

## **ATTACHMENT D**

### **Specific Terms and Conditions- Contracts For Small Construction and Repair Projects Under \$60,000**

#### **D-1. DEFINITIONS**

Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof:

- D-1.1 **ADDENDA** - Written or graphic instruments issued prior to the execution of this Contract that modify or interpret the CONTRACT DOCUMENTS, Plans and Specifications, by additions, deletions, clarifications, or corrections.
- D-1.2 **BID** - The offer or proposal of the bidder submitted in response to an Invitation for Bids or Request for Proposals, setting forth the prices for the WORK to be performed.
- D-1.3 **BIDDER** - Any person, firm or corporation submitting a BID.
- D-1.4 **BONDS** - Performance and Payment bonds, and other instruments of surety, furnished by the CONTRACTOR and the CONTRACTOR'S SURETY in accordance with the CONTRACT DOCUMENTS.
- D-1.5 **CHANGE ORDER** - A written order to the CONTRACTOR authorizing an addition, deletion, or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the contract price or contract time. No change order is effective unless approved in writing by the COUNTY'S Contract Administrator.
- D-1.6 **CONTRACT DOCUMENTS** - The Contract, Invitation for Bids or Requests for Proposals, Bid, Proposal, Notice of Award, Payment Bond, Performance Bond, Notice to Proceed, Change Orders, Technical Plans, Specifications, Drawings and Addenda as issued for this project. All CONTRACT DOCUMENTS are intended to cooperate, so that any WORK called for in one and not mentioned in another is to be executed the same as if mentioned in all. However, should there be any conflict between the terms of this Contract, Invitation for Bids or Request for Proposals, or technical plans, specifications or drawings and the CONTRACTOR'S Bid or Proposal, then this Contract, Invitation for Bids or Request for Proposals, and/or technical plans, specifications and drawings shall control. Where the specific terms and conditions in any of the referenced CONTRACT DOCUMENTS conflict with general terms and conditions in any referenced CONTRACT DOCUMENTS, the more specific terms and conditions shall be deemed to control. However, the general terms and conditions in any referenced CONTRACT DOCUMENTS shall remain in full force and effect, to the extent they do not conflict with the specific terms and conditions in any referenced CONTRACT DOCUMENTS.
- D-1.7 **CONTRACT PRICE** - The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.
- D-1.8 **CONTRACT TIME** - The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.
- D-1.9 **CONTRACTOR** - The person, firm, or corporation with whom the COUNTY has executed this Contract.
- D-1.10 **COUNTY** - The County of San Benito, a political subdivision of the State of California, for whom the WORK is to be performed.
- D-1.11 **FIELD ORDER** - A written order effecting a change in the WORK not involving an adjustment in the contract price or an extension of the contract time, issued by the COUNTY'S Contract Administrator to the CONTRACTOR during construction.
- D-1.12 **NOTICE OF AWARD** - written notice of the acceptance of the Bid or Proposal from the COUNTY to the successful bidder or respondent.

- D-1.13 NOTICE TO PROCEED - Written communication issued by the COUNTY to the CONTRACTOR authorizing him/her to proceed with the WORK and establishing the date for commencement of the WORK.
- D-1.14 PLANS - The parts of the CONTRACT DOCUMENTS that show the characteristics and scope of the WORK to be performed.
- D-1.15 PROJECT - The undertaking to be performed as provided in the CONTRACT DOCUMENTS.
- D-1.16 SHOP DRAWINGS - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, supplier or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.
- D-1.17 SPECIFICATIONS – The part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- D-1.18 SUBCONTRACTOR - An individual, firm, or corporation having a direct contract with CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.
- D-1.19 SUBSTANTIAL COMPLETION - That date certified by the COUNTY’S Contract Administrator when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.
- D-1.20 SUPPLIER - Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.
- D-1.21 WORK - All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

