installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, fabrication, erection and setting drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, and performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the Work required by the Contract. The HACR may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Contract.
- 5.1.2** The Contractor shall coordinate all shop drawings and review them for accuracy, completeness, and compliance with Contract requirements, and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the HACR without evidence of the Contractor's approval shall be returned for resubmission. The Architect will indicate review for compliance of the shop drawings, and if not in compliance as submitted, shall indicate the reasons therefore. Any work done before such review shall be at the Contractor's risk. Review by the Architect shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with paragraph 5.1.3.
- 5.1.3** If shop drawings show any variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation, no change in time or price will be allowed for Contractor changes. Should the Architect make changes on the shop drawings which affect time and/or cost, the Contractor will immediately notify the HACR with a Request for Information. If the Contractor fails to issue the Request for Information within seven (7) calendar days from receipt of the returned shop drawing, the Contractor shall have waived his right to any potential Change Order.
- 5.1.4** The Contractor shall submit shop drawings, coordination drawings, and schedules for review as required by the Contract Documents. The Contractor will provide a submittal schedule listing all shop drawings and submittals, the submission dates by the Contractor, and return dates from the Architect. This schedule will be provided fourteen (14) calendar days after the Notice to Proceed.
- 5.1.5** Shop drawings and schedules, other than catalogs, pamphlets, and similar printed material, shall be submitted with one reproducible plus one copy.
- 5.1.6** Each shop drawing or coordination drawing shall have a blank area 4 by 4 inches located adjacent to the title block. The title block shall display the following:
 - 1) Number and title of drawing

- 2) Date of drawing or revision
- 3) Name of project building or facility
- 4) Name of Contractor and (if appropriate) name of subcontractor submitting drawings
- 5) Clear identity of contents and location on the work
- 6) Project title and project number
- 7) Submittal number

5.1.7 Unless otherwise provided in this Contract or otherwise directed by HACR, shop drawings, coordination drawings, and schedules shall be submitted to the Architect with a letter, sufficiently in advance of construction requirements to permit no less than twenty (21) calendar days for checking and appropriate action.

5.2 SAMPLES

5.2.1 After the award of the Contract, the Contractor shall deliver samples required by the specifications to the HACR for approval. The Contractor shall prepay any shipping charges. Any materials or equipment for which samples are required shall not be used in the Work until reviewed by HACR.

5.2.2 Each sample shall have a label indicating:

- 1) Name of project building or facility, project title, and project number.
- 2) Name of Contractor and, if appropriate, name of subcontractor.
- 3) Identification of material or equipment with specification requirement.
- 4) Place of origin.
- 5) Name of manufacturer and brand (if any).
- 6) Identify by specification section.

5.2.3 Samples of finished materials shall have additional markings that will identify them in reference to the finish schedules.

5.2.4 The Contractor shall mail a letter in triplicate under separate cover submitting each shipment of samples and containing the information required in paragraph 5.2.2. He shall enclose a copy of this letter with the shipment and send a copy to the HACR representative on the project. Approval of a sample shall be only for the characteristics or use named in such review and shall not be construed to change or modify any Contract requirement. Substitutions will not be permitted unless they are approved under paragraph 5.3.

5.2.5 Approved samples not destroyed in testing will be sent to the HACR. Approved samples of hardware in good condition will be marked for identification and may be used in the Work. Materials and equipment incorporated in the Work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at time of submission.

5.2.6 Failure of any material to pass the specified tests will be sufficient cause for refusal to consider any further samples of the same brand or make of that material or equipment under this Contract.

5.2.7 Samples of various materials or equipment delivered on the site or in place, may be taken by the HACR for testing. Samples failing to meet Contract requirements will automatically void previous approvals of the items tested. The Contractor shall replace such materials or equipment found not to have met Contract requirements, or there shall be a proper adjustment of the Contract price as determined by the HACR.

5.2.8 Unless otherwise specified, when tests are required, only one test of each sample proposed for use will be made at the expense of the HACR. Samples which do not meet specification requirements will be rejected. Requests for testing of additional samples by Contractor may be made by the HACR at the expense of the Contractor.

5.3 SUBSTITUTIONS

- 5.3.1** Wherever the name, or brand, or manufacturer of an article is specified in the Contract Documents, it is used as a measure of quality and utility or a standard. Except in those instances where the product is designated to match others presently in use, specifications calling for a designated material, product, thing or service by specific brand or trade name shall be deemed to be followed by the words "or equal" so that bidders may propose any equal material, product, thing or service in their bid. If the Contractor desires to use any other brand or manufacturer of equal quality and utility to that specified, he shall list definite particulars of that which he considers equivalent to the specified item in his bid. The Contractor shall have thirty-five (35) days after the award of the Contract for submission of data substantiating substitution of "equal" items. The HACR will then determine whether or not the proposed name brand or article is equal in quality and utility to that specified in the Contract Documents, and its written decision shall be final.
- 5.3.2** No proposal will be considered unless accompanied by complete information and descriptive data necessary to determine the equality of the offered materials, articles, or equipment. Samples shall be provided when requested by the HACR.
- 5.3.3** The burden of proof as to the comparative quality or suitability of the offered materials, articles, or equipment shall be upon the Contractor. The HACR shall be the sole judge as to such matters. In the event that the HACR rejects the use of such alternative materials, articles, or equipment, then one of the particular products designated by brand name in the specifications shall be furnished.
- 5.3.4** The HACR will examine Contractor's submittals with reasonable promptness. Return of the submittals to the Contractor shall not relieve the Contractor from responsibility for deviations and alternatives from the Contract Documents nor shall it relieve him from responsibility for errors in the submittals. A failure by the Contractor to identify, in his letter of transmittal, material deviations from the Contract Documents shall void the submittal and any action taken thereon by the HACR. When specifically requested by the HACR, the Contractor shall resubmit such shop drawing(s), descriptive data, and samples as may be required.
- 5.3.5** If any mechanical, electrical, structural, or design revisions are required for the proper installation and fit of alternative materials, articles, or equipment, or because of deviations from the Contract Documents, such changes shall not be made without the consent of the HACR's authorized representative, and shall be made without additional cost to the HACR, such costs, including the fees of the Architect, to be borne by the Contractor.

ARTICLE 6 SCHEDULES

6.1 CONSTRUCTION SCHEDULE

- 6.1.1** The Contractor shall prepare and submit to the HACR within five days after work commences on the contract or another period of time determined by the Contracting Officer, three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the salient features of the work (including acquiring materials and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. The scheduled completion date shall be the same as the contractual completion date, for the initial schedule and subsequent updates. Any proposed early completion date shall show the difference between that date and the contract completion date as Float, which shall belong to both the HACR and Contractor. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.

- 6.1.2** The Contractor shall submit any supplementary schedule or schedules as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, without additional cost to the HACR. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained. Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract, and the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default clause of the contract.
- 6.1.3** All schedule updates must accurately reflect the as-built schedule. There shall be no change to the Critical Path without the HACR's written consent. The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer.

ARTICLE 7 TIME, LIQUIDATED DAMAGES AND EXTENSIONS

7.1 TIME OF WORK

The Contractor shall commence the project upon receipt of the written Notice to Proceed (See: Article 1 for the Definition of the Notice to Proceed) and shall perform the work diligently to completion within the number of calendar days specified in the Contract. Neither site access nor physical work shall be commenced before the Contract is fully executed, and bonds, insurance and the schedule are submitted as required by the Contract Documents. No work shall be done on Saturday, Sunday and holidays and no work shall be performed outside of normal working hours without the prior written consent of the HACR, unless required by these Specifications. See: Working Hours.

7.2 LIQUIDATED DAMAGES

If the Work is not completed within the time required, damage will be sustained by the HACR. It is and will be impracticable and extremely difficult to ascertain and determine actual damage which HACR will sustain by reason of such delay; and it is therefore agreed that Contractor will pay to HACR the sum of \$ 300.00 per day for each and every day's delay in finishing the Work beyond the time prescribed. If the Contractor fails to pay such liquidated damages, the HACR may deduct the amount thereof from any money due or that may become due the Contractor under the Contract.