**D-2. RESERVED**

**D-3. PLANS AND SPECIFICATIONS**

- D-3.1 The intent of the PLANS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental WORK necessary to complete the project in an acceptable manner, ready for use, occupancy or operation by the COUNTY.
- D-3.2 In case of conflict between the plans and specifications, the specifications shall govern. Figure dimensions on plans shall govern over general plans and drawings.
- D-3.3 Any discrepancies found between the plans and specifications and site conditions or any inconsistencies or ambiguities in the plans and specifications shall be immediately reported to the COUNTY’S Contract Administrator, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the CONTRACTOR after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR’S risk.
- D-3.4 Pursuant to Government Code section 4215, COUNTY shall be responsible for the timely removal, relocation or protection of existing main or trunkline utility facilities, if not identified in the plans and specifications and made part of the Invitation for Bids or Requests for Proposals. CONTRACTOR shall be entitled to compensation for the costs of locating, repairing damage not due to the failure of the CONTRACTOR or any SUBCONTRACTOR to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such WORK. CONTRACTOR shall not be assessed liquidated damages for delay in completion of the project for delays caused by damage to utility facilities not indicated in the plans and specifications with reasonable accuracy or for delays caused by the failure of the COUNTY or the owner of the utility to provide for removal or relocation of such utility facilities.

#### **D-4. SHOP DRAWINGS**

- D-4.1 CONTRACTOR shall provide shop drawings as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The COUNTY'S Contract Administrator shall promptly review all shop drawings. The COUNTY'S Contract Administrator's approval of any shop drawing shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any shop drawing that substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a change order.
- D-4.2 When submitted for the COUNTY'S Contract Administrator's review, shop drawings shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the shop drawings and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.
- D-4.3 Portions of the WORK requiring a shop drawing or sample submission shall not begin until the shop drawing or submission has been approved by the COUNTY'S Contract Administrator. A copy of each approved shop drawing and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the COUNTY'S Contract Administrator.

#### **D-5. ADDITIONAL INSTRUCTIONS AND DETAILED DRAWINGS**

- D-5.1 CONTRACTOR may be furnished additional instructions and detailed drawings, by the COUNTY'S Contract Administrator, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.
- D-5.2 The additional drawings and instructions thus supplied will become a part of the CONTRACT DOCUMENTS. CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

#### **D-6. MATERIALS, SERVICES AND FACILITIES**

- D-6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time. All materials shall be new and of merchantable grade, free from defect.
- D-6.2 Material and equipment shall be stored so as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.
- D-6.3 Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- D-6.4 Materials, supplies, and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the COUNTY'S Contract Administrator. No substitutions shall be permitted from the original specifications, except as provided under the CONTRACT DOCUMENTS, upon the prior approval of the COUNTY'S Contract Administrator, based upon the CONTRACTOR'S specific explanation of functioning and structural characteristics for those details that differ from the specifications.
- D-6.5 Materials, supplies, and equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.
- D-4.6 The CONTRACTOR shall bear risk of loss until materials, supplies, equipment or other goods have reached the final F.O.B. Destination point. Thereafter, the COUNTY shall bear risk of loss.

#### **D-7. GOVERNING LAW, JURISDICTION AND VENUE**

This contract shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Jurisdiction and venue for any action brought to enforce the terms or provisions of the CONTRACT DOCUMENTS shall be in the state or federal courts situated in and for the County of San Benito, State of California.

## **D-8. SUBSTITUTIONS**

Whenever a material, article, or piece of equipment is identified on the plans or specifications by reference to brand name or catalogue numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the COUNTY'S Contract Administrator, such material, article, or piece of equipment is of equal substance and function to that specified, the COUNTY'S Contract Administrator may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the contract price and the contract documents shall be appropriately modified by the change order. CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the contract price or contract time.

## **D-9. CALIFORNIA LABOR CODE REQUIREMENTS**

Unless federal law applies, the CONTRACTOR and all SUBCONTRACTORS shall comply with all state labor requirements applicable to public works projects, including but not limited to Labor Code sections 1720 *et seq.*, 1770 *et seq.* and 1810 *et seq.*. Without limitation, CONTRACTOR'S and SUBCONTRACTORS' obligations include the following:

### **D-9.1 Hours of Work:**

- (a) Eight hours of labor shall constitute a legal day's work upon all WORK done hereunder, and it is expressly stipulated that no workman employed at any time by the CONTRACTOR, or by any SUBCONTRACTOR shall be required or permitted more than eight hours in any one calendar day and/or more than 40 hours in any one calendar week except as provided in section 1815 of the Labor Code, and it is further expressly stipulated that for each and every violation of such Labor Code requirements, the CONTRACTOR shall forfeit, as a penalty to the COUNTY, \$50.00 for each workman employed in the execution of this Contract, or by any SUBCONTRACTOR, for each calendar day during which said workman is required or permitted to labor more than eight hours in any one calendar day or more than 40 hours in any one calendar week in violation of the provisions of such Labor Code requirements.
- (b) In accordance with the provisions of the Labor Code, CONTRACTOR and each SUBCONTRACTOR shall also keep an accurate record showing the names and actual hours worked for all workers employed by CONTRACTOR or SUBCONTRACTOR in connection with the WORK contemplated by this Contract, which record shall be open at all reasonable hours to the inspection of the COUNTY or its officers, agents or employees, and to the Chief of the Division of Labor Statistics and Law Enforcement or the Department of Industrial Relations, his deputies or agents.

### **D-9.2 Apprentice Employment:**

- (a) Pursuant to the provisions of Labor Code section 1777.5, as amended, CONTRACTOR or any SUBCONTRACTOR employing tradesmen in any apprenticeable occupation shall apply to the joint apprenticeship committee nearest the site of the public works 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. All requirements and exceptions to those requirements set forth herein for Apprenticeship Employment are contained in Labor Code section 1777.5 and are available from the applicable Joint Apprenticeship Committee.
- (b) CONTRACTOR and SUBCONTRACTORS shall make contributions to funds established for the administration of the apprenticeship programs if the CONTRACTOR or SUBCONTRACTORS employ registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

- (c) CONTRACTOR and SUBCONTRACTORS shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

D-9.3 Wage Rates:

- (a) Pursuant to the provisions of Labor Code section 1770 *et seq.*, each laborer or mechanic of CONTRACTOR or any SUBCONTRACTOR engaged in WORK on the project under this Contract shall be paid not less than the hourly wage rate of per diem wages set forth in the prevailing wage rate schedule published by the Director of Industrial Relations regardless of any contractual relationship which may be alleged to exist between CONTRACTOR or any SUBCONTRACTOR and such laborers and mechanics.
- (b) Any laborer or mechanic employed to perform WORK on the PROJECT under this Contract, which WORK is not covered by any of the foregoing classifications, shall be paid not less than the prevailing rate of per diem wages specified herein for the classification which most nearly corresponds to the WORK to be performed by such laborer or mechanic.
- (c) The foregoing specified prevailing wage rates are minimum rates only, and the CONTRACTOR or any SUBCONTRACTOR may pay any wage rate in excess of the applicable rate contained in this Contract.
- (d) Pursuant to Labor Code section 1775, the CONTRACTOR or SUBCONTRACTOR, as a penalty to the COUNTY, shall forfeit \$50.00 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate established by the Department of Industrial Relations for such WORK or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage rate shall be paid to each worker by CONTRACTOR or SUBCONTRACTOR.
- (e) An error on the part of the COUNTY does not relieve the CONTRACTOR or any SUBCONTRACTOR from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code sections 1770 through 1775.
- (f) Copies of the applicable prevailing wage rates are on file with the San Benito County Community Services and Workforce Development Department at 1131 San Felipe Road, Hollister, CA 95023, and they are available to any interested party on request.

D-9.4 Certified Payroll: as required under the provisions of Labor Code section 1776, CONTRACTOR and all SUBCONTRACTORS shall keep accurate payroll records on forms provided by the Division of Labor Standards Enforcement, or alternatively, the CONTRACTOR and all SUBCONTRACTORS shall keep accurate payroll records containing the same information:

- (a) The payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee by the CONTRACTOR or SUBCONTRACTOR in connection with the PROJECT.
- (b) Certified copies of all payroll records enumerated above shall be available for inspection at all reasonable hours at the principal office of the CONTRACTOR as follows:
  - (1) certified copies shall be made available or furnished to the CONTRACTOR'S or SUBCONTRACTOR'S employee or the employee's authorized representative upon request.
  - (2) certified copies shall be made available for inspection or furnished upon request to a representative of the COUNTY, the Division of Labor Standards Enforcement, and the

Division of Apprenticeship Standards of the Department of Industrial Relations. Upon written notice from the COUNTY, the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the Department of Industrial Relations, the CONTRACTOR shall, within ten (10) days of such request, file with the COUNTY a certified copy of the payroll records.