7.3 UNAVOIDABLE DELAYS

7.3.1 TIME EXTENSION

- a. The Contractor will be granted an extension of time for completion of the Work beyond that named in the Contract Documents, for delays which may result through causes beyond the control of the Contractor and which he could not have avoided by the exercise of care, prudence, foresight and diligence. The appropriate extension of time shall constitute full compensation. Costs associated with extended overhead will not be considered.

- b. If the Contractor is allowed extensions of time in which to complete the Work equal to the sum of all unavoidable delays, plus any adjustments of contract time due to contract change orders, during such extension of time liquidated damages shall not be charged to the Contractor.
- c. Unavoidable delays within the meaning of this section shall be those caused by Acts of God or of the public enemy, fire, epidemics, or strike. There will be no liquidated damages for delays as described within this paragraph.
- d. Delays in the performance of parts of the work which may in themselves be unavoidable, but do not necessarily prevent or delay the performance of critical activity(s) while the activity(s) is on the Critical Path, will not be considered as unavoidable delays within the meaning of the contract and shall not be the basis of a claim for delay.

7.3.2 WEATHER

Inclement weather shall not be a prima facie reason for granting a time extension. The Contractor shall make every effort to continue work under prevailing conditions. However, if the inclement weather prevents the Contractor from beginning at the usual starting time, or prevents the Contractor from proceeding with seventy-five percent (75%) of the normal labor and equipment force towards completion of the day's current Critical Path activities (shown on the most current, and accepted schedule update) for a period of at least five (5) hours, and the crew is dismissed as a result thereof, the HACR will designate such time as unavoidable delay and grant a one (1) calendar day, non-compensable, time extension.

7.3.3 NOTICE OF DELAYS

- a. Whenever the Contractor foresees any delay in the performance of a Critical Path work activity, and in any event immediately upon the occurrence of any delay which he regards as an unavoidable delay, the Contractor shall notify the HACR in writing of such delay and its cause, in order that the HACR may take immediate steps to prevent, if possible, the occurrence or continuance of the delay, and may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the work are to be delayed thereby.
- b. After the completion of any part or the whole of the Work, the HACR, in calculating the amount due the Contractor, will assume that any and all delays which have occurred have been avoidable delays, except such delays as shall have been called to the attention of the HACR at the time of their occurrence and found by the HACR to have been unavoidable as substantiated by a change order. The Contractor shall make no claims that any delay not called to the attention of the HACR at the time of its occurrence has been an unavoidable delay.

7.4 REQUEST FOR TIME EXTENSION

- 7.4.1** In the event the Contractor requests an extension of contract time for unavoidable delay, justification shall be submitted no later than seven (7) calendar days after the initial occurrence of any such delay. When requesting time for proposed change orders, the request(s) must be submitted with the proposed change order with full justification. If the Contractor fails to submit justification he shall waive his right to a time extension at a later date. Justification must be based on the currently accepted contract schedule as updated at the time of occurrence of delay or execution of work related to any change(s) in the scope of work. The justification must include a schedule, including, but not limited to, the following information:

- a. The duration to perform the activity relating to the change(s) in the work and the resources (manpower, equipment, material, etc.) required to perform these activities within the stated duration.
- b. Logical activity ties to the contract schedule for the proposed changes and/or delay showing the activity/activities in the schedule whose start or completion dates are affected by the change and/or delay.

7.4.2 The HACR, after receipt of such justification and supporting evidence, shall make its finding of fact. The HACR's decision shall be final and conclusive and the HACR will advise the Contractor in writing of such decision. If the HACR finds that the Contractor is entitled to any extension of Contract time, the HACR's determination as to the total number of days of extension shall be based upon the latest updated version of the approved contract schedule.

7.4.3 In the event the Contractor disagrees with the HACR's decision, the Contractor shall be required to submit a claim pursuant to the DISPUTE article.

ARTICLE 8 PERFORMANCE

8.1 SUPERVISION & CONSTRUCTION PROCEDURES

8.1.1 The Contractor shall supervise and direct the work. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences, procedures, project safety, and shall coordinate all portions of the Work under the Contract, including the relations of the various trades to the progress of the Work, in accordance with the provisions of the Contract Documents.

8.1.2 The Contractor shall be responsible to the HACR for the acts and omissions of the Contractor's employees, subcontractors, and their agents and employees, and any other persons performing any of the work under a contract with the Contractor.

8.1.3 The Contractor is an independent contractor and nothing in the Contract Documents shall be interpreted to make the Contractor an agent of the HACR.

8.2 SUPERVISION

8.2.1 Within seven (7) days after the Notice to Proceed, the Contractor shall provide to the HACR an organization chart outlining key job personnel. The Contractor will also provide a Letter of Authority or Corporate Resolution for the individual(s) authorized to sign documents on its behalf, i.e., payment requests, change orders, inspection reports, etc.

8.2.2 The Contractor shall employ, during the progress of the Work, a competent Project Superintendent and any necessary assistants, as approved by the HACR. The Project Superintendent shall not be changed except with the consent of the Authorized Representative of HACR, unless the Superintendent proves to be unsatisfactory to the Contractor or ceases to be in his employ. The HACR shall be notified immediately of any new Superintendent appointed to the Work and the Contractor shall submit qualifications for approval. The Superintendent shall represent the Contractor and all directions given to him shall be as binding as if given to the Contractor.

8.2.3 The HACR shall be supplied at all times with the name and telephone number of a person in charge of or responsible for the Work, who can be reached for emergency work twenty-four (24) hours a day, seven (7) days

a week.

8.3 CONDUCT OF WORK

8.3.1 In connecting one kind of work with another, marring or damaging same will not be permitted and, in the event such occurs, shall be corrected by the Contractor at its cost prior to acceptance by the HACR. Should improper work of any trade be covered by another which results in damage or defects, the whole work affected shall be made good by the Contractor without expense to HACR.

8.4 PROTECTION OF WORK & PROPERTY

8.4.1 The Contractor shall continuously maintain adequate protection of the Work from damage and shall protect the HACR's property from injury or loss in connection with this Contract. He shall make good any such damage, injury, or loss, except what may be directly due to errors in the Contract Documents or caused by agents or employees of the HACR. He shall adequately protect adjacent property as provided by law and the Contract Documents.

8.4.2 The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the Work site which are not to be removed and which do not unreasonably interfere with the work required under this Contract.

8.4.3 The Contractor shall protect from damage all existing improvements and utilities at or near the Work site and on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the Work. If the Contractor fails to repair the damage promptly, the HACR may have the necessary work performed and charge the cost to the Contractor.

8.5 CONTRACTOR'S RESPONSIBILITY FOR WORK

8.5.1 Until Acceptance of the Work by the HACR, Contractor shall have the charge and care thereof and shall bear risk of injury or damage to any part of the Work by action of the elements. If a separate Contractor sues the Owner, on account of any loss so sustained, the HACR shall notify the Contractor, who shall indemnify and hold harmless the HACR against any expenses, or judgment arising therefrom.

8.5.2 Contractor, at its cost, shall rebuild, repair, restore and make good all damages from the elements to any portion of the Work occasioned by such causes before its Acceptance.

8.5.3 No advertising of any description will be permitted in or about the Work, except by order of the HACR.

8.5.4 Contractor shall not create or permit the continued existence of any nuisance in or about the Work.

8.6 UTILITIES

8.6.1 Unless otherwise provided for under separate sections herein, Contractor will arrange all water, gas, and electricity required for construction purposes until acceptance of the Work. Contractor shall pay for such services unless otherwise specifically noted.

8.6.2 Utilities shall not be interrupted except with the approval of the HACR. A two (2) work day written notice is required prior to any and all interruptions. Interruptions shall be scheduled so as to minimize duration and disruption to existing operations.

- 8.6.3**
- a. The Contractor shall send notices, make all necessary arrangements, and perform all other services required in the care and maintenance of all public utilities.
 - b. Enclosing or boxing in, for protection of any public utility equipment, shall be done by the Contractor. Upon completion of the Work, the Contractor shall remove all enclosures, and leave in a finished condition.
 - c. All connections to public utilities shall be made and maintained in a manner so as not to interfere with the continuing use of same by the HACR during the entire progress of the Work.

8.7 WORKING HOURS

8.7.1 All work shall be performed on a calendar day basis during the customary working hours of the trades involved unless otherwise specified in this Contract. Work performed by the Contractor of his own volition outside such established working hours shall be at no additional expense to the HACR and without HACR approval.