- (3) certified copies shall be made available upon request by the public for inspection or copies thereof made, provided, however, that a request by the public shall be made through either the COUNTY, the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the Department of Industrial Relations. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by the CONTRACTOR and the entity through which the request was made. The public shall not be given access to the records at the principal office of the CONTRACTOR.

D-9.5 Subcontractors: CONTRACTOR shall cause clauses identical to those provided in paragraph D-9 of this Contract to be included in every subcontract for the WORK performed under this Contract.

#### **D-10. INDEMNIFICATION.**

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

#### **D-11. GUARANTEE**

CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of substantial completion. CONTRACTOR warrants and guarantees for a period of one (1) year from the date of substantial completion of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of the damage of other parts of the system resulting from such defects. The COUNTY will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the COUNTY may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

#### **D-12. WARRANTY, MANUFACTURER**

The manufacturer shall fully warrant all materials and/or equipment furnished under the terms of the CONTRACT DOCUMENTS against poor and inferior quality. While under warranty, the manufacturer shall repair or replace inoperable materials and/or equipment in a timely manner to minimize the disruption of County operations. A copy or description of the manufacturer's warranty shall be provided for the material and/or equipment provided, detailing the scope and length of the warranty. Where the contract is awarded pursuant to an Invitation for Bids (IFB) or Request for Proposals (RFP), and where the CONTRACTOR is also the manufacturer of the materials, supplies or equipment provided under this contract, the Manufacturer's Warranty requirement will supercede the successful Bidder or successful Respondent warranty requirement.

#### **D-13. WARRANTY, SUCCESSFUL BIDDER**

Where the contract is awarded pursuant to an Invitation for Bids (IFB) or Request for Proposals (RFP), the CONTRACTOR shall fully warrant all materials and/or equipment furnished and WORK performed under the terms of the CONTRACT DOCUMENTS, awarded pursuant to the IFB or RFP, against poor and inferior quality or workmanship, for a period of not less than one (1) year from the date of the final acceptance by the COUNTY. While under warranty, the successful Bidder or successful Respondent shall promptly repair or replace inoperable material and/or equipment and shall promptly correct inferior or defective work as may be deemed necessary by the COUNTY'S Contract Administrator, in a timely manner to minimize the disruption of County operations. The COUNTY shall give notice of

observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments or other work that may be necessary to correct defective or inoperable materials, equipment or WORK, the COUNTY may do so and charge the CONTRACTOR the cost thereby incurred. The Performance Bond shall remain in full force and effect through the warranty period.

#### **D-14. ASSIGNMENT OF ANTI-TRUST CLAIMS REGARDING PURCHASE OF GOODS, SERVICES OR MATERIALS**

CONTRACTOR offers and agrees to assign to the COUNTY all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 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 this Contract. This assignment shall be made and become effective at the time the COUNTY tenders final payment to the CONTRACTOR, without further acknowledgment by the parties.

#### **D-15. BONDS**

If required, the CONTRACTOR shall file with the COUNTY the following bonds satisfactory to the COUNTY in the amounts and for the purposes noted, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Bonds shall be approved as to form by the COUNTY, duly executed by the CONTRACTOR, and by a responsible corporate surety as principal, authorized to issue such bonds in the State of California, named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570, and secured through an authorized agent with an office in California. If at any time a surety on any such bond is declared a bankrupt or loses its right to do business within the State of California or is removed from the list of surety companies accepted on Federal Bonds, CONTRACTOR shall within ten (10) days after notice from the COUNTY to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the COUNTY. No further Contract payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the COUNTY. The CONTRACTOR shall pay all bond premiums, costs and incidentals.