8.7.2 It is expressly stipulated that no laborer, workman, or mechanic employed at any time by the Contractor or by any subcontractor(s) under this Contract upon the Work or any part thereof, shall be required or permitted to work thereon more than eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except, as provided by Section 1815 of the California Labor Code. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the California Labor Code, all the provisions of which are deemed to be incorporated herein, said contractor shall forfeit, as a penalty to HACR, twenty-five dollars (\$25.00) for each laborer, workman, or mechanic employed in the execution of this Contract by contractor for each calendar day during which said laborer, workman, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of said Sections of the Labor Code.

8.7.3 The Contractor, and each subcontractor, shall keep an accurate record showing the names of and actual hours worked each calendar day and each calendar week by all laborers, workmen, and mechanics employed by them in connection with the Work contemplated by this Contract, which record shall be open at all reasonable hours to the inspection of the HACR or its officers or agents and to the Division of Labor Standards Enforcement of the Department of Industrial Relations.

8.7.4 No construction work shall be done on Saturdays, Sundays or HACR holidays and no work shall be performed outside of normal working hours without the prior written consent of the HACR. In any event, all work shall be subject to approval of the HACR. Prior to start of such work, the Contractor shall arrange with the HACR for the continuous or periodic inspection of the Work and testing of materials, when necessary. If requests are made by the Contractor for permission to work overtime, nights, Saturdays, Sundays or HACR holidays, and such requests are granted, the Contractor shall bear all extra expense to the HACR for inspection and other incidental expenses caused by such overtime work. If contractors are requested, in the interest of the HACR, to work overtime by the HACR, or if overtime work is specifically required by these specifications, all extra expense of inspection will be paid by the HACR.

8.8 MATERIAL & EQUIPMENT

8.8.1 Materials, equipment, and articles incorporated into the Work shall be new and of equal quality to the types and grades specified. When not particularly specified, the Contractor shall submit for approval satisfactory evidence as to the kind and quality of material. See SUBSTITUTION provision 5.3 concerning "or equal" requirements and procedure for submitting alternative material, articles, or equipment.

8.8.2 All materials shall be delivered so as to insure a speedy and uninterrupted progress of the Work. All materials shall be stored so as to cause no obstruction and so as to prevent overloading of any portion of the structure on the Work site, and the Contractor shall be entirely responsible for damage or loss by weather, theft, vandalism, or other cause.

8.8.3 Materials shall be stored to assure the preservation of their quality and fitness for the Work. Stored materials shall be reasonably accessible for inspection. When considered necessary by the HACR, stored materials shall be placed on wooden platforms or on other hard, clean surfaces and not directly on the ground, and shall be placed under cover when so directed.

8.9 LAYOUT OF WORK

8.9.1 The Contractor shall lay out its work from established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, material, and labor required to lay out any part of the Work. The Contractor shall be responsible for executing the Work to the lines and grades that may be established or indicated in the Contract Documents. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the HACR until authorized to remove them. If such marks are destroyed by the Contractor before their removal is authorized, the HACR may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

8.10 USE OF PREMISES

8.10.1 The Contractor shall maintain the entire premises under his control in an orderly condition. He shall store his apparatus, materials, supplies and equipment in such a manner as will not interfere with the progress of his work or the work of other contractors.

8.11 OPERATIONS & STORAGE

8.11.1 The Contractor shall confine all operations (including storage of materials) on HACR premises to areas authorized or approved by the HACR.

8.11.2 Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the HACR and shall be built with labor and materials furnished by the Contractor without expense to the HACR. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at his expense upon completion of the work.

8.11.3 The Contractor shall, under regulations prescribed by the authority having jurisdiction, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the authority having jurisdiction. When materials are transported in performance of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or HACR regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair, or pay for the repair, of any damaged curbs, sidewalks, or roads.

8.12 HEAT/POWER/LIGHT

8.12.1 Unless otherwise specified or already provided by the HACR, the Contractor shall:

- a. Provide heat, as necessary to protect all work, materials, and equipment against injury from dampness and cold;

- b. Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material;
- c. Provide electric power and light as required for performance of the Work.

8.13 CLEANING UP

8.13.1 The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the Work, the Contractor shall remove from the work and premises any weeds, rubbish, tools, scaffolding, equipment, and materials that are not the property of the HACR. Upon completing the Work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the HACR.

ARTICLE 9 SAFETY & HEALTH

9.1 ACCIDENT PREVENTION

9.1.1 In performing this Contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions. For these purposes, the Contractor shall:

- a. Provide a copy of its safety program;
- b. Provide appropriate safety barricades, signs, and signal lights;
- c. Comply with standards issued by the U.S. Government, State, HACR and City, and other governing agencies having jurisdiction;
- d. Ensure that any additional measures the HACR determines to be reasonably necessary for this purpose are taken.

9.1.2 The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by the HACR.

9.1.3 Before beginning excavation for a trench 5 feet or more in depth, Contractor shall provide evidence of having obtained a permit from the authority having jurisdiction.

9.1.4 Nothing herein shall be deemed to allow use of shoring, sloping, or protective systems less effective than those required by the Construction Safety Orders of the California Division of Industrial Safety.

9.2 SANITARY FACILITIES

9.2.1 Contractor shall supply and maintain at its expense such toilets and other sanitary facilities including those which are accessible by the disabled as per ADA and Title 24 requirements necessary for use by visitors and workers employed at the job site. Such facilities shall be approved by the HACR.

9.3 RESPONSIBILITY FOR COMPLIANCE WITH CAL-OSHA

9.3.1 All work, materials, work safety procedures and equipment shall be in full accordance with the latest Cal-OSHA

rules and regulations.

9.3.2 Contractor warrants that he and each of his subcontractors shall, in performance of this Contract, comply with each and every compliance order issued pursuant to Cal-OSHA. The Contractor assumes full and total responsibility for compliance with Cal-OSHA standards by his subcontractors as well as himself. The cost of complying with any order and/or payment of any penalty assessed pursuant to Cal-OSHA shall be borne by the Contractor. Nothing contained therein shall be deemed to prevent the Contractor and his subcontractors from otherwise allocating between themselves responsibility for compliance with Cal-OSHA requirements; provided, however, that the Contractor shall not thereby, in any manner whatsoever, be relieved of his responsibility to the HACR as herein set forth.

9.4 TOXIC AND HAZARDOUS MATERIALS AND WASTE

9.4.1 ASBESTOS

Operations which may cause release of asbestos fibers into the atmosphere shall meet the requirements of Title 8 CCR General Industrial Safety Orders, Section 5208 and California law. Some operations which may cause such concentrations include sanding, grinding, abrasive blasting, sawing, drilling, shoveling, or otherwise handling materials containing asbestos so that dust will be raised.

9.4.2 TOXIC MATERIALS

Operations which release toxic materials into the atmosphere shall meet the requirements of Title 8 CCR, General Industrial Safety Orders. Some operations which may release such materials include use of adhesives, sealants, paint, and other coatings.

9.4.3 LEAD-BASED PAINT

Lead-based paint is prohibited. Lead-based paint is defined as:

- a. Any paint containing more than five-tenths of one percentum lead by weight (calculated as lead metal in the total non-volatile content of the paint) or the equivalent measure of lead in the dried film of paint applied or both; or
- b. For paint manufactured after June 22, 1977, any paint containing more than six one-hundredths of one percentum lead by weight (calculated as lead metal) in the total content of the paint or the equivalent measure of lead in the dried film or paint already applied.

9.4.4 HAULING AND DISPOSAL

All hauling and disposal shall meet requirements of Title 22 CCR, Division 4, Chapter 30, "Minimum Standards for Management of Hazardous and Extremely Hazardous Wastes."

9.4.5 ASBESTOS PROHIBITED

No products or materials containing asbestos shall be incorporated into the Work without the prior written approval of the HACR.

ARTICLE 10 HACR-FURNISHED PROPERTY

10.1 HACR-FURNISHED PROPERTY

- 10.1.1** The HACR may furnish to the Contractor property as identified in the specification(s) to be incorporated or installed into the Work or used in performing the Contract. The listed property will be furnished f.o.b. railroad cars at the place specified in the Contract or f.o.b. truck at the project site. The Contractor is required to accept delivery. When the property is delivered, the Contractor shall verify its quantity and condition and acknowledge receipt in writing to the HACR within twenty-four (24) hours of delivery, also specifying any damage to or shortage of the property as received. All such property shall be installed or incorporated into the Work at the expense of the Contractor, unless otherwise indicated in this Contract.
- 10.1.2** Each item of property to be furnished under this clause shall be identified by the Contractor in a schedule by quantity, item, and description. Schedule form will be provided by the HACR.
- 10.1.3** The Contractor shall be held responsible for all material delivered to him and deductions will be made from any moneys due him to make good any shortages and deficiencies, from any cause whatsoever, which may occur after such delivery.
- 10.1.4** The Contractor shall set up accounting records and establish an inspection procedure as approved by the HACR.

ARTICLE 11 BENEFICIAL OCCUPANCY

11.1 BENEFICIAL OCCUPANCY

- 11.1.1** The HACR shall have the right to take possession of or use any completed or partially completed portion of the Work. The HACR's possession or use shall not be deemed an acceptance of any Work under the Contract. The Contractor will continue to pay for any portion of the utilities which he is using.
- 11.1.2** While the HACR has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to that portion of the Work resulting from the HACR's possession or use. If Contractor believes the partial possession or use by the HACR will delay the progress of the Work or will cause additional expense to the Contractor, Contractor shall immediately submit a written request for an equitable adjustment in the Contract price or the time of completion. HACR will then consider such request and, if in its judgment it is justified, the HACR will modify the contract in writing accordingly. In the event the Contractor disagrees with the HACR's decision, the Contractor shall be required to submit a claim pursuant to the DISPUTE article.

ARTICLE 12 INSPECTION AND TESTING

12.1 INSPECTION AND TESTING

- 12.1.1** The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by this Contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the HACR. The HACR shall at all times have access to the Work, and the Contractor shall provide proper facilities for such access and for inspection.
- 12.1.2** HACR inspections and tests are for the sole benefit of the HACR and do not:
- a. Relieve the Contractor of responsibility for providing adequate quality control measures;
 - b. Relieve the Contractor of responsibility for damage to or loss of the material before Acceptance;

- c. Constitute or imply Acceptance; or
- d. Affect the continuing rights of the HACR after Acceptance regarding latent defects, gross mistakes, fraud or the HACR's rights under any warranty or guarantee.

12.1.3 The presence or absence of a HACR inspector does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the HACR's written authorization.

12.1.4 The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the HACR. The HACR may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. Special, full size, and performance tests shall be performed as described in the Contract.

12.1.5 The Contractor shall, without charge, replace or correct work found by the HACR not to conform to contract requirements, unless in the public interest the HACR consents to accept the work with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

12.1.6 If, before Acceptance of the Work, the HACR decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet Contract requirements, the HACR shall issue a Change Order for such removal and reinstallation.

12.1.7 The Contractor shall at all times maintain proper facilities and provide safe access for inspection by the HACR to all parts of the work, and to the shops wherein the work is in preparation. Where the specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the HACR of its readiness for inspection and without the approval or consent of HACR. Should any such work be covered up without such notice, approval, or consent, it must, if required by HACR, be uncovered for examination at the Contractor's expense.

12.1.8 The Contractor shall notify the HACR at least one (1) work day in advance of the time scheduled for the inspection. Should the Contractor fail to notify the HACR and proceed with work requiring inspection, all such work is rejected, and no further work shall be done on that portion of the project until the rejected work is accepted by the HACR. Should the Contractor request acceptance of such rejected work the HACR shall, at the Contractor's expense, secure the services of private material testing laboratories, consulting engineers or licensed land surveyors, who shall certify that said work does in fact conform to the requirements of the Contract Documents. The work previously rejected shall be accepted by the HACR after receipt of such certification if the HACR approves of such certification.

12.1.9 If the Contractor does not promptly replace or correct rejected work, the HACR may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

12.1.10 Construction review of the Contractor's performance by the HACR is not intended to include the review of the adequacy of the Contractor's safety measures, in, on, or near the construction site.

12.1.11 The HACR will pay for initial testing services specified to be performed by the HACR. When initial tests

indicate non-compliance with the Contract Documents, subsequent retesting occasioned by the non-compliance shall be performed by the same testing agency, and costs thereof will be deducted by the HACR from the Contract sum.

12.2 INSPECTION BY OTHER JURISDICTIONS

Whenever any part of the Work to be performed is under the jurisdiction or control of another public entity, including but not limited to: The United States Government, State of California, or City, such work shall be subject to inspection by the officials of such entities and it must pass inspection, in addition to HACR inspection, and such other inspections as may otherwise be provided for in the Contract Documents.

12.3 FINAL INSPECTION AND TESTS

The Contractor shall give the HACR at least ten (10) calendar days advance written notice of the date the Work will be fully completed and ready for final inspection and tests. Final inspection and tests will be started within ten (10) calendar days from the date specified in the aforementioned notice unless the HACR determines that the Work is not ready for final inspection and so informs the Contractor.

ARTICLE 13 ACCEPTANCE

13.1 ACCEPTANCE OF THE WORK

13.1.1 After the final inspection by HACR and all the contract documentation has been received, it will be recommended to the HACR Board of Commissioners to accept the Work and file a Notice of Completion. Upon approval of the Notice of Completion, a copy will be sent to the Contractor. (See final payment clause.) Upon Acceptance of the Work, Contractor will be relieved of the duty of maintaining and protecting the Work. Neither determination by the HACR that the Work is complete, nor Acceptance thereof, shall operate as a bar to HACR's claim against Contractor pursuant to Contractor's warranty and guarantees.

13.1.2 Partial payments shall not be construed as acceptance of any part of the Work.

13.1.3 In judging the Work, no allowance for deviations from the drawings and specifications will be made, unless already approved in writing at the time and in the manner as called for herein.

13.1.4 HACR shall be given adequate opportunity to make any necessary arrangements for fire insurance and extended coverage.

13.1.5 The Acceptance of the Work will not be recommended until all requirements of the Contract Documents are complete and approved by the HACR. This shall include, but is not limited to, all construction, guarantee forms, parts lists, schedules, tests, operating instructions, as-built drawings, and all other documentation identified by the Contract Documents.

ARTICLE 14 WARRANTY AND GUARANTEES

14.1 CONTRACTOR'S WARRANTY AND GUARANTEE

14.1.1 Contractor warrants that all materials and equipment furnished under this Contract shall be new unless otherwise specified, and that all Work performed under this Contract conforms to the Contract requirements and is free of any defect whether performed by the Contractor or any subcontractor or supplier.

- 14.1.2** This warranty shall continue for a period of one (1) year from the date of filing of Notice of Completion on the Work. The Performance Bond shall remain in force during the warranty period.
- 14.1.3** The Contractor shall remedy at the Contractor's expense any damage to HACR-owned or controlled real or personal property, when that damage is the result of:
- a. The Contractor's failure to conform to Contract requirements or
 - b. Any defect of equipment, material, workmanship, or design furnished by the Contractor.
- 14.1.4** The Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. The Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.
- 14.1.5** The HACR shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) calendar days after being notified in writing by the HACR of any work not in accordance with the requirements of the Contract or any defects in the Work, commence, and perform with due diligence, all work necessary to fulfill the terms of this Article. If the Contractor fails to remedy any defect, or damage within fourteen (14) calendar days after receipt of notice, the HACR shall have the right to replace, repair, or otherwise remedy the defect, or damage at the Contractor's expense. Payment due to the Architect from the HACR for extra architectural services required in the enforcement of Contractor's guarantee after Acceptance of the Work shall be paid to the HACR by the Contractor.
- 14.1.6** In the event of any emergency constituting an immediate hazard to health or safety of HACR employees, property, or licensees, when caused by work of the Contractor that is not in accordance with the Contract requirements, the HACR may undertake at Contractor's expense and without prior notice, all work necessary to correct such hazardous condition(s).
- 14.1.7.** With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall:
- a. Obtain all warranties that would be given in normal commercial practice;
 - b. Require all warranties to be executed, in writing, for the benefit of the HACR, unless directed otherwise by the HACR; and
 - c. Enforce all warranties for the benefit of the HACR, unless otherwise directed by the HACR.
- 14.1.8** This warranty shall not limit the HACR's rights under the Inspection and Acceptance section(s) of this Contract with respect to latent defects, gross mistakes, or fraud.