D-15.1 PERFORMANCE BOND: For contracts in excess of \$25,000, within ten (10) days of the execution of the contract, the CONTRACTOR shall furnish the COUNTY, at the CONTRACTOR'S expense, a Faithful Performance Bond in an amount equal to one hundred percent (100%) of the total CONTRACT PRICE.

D-15.2 PAYMENT BOND: For public works contracts in excess of \$25,000, within ten (10) days of the execution of the contract, the CONTRACTOR shall furnish the COUNTY, at the CONTRACTOR'S expense, a Payment Bond in an amount equal to one hundred percent (100%) of the total CONTRACT PRICE to guarantee the payment of wages, and bills contracted for materials, supplies, or equipment used in the performance of the contract. The bond shall be in accordance with the provisions of Sections 3225, 3226, and 3247 through 3252 inclusive, of the California Civil Code, and Section 13020 of the California Unemployment Insurance Code. Said bond shall also contain a provision that the surety thereon waives the provisions of Sections 2819 and 2845 of the California Civil Code.

#### **D-16. INSURANCE**

D-16.1 Without limiting the CONTRACTOR'S duty to indemnify the COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in paragraph 6 of this Contract. Required insurance policies shall satisfy the following requirements:

(a) CONTRACTOR shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of, or result from the CONTRACTOR'S execution of the WORK, whether such execution be by the CONTRACTOR, any SUBCONTRACTOR, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(1) Claims under worker's compensation, disability benefit and other similar employee benefit acts;

- (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of employees;
  - (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees;
  - (4) Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and
  - (5) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
- (b) Each policy shall be issued by admitted insurers rated by A.M. Best Co. as A:VII or higher, by a company authorized by law to transact business in the State of California. Lower rate, or approved but not admitted insurers, may be accepted with the COUNTY'S prior written approval.
  - (c) Each required policy shall be endorsed by the insurance company (not the agent) to modify the policy to include San Benito County, its officers, agents, and employees as additional insured, and to provide the COUNTY with thirty (30) calendar days prior written notice of cancellation. Additionally, the COUNTY shall be provided written notice at least thirty (30) days in advance of any other change or nonrenewal thereof. The insurance shall apply separately to each insured or additional insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The COUNTY is not liable for the payment of premiums or assessments on the policy.
  - (d) The required coverage shall be maintained in effect throughout the term of this contract. No cancellation provisions in the insurance policy shall be construed in derogation of the CONTRACTOR'S continuing duty to furnish insurance during the term of the contract.
  - (e) These requirements assume that the standard insurance policy forms, terms, and conditions will apply to cover the expected risk exposures for the intended "Scope of Work". Additional qualifying policy conditions or special endorsements may be specified in the CONTRACT DOCUMENTS depending on the final "Scope of Work".
  - (f) The CONTRACTOR shall include all SUBCONTRACTORS performing WORK under this contract as insured under its policies or shall require all SUBCONTRACTORS to obtain substantially the identical insurance coverage required of the CONTRACTOR pursuant to this contract and shall provide the COUNTY with Certificates of Insurance for each SUBCONTRACTOR. All coverage for SUBCONTRACTORS shall be subject to all of the requirements stated herein.

D-16.2 If required by paragraph 6 of this Contract, CONTRACTOR shall procure and maintain in full force and effect, at the CONTRACTOR'S own expense, and in case any WORK is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to procure and maintain in full force and effect, at the CONTRACTOR'S or SUBCONTRACTOR'S own expense, during the term of this Contract, insurance policies as hereinafter specified, with policy limits of coverage specified in paragraph 6 of this Contract:

- (a) CONTRACTOR'S comprehensive general and excess public liability and property damage insurance, including vehicle coverage, issued to the CONTRACTOR and protecting the CONTRACTOR from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by the CONTRACTOR or by any SUBCONTRACTOR employed by the CONTRACTOR or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR employed by the CONTRACTOR, and shall provide an endorsement naming the COUNTY and its officers, agents and employees as additional insureds. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11 85 or CG 20 10 07 04 in tandem with CG 20 37 07 04.