ARTICLE 15 ENVIRONMENTAL PROTECTION

15.1 DUST CONTROL

- 15.1.1** The Contractor shall provide any and all dust control required.
- 15.1.2** Whenever the Contractor is negligent in providing dust control, the HACR shall order the Contractor to provide such dust control. If the Contractor does not comply promptly with such order, the HACR shall have the authority to provide such dust control and charge the Contractor therefore by deducting the cost from progress

payments to the Contractor as such costs are incurred by the HACR. The HACR shall not be held responsible for schedule delays due to actions taken by HACR to mitigate the failure of the Contractor in providing dust control.

15.2 EXCESSIVE NOISE

15.2.1 The Contractor shall use only such equipment on the Work and in such state of repair that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.

15.2.2 Should the HACR determine that the muffling device on any equipment used on the Work is ineffective or defective so that the noise tolerance of such equipment is exceeded, such equipment shall not, after such determination by the HACR, be used on the Work until its muffling device is repaired or replaced so as to bring the noise tolerance level of such equipment within such standards.

15.3 POLLUTION CONTROL, CLEANING

15.3.1 The Contractor shall not, in connection with the Work, discharge any smoke, dust, or other contaminants into the atmosphere which are in violation of South Coast Air Quality Management District standards or discharge any fluids or materials into any lake, river, stream, or channel as will violate regulations of State of California Water Resources Board. The Contractor shall control accumulation of waste materials and rubbish and dispose of waste materials and rubbish off-site at a minimum of weekly intervals. Burning of materials is not permitted.

ARTICLE 16 EMPLOYMENT PRACTICES

16.1 QUALIFICATIONS FOR EMPLOYMENT AND APPRENTICESHIP STANDARDS

16.1.1 In accordance with Section 1735 of the California Labor Code, no person under the age of 16 years and no person currently serving sentence in a penal or correctional institution shall be employed to perform any Work under this Contract. No person whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health or safety of others shall be employed to perform Work under this Contract; provided that this requirement shall not operate against any physically handicapped persons otherwise employable where such persons may be safely assigned to Work which they ably perform.

16.1.2 This contract is subject to the provisions of Sections 1777.5 and 1777.6 of the California Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him. Section 1777.5 as amended, requires the Contractor or subcontractor employing tradesmen in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of this project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the Contract.

16.1.3 The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making contributions.

16.1.4 All employees engaged in work on the project under this Contract shall have the right to organize and bargain collectively through representatives of their own choosing, and such employees shall be free from interference, restraint, and coercion of employers in the designation of such employees for the purpose of collective bargaining or other mutual aid or protection, and no person seeking employment under this Contract shall be required as a condition of initial or continued employment to join any company, union, or to refrain from joining, organizing, or assisting a labor organization of such person's own choosing. No person in the

employment of the HACR shall be employed by this contractor.

16.2 WAGES & RECORDS

16.2.1 WAGE RATES

- a. Pursuant to Section 1770 and 1773 et seq. of the Labor Code of the State of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification, or type of workman needed to execute the contract which will be awarded to the successful bidder, copies of which are on file and available upon request at the Clerk of the Board, Board of Supervisors, 4080 Lemon St., 14th Floor, Riverside, CA 92501-3655, and shall be posted at the job site.
- b. It shall be mandatory upon the Contractor and upon any subcontractor under him, to pay not less than the said specified rates to all laborers, workmen, and mechanics employed in the execution of the Contract. It is further expressly stipulated that the Contractor shall, as a penalty to HACR, forfeit two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic paid less than the stipulated prevailing rates for any work done under this Contract by him or by any subcontractor under him; and Contractor agrees to comply with all provisions of Section 1770 et. seq. of the Labor Code.
- c. In case it becomes necessary for the Contractor or any sub-contractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, the Contractor shall immediately notify the HACR who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish the Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.
- d. The HACR will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth as provided herein. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the HACR on the Contract.

16.2.2 WAGE RECORDS

- a. The Contractor and each subcontractor shall keep or cause to be kept an accurate record (certified payroll) showing the names and occupations of all laborers, workers, and mechanics employed by him in connection with the execution of this Contract or any subcontract thereunder. The record shall show the actual per diem wages paid to each of said workers, which records shall be provided to the HACR, and to the Division of Labor Standards Enforcement upon its request. Copies provided will include one which has the name and social security numbers marked out.

16.3 NOTICE OF LABOR DISPUTES

- ### **16.3.1**
- If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the

timely performance of this Contract, the Contractor shall immediately give notice, including all relevant information, to the HACR.

16.3.2 The Contractor agrees to insert the substance of this clause, including this paragraph into any subcontract in which a labor dispute may delay the timely performance of this Contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

16.4 NONDISCRIMINATION

16.4.1 EQUAL EMPLOYMENT OPPORTUNITY

- a. Contractor agrees for the duration of this Contract that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.
- c. The Contractor will send to each labor union or other representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the workers' representative of the Contractor commitments under this agreement.
- d. The Contractor agrees that it will comply with the provisions of Titles VI and VII of the Civil Rights Act, Revenue Sharing Act Title 31, U.S. Code Section 2716, and California Government Code Section 12990.
- e. The Contractor agrees that it will assist and cooperate with the HACR, the State of California and the United States Government in obtaining compliance with the equal opportunity clause, rules, regulations, and relevant orders of the State of California and United States Government issued pursuant to the Acts.
- f. In the event of the Contractor's non-compliance with the discrimination clause, the affirmative action plan of this contract, or with any of the said rules, regulations or orders, this Contract may be canceled, terminated, or suspended in whole or in part by the HACR.

16.4.2 HANDICAPPED NON-DISCRIMINATION

This project is subject to Section 504 of the Rehabilitation Act of 1973 as amended, (29 U.S.C. 794), and the Americans with Disabilities Act of 1990, as amended, and all requirements imposed by the guidelines and

interpretations issued thereto. In this regard, the HACR and all of its contractors and subcontractors will take all reasonable steps to ensure that handicapped individuals have the maximum opportunity for the same level of aid, benefit or service as any other individual.

16.4.3 FAIR EMPLOYMENT AND HOUSING ACT ADDENDUM

In the performance of this Contract, the Contractor will not discriminate against any employee or Applicant for employment because of race, sex, color, religion, ancestry, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, sex, color, religion, ancestry, or national origin. Such action shall include, but not limited to, the following: employment, upgrading, promotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State or local agency setting forth the provisions of this Fair Employment and Housing Section.

16.4.4 ACCESS TO RECORDS

The Contractor will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment and Housing section of this Contract.

16.4.5 REMEDIES FOR WILLFUL VIOLATION

The State or local agency may determine a willful violation of the Fair Employment and Housing provision to have occurred upon receipt of a final judgment having that effect from a court in an action to which Contractor was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Contractor has violated the Fair Employment and Housing Act and has issued an order or obtained an injunction under Government Code Sections 12900, et seq.

ARTICLE 17 SUBCONTRACTING

17.1 SUBCONTRACTORS

17.1.1 A subcontractor is an individual, firm or corporation having a direct contract with the Contractor or with any other subcontractor for the performance of a part of the Work. In accordance with Section 4104 of the Public Contract Code, each Contractor, in his bid, shall include the name and location of each subcontractor who will perform work or labor, or render services to the Contractor in or about the Work in an amount in excess of one half of 1% of the Contractor's total bid.

17.1.2 The HACR reserves the right to approve all subcontractors. Such approval shall be a consideration to the awarding of the Contract and unless notification to the contrary is given to the Contractor prior to the signing of the Contract, the list of subcontractors which is submitted with his proposal will be deemed to be acceptable.

17.1.3 The Contractor shall be as fully responsible to the HACR for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

17.1.4 Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and the HACR.

17.1.5 The divisions or sections of the specifications are not intended to control the Contractor in dividing the Work among subcontractors or to limit the work performed by any trade.

17.2 RELATIONS OF CONTRACTOR AND SUBCONTRACTOR

17.2.1 The Contractor agrees to bind every subcontractor by the terms of the Contract with the HACR, the General Conditions, Supplementary Conditions, and the drawings and specifications as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the HACR.

17.3 SUBCONTRACTS

17.3.1 Pursuant to the provisions of Sections 4100 to 4114 of the California Public Contract Code, inclusive, the Contractor shall not, without the consent of the HACR, either:

- a. Substitute any persons as subcontractors in place of the subcontractors designated in his original bid without the consent of HACR. (The HACR's consent can only be given in cases permitted by Public Contract Code Section 4107.)
- b. Permit any subcontract to be assigned or transferred or allow any work to be performed by anyone other than the original subcontractor listed in his bid.
- c. Sublet or subcontract any portion of the work in excess of one-half of one percent of his bid to which his original bid did not designate a subcontractor.

Should the Contractor violate any of the provisions of Sections 4100 to 4114, inclusive, of the Public Contract Code, his so doing shall be deemed a violation of this Contract, and the HACR may either cancel the contract, or assess the Contractor a penalty in the amount of not more than ten (10) percent of the amount of the subcontract involved, or both.

ARTICLE 18 TAXES

18.1 SALES AND PAYROLL TAXES

18.1.1 Each Contractor, subcontractor, and material dealer shall include in their bid all applicable taxes including but not limited to sales tax and payroll taxes required by law.

ARTICLE 19 CHANGES

19.1 CHANGE ORDER WORK

19.1.1 The HACR reserves the right to make changes in the work without impairing the validity of the Contract. The HACR may make changes to the work, or suspend the work, and all such changes or suspension are within the contemplation of the parties and will not be a basis for compensable delay. Such changes may be made in accordance with any of the following methods:

- a. By written change order to the Contract ordered by the Board of Commissioners.
- b. By written change order, signed by the Contracting Officer, in the manner and amounts specified by HACR procurement and procedure manual.

- c. By written authorization, issued by the Contracting Officer, for items of work done under unit prices. The cost or credit for such added or omitted work shall be determined by multiplying the number of units added to or omitted from the work by the applicable unit price.
- 19.1.2** Upon receipt of a proposed Change Order from HACR, the Contractor shall submit a proposal in accordance with the requirements and limitations set forth in this "Change Orders" article, for work involved in the contemplated change.
- 19.1.3** The Contractor must submit a cost proposal within fifteen (15) calendar days after receipt of the proposed change order. The Contractor must submit cost proposals in less than fifteen (15) calendar days if requested by the HACR or if required by schedule limitations.
- 19.1.4** If the Contractor fails to submit the cost proposal within the 15-day period (or as requested), the HACR has the right to order the Contractor in writing to commence the work immediately on a force account basis and/or issue a lump sum change to the contract price in accordance with the HACR's estimate of cost. If the change is issued based on the HACR estimate, the Contractor will waive his right to dispute the action unless within fifteen (15) calendar days following completion of the added/deleted work, the Contractor presents proof that the HACR's estimate was in error.
- 19.1.5** If the HACR disagrees with the proposal submitted by Contractor, it will notify the Contractor in writing and the Contractor may elect to proceed under the DISPUTE article of this Contract, or, in the event either party contests the price or time extension of Change work, or time is of the essence, the HACR may issue a Construction Change Directive and the contractor shall proceed with the work. The HACR will provide its opinion of the appropriate price and/or time extension in a "Response to Change Order Request." If the contractor agrees with the HACR's estimate, a change order will be issued by the HACR. If no agreement can be reached, the HACR shall have the right to issue the Change Order Directive setting forth its unilateral determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a Claim in writing to the HACR, within twenty-one (21) days of the Change Order Directive, disputing the terms of such Directive. No dispute, disagreement or failure of the parties to reach agreement regarding the amount, if any, of any adjustment to the contract sum or contract time shall relieve the Contractor from the obligation to proceed with performance of the work, including extra work, promptly and expeditiously."
- 19.1.6** The Contractor will give notice of a requested change on his letterhead within seven (7) calendar days of discovery and, if the HACR agrees, a proposed change order will be issued on the HACR's standard change order form.
- 19.1.7** If any change involves an increase or decrease in the cost of the Contractor's work, a change order shall state the amount to be added or deducted from the Contract amount, and the additional time, if any, needed for the performance of such work.
- 19.1.8** Any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the HACR, except that when, in the opinion of the HACR, such basis is not feasible the change to the Contract amount shall be determined upon a cost-plus-percentage basis with a guaranteed maximum lump sum cost within the limitations provided by law.
- 19.1.9** Each lump sum quotation from the Contractor shall be accompanied by sufficiently detailed estimates to permit verification of totals in accordance with (a) through (d) in 19.1.11 below.
- 19.1.10** When the work is to be done on a cost-plus-percentage basis, the Contractor shall submit statements as required

by the HACR showing all labor, material, and equipment costs incurred, and upon completion of the work, a summary of costs, including overhead and profit, and in accordance with Item (a) through (d) in 19.1.11 below.

19.1.11 Estimates for lump sum quotations and accounting for cost-plus-percentage work shall be limited to direct expenditures necessitated specifically by the subject extra work, and shall be segregated as follows:

- a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the extra work cost will not be permitted unless the contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
- b. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery.
- c. Tool and Equipment Use. No payment will be made for the use of tools which have a replacement value of \$100 or less. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed.
- d. Overhead, Profit and Other Charges. The mark-up for overhead and profit on work added to the Contract shall be according to the following Schedule.
 - (1) For work performed by the Contractor's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the net cost of the work, equipment, labor and materials.
 - (2) For work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the net cost of the work, equipment, labor and materials, to which the Contractor may add five (5) percent of the subcontractor's price of the work.
 - (3) For work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed fifteen (15 %) percent of the net cost for work, equipment, labor and materials to which sub-contractor and general contractor may each add an additional five (5 %) percent of the total price from the lower tier subcontractor.
 - (4) "Net Cost" is defined as consisting of costs of labor, materials and equipment use and/or rental only. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up.
 - (5) The cost of direct supervision, except when provided by working foreman whose time is included above, of change order work when done exclusively, and not in conjunction or at the same time as, other work performed on the job and when approved in advance by the HACR's authorized representative, including only payroll taxes, insurance, pension and direct costs for the labor of supervision may

be charged to the change order. The cost of transportation, use of vehicle and other costs incurred by supervision will not be allowed.

- 19.1.12** For added or deducted work by subcontractors, the Contractor shall furnish to the HACR the subcontractor's signed detailed estimate of the cost of labor, material and equipment, including the markup by such subcontractor for overhead and profit. The same requirement shall apply to sub-subcontractors.
- 19.1.13** For added or deducted work furnished by a vendor or supplier, the Contractor shall furnish to the HACR a detailed estimate or quotation of the cost to the Contractor for such work, signed by such vendor or supplier.
- 19.1.14** Any change in the work involving both extras and credits shall show a new total cost, including subcontracts. Allowance for overhead and profit, as specified therein, shall be applied if the net total cost is an extra; overhead and profit allowances shall not be applied if the net total cost is a credit. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.
- 19.1.15** The Contractor shall identify any adjustment in time of the final completion of the Work as a whole which is directly attributable to the changed work within fifteen (15) calendar days of receipt of the proposed change order. The Contractor's request for a change in time will be supported by a detailed schedule analysis including a schedule indicating the activities which have been affected and the additional time being requested.
- a. For a change in time for the Work, the Contractor shall be entitled only to such adjustments where completion of the entire Work (critical path) is delayed due to the performance of the changed work. Failure to request extra time when submitting such estimate shall constitute waiver of the right to subsequently claim adjustment in time for final completion based upon such changed work.
 - b. If the HACR and the Contractor fail to arrive at an agreement on the amount of extra cost, credit or time extension for a proposed change, a change order will be processed in the amount believed by the HACR to be reasonable, and the Contractor shall proceed with the work. If the Contractor believes that the amount or time stipulated in the change order is not reasonable for the work required, he may elect to issue a notification in accordance with the DISPUTES article for review by the HACR, stating therein the basis for his dispute with such change order.
- 19.1.16** Any change in the Work shall conform to the original Contract Documents insofar as they may apply without conflict to the conditions involved in the change.
- 19.1.17** Payment for additional work or extras, if any, shall become due and payable in accordance with the provisions for payment in the Contract.
- 19.1.18** Contractor shall not reserve a right to assess impact cost, extended job site costs, extended overhead, and/or constructive acceleration at a later date as related to any and all changes. All costs or estimated costs must be supported with full schedule and cost documentation with each proposed change within the prescribed submission times. If a request for a change is denied and the Contractor disputes the denial, the Contractor must supply the aforementioned documentation to support his claim under the DISPUTES article of this Contract. No claims shall be allowed for impact, extended overhead costs, and/or construction acceleration due to the multiplicity of changes and/or clarifications. Any attempt by Contractor to change or modify the change order form (sample included herein) shall void the form, including any letters the Contractor may issue in conjunction therewith.
- 19.1.19** All alterations, extensions of time, extra and additional work and other changes authorized by these

specifications or any part of the Contract may be made without securing consent of the surety or sureties on the contract bonds.