- (b) CONTRACTOR shall acquire and maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 6 of this Contract.
- (c) CONTRACTOR shall acquire and maintain Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the COUNTY, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.
- (d) CONTRACTOR shall secure "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the COUNTY, the amount of such insurance shall not be less than the CONTRACT PRICE. The policy shall cover not less than the losses due to fire, explosion, vehicle damage, theft, flood, earthquake, civil commotion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the COUNTY. The policy shall name the COUNTY as an additional insured.
- (e) CONTRACTOR shall acquire and maintain Environmental Impairment Pollution Liability Insurance upon the PROJECT to the full insurable value thereof for the benefit of the COUNTY, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or the CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT or to repair or remediate environmental damage or pollution.
- (f) The CONTRACTOR shall acquire and maintain automotive liability insurance with liability limits of not less than the amount set out in paragraph 6 of this contract. If the CONTRACTOR elects to deliver products to the COUNTY using a common carrier that is not related to the CONTRACTOR'S business entity, the CONTRACTOR may request waiver of the automobile insurance requirements for delivery by the common carrier.

D-16.3 In accordance with section 3700 of the Labor Code, the CONTRACTOR shall procure and maintain, at the CONTRACTOR'S own expense, during the CONTRACT TIME, worker's compensation insurance, including Employers' Liability limits and occupational disease provisions, for all of the CONTRACTOR'S employees at the site of the PROJECT, either through worker's compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. In case any WORK is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide worker's compensation insurance, including Employer's Liability limits and occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. The policies shall be endorsed to waive insurer's subrogation rights against the COUNTY. In case any class of employees engaged in hazardous WORK under this contract at the site of the PROJECT is not protected under the worker's compensation statutes, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. If CONTRACTOR or any SUBCONTRACTOR elects to be self-insured, the Certificates of Insurance otherwise required by this Contract shall be replaced with a consent to self-insure by the State Director of Industrial Relations. If the CONTRACTOR elects to deliver products to the COUNTY using a common carrier that is not related to the CONTRACTOR'S business entity, the CONTRACTOR may request waiver of the workers' compensation insurance requirements for delivery by the common carrier.

D-16.4 Prior to commencement of WORK by the CONTRACTOR or any SUBCONTRACTOR and prior to any obligation by the COUNTY, the CONTRACTOR shall file Certificates of Insurance acceptable to the COUNTY, showing that the CONTRACTOR and all SUBCONTRACTORS have in effect the insurance required by this Contract. The certificates shall contain a provision that coverage afforded under the policies will not be canceled unless at least 15 days prior written notice has been given to the COUNTY. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy that would alter the information on the certificate then on file. In lieu of providing

proof of insurance, the CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR shall warrant that the CONTRACTOR'S or SUBCONTRACTOR'S self-insurance provides substantially the same protection to the COUNTY as the insurance required herein. CONTRACTOR further agrees to notify the COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this Contract within 15 days of such change.

#### **D-17. PROTECTION OF WORK, PROPERTY, AND PERSONS**

- D-17.1 CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. CONTRACTOR will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the worksite and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- D-17.2 CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. CONTRACTOR will erect and maintain, as required by the conditions and progress of the WORK, such temporary walls, fences, guardrails, barricades, lights, danger signs, enclosures and/or all other necessary safeguards for safety and protection, as may be required during site preparation and all phases of construction, and shall maintain such safeguards until all WORK is completed. CONTRACTOR will notify COUNTY of adjacent utilities when prosecution of the WORK may affect them. CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts of any of them will be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the COUNTY and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.
- D-17.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instructions or authorization from the COUNTY'S Contract Administrator or COUNTY, shall act to prevent threatened damage, injury or loss. CONTRACTOR will give the COUNTY'S Contract Administrator prompt written notice of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a change order shall thereupon be issued covering the changes and deviations involved.
- D-17.4 The CONTRACTOR shall replace all items received by the COUNTY that are damaged due to the CONTRACTOR'S negligence. Existing construction, equipment, plantings, etc. damaged by the CONTRACTOR, in the performance of the WORK, shall be replaced or repaired and restored to original condition by the CONTRACTOR.
- D-17.5 CONTRACTOR shall, at all times, keep the premises clean from accumulation of waste materials or rubbish caused by CONTRACTOR'S employees or WORK and shall remove all resulting WORK debris from the job site.
- D-17.6 For public works contracts in excess of \$25,000 involving excavations in excess of five (5) feet , the CONTRACTOR shall, pursuant to Labor Code Section 6705, submit in advance of any excavation hereunder a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from caving ground. No such excavation shall be made until said detailed plan is submitted by CONTRACTOR and accepted, in writing, by the COUNTY.