19.2 CHANGE ORDERS AND LABOR RATES GUIDELINES

19.2.1 The following are guidelines for preparing change orders:

a. Labor Rates:

- (1) To establish the labor rate for each classification and trade, a breakdown shall be submitted to the HACR.
- (2) Labor rates are based on current prevailing state and federal wages. Only those benefits mandated by law or a valid labor contract are paid by the HACR.
- (3) Payroll taxes shall be paid as mandated by law. Labor related insurances shall be paid according to industry standard average.
- (4) No other costs related to labor shall be paid by HACR.

b. Change Orders:

- (1) Change orders shall be prepared in accordance with the project contract.
- (2) No insurance costs are paid by HACR, except for labor insurances specified in this guideline under section 1 titled "LABOR RATES".
- (3) Material cost shall be broken down on a separate sheet, and for those jobs designated as time and material shall be supported by valid invoices from suppliers.
- (4) Hours for non-productive labor, such as non-working foremen or general foremen, shall be paid only when justified in the opinion of the HACR, and approved by the HACR. The total number of nonproductive labor hours shall be limited to a maximum of 15% of the total number of productive labor hours.
- (5) Cost of use of special equipment shall be paid when justified in the opinion of the HACR, and approved by the HACR. Equipment refers to special equipment that is needed to perform that specific job, and does not include the usual tools customarily required for that trade. Small tools costs are not paid by HACR.
- (6) Material transportation costs are paid by HACR when justified in the opinion of the HACR, and approved by the HACR's authorized representative.
- (7) Overhead, profit and fees on subcontracts, are paid according to the contract.
- (8) No costs other than those designated above shall be paid by HACR. The percentages of overhead and fee allowed with change orders have been established to account for any other direct or indirect costs that might be incurred due to the change order.

19.3 AUDIT

- 19.3.1** The HACR shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the HACR.
- 19.3.2** The Contractor shall make available at its office at all reasonable times the materials described in paragraph 19.3.1 above, for examination, audit, or reproduction, until 4 years after final payment under this Contract.
- 19.3.3** The Contractor shall insert a clause containing all the provisions of this 19.3, including this paragraph, in all subcontracts over \$10,000 under this contract.

ARTICLE 20 PAYMENT

20.1 PROGRESS PAYMENTS

- 20.1.1** The HACR shall pay the Contractor the price as provided in this Contract.
- 20.1.2** The HACR shall make progress payments monthly as the Work proceeds, on estimates approved by the HACR. The Contractor shall furnish a breakdown of the total contract price, in a format provided by the HACR, showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments.
- 20.1.3** Contractor shall submit to the HACR vouchers, schedule activities, or other satisfactory proof of the value of any work for which he claims payment on such account, and receipts showing that progress payments have been duly made on such contracts, and for materials furnished.
- 20.1.4** In the preparation of estimates, the HACR may authorize 75% of the value of material delivered and satisfactorily stored on the site, and preparatory work done to be taken into consideration for major equipment if:
- a. Consideration is specifically authorized by this Contract; and
 - b. The Contractor furnishes certified receipt that it has acquired title and paid invoices for such material and that the material will be used to perform this Contract.
- 20.1.5** On the 25th of each month the Contractor will submit his request for payment. Prior to that submittal the HACR will review the requested percentage of completion for each activity. The payment request will be in the format as provided by the HACR and will refer to the schedule.
- 20.1.6** Upon receipt of a payment request, the HACR shall:
- a. Review that request as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request; and
 - b. Any payment request determined not to be a proper request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) calendar days after receipt. The returned request for payment shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.
- 20.1.7** Any progress payment which is undisputed and properly submitted and remains unpaid for thirty (30) calendar

days after receipt by HACR shall accrue interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. The number of days available to the HACR to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the HACR exceeds the seven-day return requirement set forth in 20.1.6 above.

- 20.1.8** In making these progress payments, there shall be retained five percent (5%) from the amount of each progress payment until the work is complete.
- 20.1.9** Except as otherwise prohibited by law, the Contractor may elect to receive all payments due under the contract pursuant to this section without any retention, by posting securities in accordance with Public Contract Code Section 22300.
- 20.1.10** Contractor and each subcontractor shall pay each of its employees engaged in work under this Contract in full (less deductions made mandatory by law) in accordance with California law.
- 20.1.11** The HACR may withhold (in excess of retentions) or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect the HACR from loss on account of:
- a. Defective work not remedied.
 - b. Claims filed or reasonable evidence indicating probable filing of claims.
 - c. Failure of the Contractor to make payments properly to subcontractors or for material or labor.
 - d. Damage to another Contractor.
 - e. Delays in progress toward completion of the work, with the stipulated amount of liquidated damages being withheld for each day of delay for which no extension is granted.
 - f. Default of the Contractor in the performance of the terms of the Contract.
- 20.1.12** Should stop notices be filed with the HACR, HACR shall withhold the amount required plus 25% from certificates until such claims shall have been resolved pursuant to applicable law. California Civil Code Section 9000 et seq.
- 20.1.13** Contractor shall provide (1) forms of conditional releases of stop notice and bond rights upon progress payment, complying with California Civil Code Section 8132, for all work performed during the time period covered by the current Application for Payment, signed by the Contractor and the subcontractors of every tier; and (2) forms of unconditional release of stop notice and bond rights upon progress payment, complying with Civil Code Section 8134 for all work performed during the time period covered by previous Application for Payment, signed by Contractor and the subcontractors of every tier.
- 20.1.14** All material and work covered by progress payments made shall, at the time of payment, become the sole property of the HACR, but this shall not be construed as:
- a. An acceptance of any work not in accordance with the Contract Documents; or
 - b. Waiving the right of the HACR to require the fulfillment of all of the terms of the contract.

20.2 FINAL PAYMENT

20.2.1 GENERAL

- a. The HACR shall pay the amount due the Contractor under this Contract after:
 - 1.) The Acceptance of all work and Notice of Completion per the terms of this Contract;
 - 2.) Presentation of a properly executed voucher;
 - 3.) Submission of conditional releases and waivers of stop notice and bond rights upon final payment in the form required by California Civil Code Section 8136 executed by Contractor and by all the subcontractors of every Tier.
 - 4.) Presentation of release of all claims against the HACR arising by virtue of this Contract, other than claims and disputes in stated amounts, that the Contractor has specifically excepted from the operation of the release.
- b. The Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the HACR, to indemnify him against any lien.

20.2.2 FINAL CERTIFICATE FOR PAYMENT

- a. When the work is ready for acceptance by the HACR, they will certify a Notice of Completion. Upon approval of the Notice of Completion, a copy will be sent to the Contractor.
- b. Notice of Completion will be recorded by the HACR upon completion and Acceptance of the Work. Providing no stop notices have been filed, thirty-five (35) calendar days after filing of such Notice of Completion, payment due under the contract will become due to the Contractor and the HACR shall so certify authorizing the final payment.

20.2.3 FINAL PAYMENT

- a. After Acceptance of Work, the HACR will submit to Contractor a statement of the sum due Contractor under this contract, together with HACR payment in the amount thereof. Said statement shall take into account the contract price, as adjusted by any change orders; amounts already paid; sums to be withheld for incomplete work; liquidated damages; and for any other cause under the Contract.
- b. The Contractor shall, from the effective date of Acceptance until the expiration of four years after final settlement under this Contract, preserve and make available to the HACR, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract.

ARTICLE 21 SUSPENSION OF WORK/TERMINATION

21.1 NON-COMPLIANCE WITH CONTRACT REQUIREMENTS

21.1.1 In the event the Contractor, after receiving written notice from the HACR of non-compliance with any

requirement of this Contract, fails to promptly initiate appropriate action to comply with the specified requirement, the HACR shall have the right to withhold payment for work completed under the Contract until the Contractor has complied with the notice or has initiated such action as may be appropriate to comply, within a reasonable period of time. The Contractor shall not be entitled to any extension of contract time or payment for any costs incurred for work under this article.

21.1.2 Should the Contractor abandon the Work called for under the Contract, or assign his Contract, or unnecessarily and unreasonably delay the work, or willfully violate or perform the work in bad faith, the HACR shall have the power to notify the Contractor to discontinue all work or any part thereof under this Contract, and thereupon the Contractor shall cease to continue said work or such part thereof as the HACR may designate, and the HACR shall have the power to employ such persons as it may consider desirable, and to obtain by contract, purchase, hire or otherwise, such implements, tools, material or materials as the HACR may deem advisable to work at and be used to complete the work herein described, or such part thereof as shall have not been completed, and to use such material as it may find upon the site of the work, and to charge the expense of such labor and material, implements and tools to the Contractor, and the expense so charged shall be deducted and paid by the HACR out of such monies as may either be due, or may at any time thereafter become due to the Contractor under the Contract.

21.2 TERMINATION

21.2.1 TERMINATION FOR BREACH

If the Contractor should be adjudged bankrupt or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his subcontractors should violate any of the provisions of the Contract, the HACR may serve written notice upon him and his surety of its intention to terminate Contractor's performance hereunder, said notice shall contain the reasons for such intention to terminate Contractor's performance, and, unless within ten (10) calendar days after serving of said notice, such violation shall cease and satisfactory arrangements for correction thereof be made, Contractor's performance shall, upon the expiration of said ten (10) calendar days, cease and terminate. In the event of any such termination, the HACR shall immediately serve written notice thereof upon the surety and the Contractor, and the HACR may take over the Contractor's work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the HACR for any excess cost occasioned the HACR thereby, and in such event the HACR may without liability for so doing take possession of and utilize in completing the work, such materials, appliances, plants, and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

21.2.2 TERMINATION FOR CONVENIENCE

- a. If the construction of the project herein is damaged, which damage is determined to have been proximately caused by an Act of God, in excess of 5% of the contract amount, provided that the work damaged is built in accordance with applicable building standards and the plans and specifications, then the HACR may, without prejudice to any other right or remedy, terminate the Contract.
- b. The HACR may terminate performance of work under this Contract in whole or in part, if the HACR determines that a termination is in the HACR's interest. The HACR shall terminate by delivering to the Contractor a Notice to Terminate specifying the extent of termination and the effective date.
- c. After receipt of such Notice, and except as directed by the HACR, the Contractor shall

immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete any continued portion of the Contract.
 - (3) To terminate all subcontracts to the extent they relate to the work terminated.
 - (4) With approval or ratification to the extent required by the HACR, settle all outstanding liabilities and termination settlement proposals arising from termination of subcontracts; the approval or ratification will be final for purposes of this clause.
 - (5) As directed by the HACR, transfer title and deliver to the HACR (1) the fabricated or unfabricated parts; work in progress, completed work, supplies, and other material produced or acquired for the work terminated; and (2) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the HACR.
 - (6) Complete performance of work not terminated.
 - (7) Take any action that may be necessary, or that the HACR may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the HACR has or may acquire an interest.
 - (8) Use its best efforts to sell, as directed or authorized by the HACR, any property of the types referred to in subparagraphs above; provided, however, that the Contractor (1) is not required to extend credit to any purchaser and (2) may acquire the property under the conditions prescribed by, and at prices approved by the HACR. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the HACR under this contract, credited to the price or cost of the work, or paid in any other manner directed by the HACR.
- d. After termination, the Contractor shall submit a final termination settlement proposal to the HACR in the form and with the certification prescribed by the HACR. The Contractor shall submit the proposal promptly, but no later than thirty (30) days from the effective date of termination. If the Contractor fails to submit the proposal within the time allowed, the HACR may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- e. Subject to subparagraph (2) above, the Contractor and the HACR may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, may not exceed the total contract price as reduced by:
- (1) the amount of payments previously made and;
 - (2) the contract price of work not terminated. The contract shall be amended with a Change Order, and the Contractor paid the agreed amount.

- f. If the Contractor and HACR fail to agree on the whole amount to be paid the Contractor because of the termination of work, the HACR shall pay the Contractor the amounts determined as follows:
- (1) For contract work performed before the effective date of termination, the total (without duplication of any terms) of:
 - (i) The cost of this work;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and
 - (iii) A sum, as profit on (i) above, determined by the HACR to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the HACR shall allow no profit under this subdivision (iii).
 - (2) The reasonable costs of settlement of the work terminated including:
 - (i) Accounting, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; and
 - (ii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- g. Except for normal spoilage, the HACR shall exclude from the amounts payable to the Contractor the fair value, as determined by the HACR, of defective work, and of property that is destroyed, lost, stolen, or damaged so as to become undeliverable.
- h. The Contractor shall have the right to make a claim under the DISPUTES article, from any determination made by the HACR.
- i. In arriving at the amount due the Contractor, there shall be deducted:
- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;
 - (2) Any claim which the HACR has against the Contractor under this Contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the HACR.
- j. If the termination is partial, the Contractor may file a proposal with the HACR for a Change Order of the price(s) of the continued portion of the Contract. The HACR shall process any Change Order agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within thirty (30) days from the effective date of termination unless extended in writing by the HACR.

- k. The HACR may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the HACR believes the total of these payments will not exceed the amount to which the Contractor will be entitled. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the HACR upon demand, together with interest.
 - l. Unless otherwise provided in this Contract or by statute, the Contractor will maintain all records and documents relating to the terminated portion of this Contract for 4 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the HACR, State and/or the U.S. Government or their representatives at all reasonable times, without any direct charge.

ARTICLE 22 DISPUTES/CLAIMS

22.1 CLAIMS RESOLUTION

In accordance with Public Contract Code Sections 20104 - 20104.6 and other applicable law, public works claims of \$375,000 or less which arise between the Contractor and the HACR shall be resolved under the following the statutory procedure unless the HACR has elected to resolve the dispute pursuant to Public Contract Code Section 10240 et seq.

- a. All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by the claimant for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the claimant and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled, or (3) an amount the payment of which is disputed by the HACR.
- b. Claims Under \$50,000. The HACR shall respond in writing to the claim within 45 days of receipt of the claim, or, the HACR may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the HACR may have. Of additional information is needed thereafter, it shall be provided upon mutual agreement of the HACR and the claimant. The HACR's written response shall be submitted 15 days after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.
- c. Claims over \$50,000 but less than or equal to \$375,000. The HACR shall respond in writing within 60 days of receipt, or, may request in writing within 30 days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims the HACR may have against the claimant. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between the HACR and the claimant. The HACR's response shall be submitted within 30 days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater. The Contractor shall make these records and documents available to the HACR, State and/or the U.S. Government or their representatives at all reasonable times, without any direct charge.
- d. If the claimant disputes the HACR's response, or if the HACR fails to respond within the statutory time period(s), the claimant may so notify the HACR within 15 days of the receipt

of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, the HACR shall schedule a meet and confer conference within 30 days.

- e. If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant may file a claim pursuant to Government Code 900 et seq. and Government Code 910 et seq. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.
- f. If a civil action is filed to resolve any claim, the provisions of Public Contract Code 20104.4 shall be followed, providing for nonbinding mediation and judicial arbitration.

22.2 CLAIM FORMAT/REQUIREMENTS

22.2.1 The Contractor will submit the claim justification in the following format:

- a. Summary of claim merit and price plus clause under which the claim is made.
- b. List of documents relating to claim
 - (a) Specifications
 - (b) Drawings
 - (c) Clarifications (RFIS)
 - (d) Schedules
 - (e) Other
- c. Chronology of events and correspondence
- d. Analysis of claim merit
- e. Analysis of claim cost
- f. Analysis of Time in CPM format
- g. Cover letter and certification (form included herein)

22.2.2 If any claim submitted includes a request for overhead, the HACR may request a Profit & Loss statement and supporting documentation from Contractor. If requested, such documentation must be submitted for the HACR to consider the claim.

22.2.3 Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by HACR, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Contractor.

22.3 NOTICE OF THIRD PARTY CLAIMS

The HACR shall provide notification to the Contractor within a reasonable time after receipt of any third-party claim relating to the Construction Contract.