#### **D-18. SUBSURFACE CONDITIONS**

- D-18.1 In the event the WORK requires digging trenches or excavation deeper than four (4) feet, CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the COUNTY by written notice of:

- (a) Material that the CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
  - (b) Subsurface or latent physical conditions at the site differing from those indicated.
  - (c) Unknown physical conditions at the site of an unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in this Contract.
- D-18.2 Upon such notification, the COUNTY shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR'S cost of, or the time required for performance of any part of the WORK, shall issue a change order under the procedures described in this Contract.
- D-18.3 In the event that a dispute arises between the COUNTY and the CONTRACTOR whether the conditions do materially so differ, or involve hazardous waste, or cause a decrease or increase in the CONTRACTOR'S cost of, or time required for, performance of any part of the WORK, the CONTRACTOR shall not be excused from any scheduled completion date provided for by this Contract, but shall proceed with all WORK to be performed under this Contract. CONTRACTOR shall retain any and all rights provided either by Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.
- D-18.4 Unless otherwise indicated in the CONTRACT DOCUMENTS, all utility lines, conduits, wires, or structures shall be maintained by the CONTRACTOR and shall not be disturbed, disconnected, or damaged by him during the progress of the WORK, provided, that should the CONTRACTOR in the performance of the WORK disturb, disconnect, or damage any of the above, all expenses arising from such disturbance or in the replacement or repair thereof shall be borne by the CONTRACTOR. However, in accordance with Section 4215 of the California Government Code, the CONTRACTOR shall be compensated for all costs of locating and repairing damage to main or trunk-line utility facilities located on the WORK site and for costs of operating equipment on the WORK site necessarily idled during such WORK where the CONTRACTOR has exercised reasonable care in removing or relocating utility facilities which are inaccurately indicated in the CONTRACT DOCUMENTS. CONTRACTOR shall not be assessed liquidated damages for delay in completion of the project for delays caused by damage to utility facilities not indicated in the plans and specifications with reasonable accuracy or for delays caused by the failure of the COUNTY or the owner of the utility to provide for removal or relocation of such utility facilities.

## **D-19 INSPECTIONS AND TESTING**

- D-19.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.
- D-19.2 The COUNTY shall provide all inspection and testing services unless specified to be provided by the CONTRACTOR.
- D-19.3 CONTRACTOR shall provide at the CONTRACTOR'S expense the testing and inspection services required by the CONTRACT DOCUMENTS.
- D-19.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the COUNTY'S Contract Administrator timely notice of readiness. CONTRACTOR will then furnish the COUNTY'S Contract Administrator with the required certificates of inspection, testing or approval.
- D-19.5 Inspections, tests, or approvals by the COUNTY'S Contract Administrator or others shall not relieve the CONTRACTOR from the obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

- D-19.6 The COUNTY'S Contract Administrator will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all WORK, materials, payrolls, records on personnel, invoices of materials, and other relevant data and records. CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection or testing thereof.
- D-19.7 If any WORK is covered contrary to the written instructions of the COUNTY'S Contract Administrator it must, if requested by the COUNTY'S Contract Administrator, be uncovered for the COUNTY'S Contract Administrator's observation and replaced at the CONTRACTOR'S expense.
- D-19.8 If the COUNTY'S Contract Administrator considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the COUNTY'S Contract Administrator's request, will uncover, expose or otherwise make available for observation, inspection or testing as the COUNTY'S Contract Administrator may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction; if, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate change order shall be issued.
- D-19.9 A pre-final inspection of the WORK will be made by the COUNTY'S Contract Administrator and project inspector. This inspection shall be made as soon as practical after the CONTRACTOR has notified the COUNTY in writing that the WORK is ready for this inspection. The pre-final inspection shall be made prior to acceptance of any portion of the WORK as being substantially complete and prior to filing of the Notice of Completion.
- D-19.10A final inspection of all the WORK will be made by the COUNTY'S Contract Administrator and CONTRACTOR prior to acceptance of the WORK.
- D-19.11Forty-eight hours prior to WORK being accomplished, the CONTRACTOR will notify the COUNTY'S Contract Administrator of the proposed working hours to accomplish the WORK for that day. Work may be accomplished on weekends or holidays only if the CONTRACTOR provides prior notification, COUNTY'S Contract Administrator approves the request, and the CONTRACTOR pays for the additional amount for holiday or overtime inspection costs beyond the normal hourly inspection rates for weekdays.

## **D-20. SURVEYS, PERMITS, AND REGULATIONS**

- D-20.1 The COUNTY shall furnish all boundary surveys and establish all baselines for locating the principal component parts of the WORK together with a suitable number of benchmarks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the COUNTY, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pipe locations and other working points, lines, elevations and cut sheets.
- D-20.2 CONTRACTOR shall carefully preserve benchmarks, reference points and stakes and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.
- D-20.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise specified. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the COUNTY, unless otherwise specified. CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, the CONTRACTOR shall promptly notify the COUNTY'S Contract Administrator in writing, and any necessary changes shall be adjusted as provided in paragraph D-28 of this Contract.

## **D-21. PATENTS**

CONTRACTOR shall pay all applicable royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and save the COUNTY harmless from loss on account thereof, except that the COUNTY shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified; however, if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless the CONTRACTOR promptly gives such information to the COUNTY'S Contract Administrator.

## **D-22. SUPERVISION BY CONTRACTOR; INDEPENDENT CONTRACTOR**

- D-22.1 CONTRACTOR will supervise and direct the WORK. CONTRACTOR will be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.
- D-22.2 CONTRACTOR and its officers and employees, in the performance of this Contract, are independent contractors in relation to the COUNTY and not officers or employees of the COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of the COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to the COUNTY that the CONTRACTOR has no expectation of receiving any benefits incidental to employment.

## **D-23. SUBCONTRACTING**

- D-23.1 CONTRACTOR may utilize the services of specialty subcontracts on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS, provided the CONTRACTOR identified the SUBCONTRACTORS in the Proposal/Bid.
- D-23.2 CONTRACTOR shall not award WORK to SUBCONTRACTOR(S), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of the COUNTY.
- D-23.3 CONTRACTOR shall be fully responsible to the COUNTY for the acts and omissions of its SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as the CONTRACTOR is for the acts and omissions of persons directly employed by the CONTRACTOR.
- D-23.4 CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and give the CONTRACTOR the same power as regards terminating any subcontract that the COUNTY may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.
- D-23.5 Nothing contained in this Contract shall create any contractual relation between any SUBCONTRACTOR and the COUNTY.

## **D-24. SEPARATE CONTRACTS**

- D-24.1 The COUNTY reserves the right to let other contracts in connection with this project. CONTRACTOR shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate the WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the work of any other contractors, the CONTRACTOR shall inspect and promptly report to the COUNTY'S Contract Administrator any defects in such work that render it unsuitable for such proper execution and results.

- D-24.2 The COUNTY may perform additional work related to the PROJECT or the COUNTY may let other contracts containing provisions similar to these. CONTRACTOR will afford the other contractors who are parties to such contracts (or the COUNTY, if the COUNTY is performing the additional WORK) reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate the WORK with theirs.
- D-24.3 If the performance of additional work by other contractors or the COUNTY is not noted in the CONTRACT DOCUMENTS prior to the execution of this Contract, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional work. If the CONTRACTOR believes that the performance of such additional work by the COUNTY or others involves it in additional expense or entitles it to an extension of the contract time, the CONTRACTOR may make a claim thereof as provided in herein, including in paragraphs D-26 and D-27 of this Contract.

#### **D-25. PAYMENT TO CONTRACTOR**

- D-25.1 Approximately 30 days prior to submittal of a Partial Payment Estimate for a Progress Payment the CONTRACTOR shall submit an Estimate Of 30-day Needs to alert the COUNTY to the amount of funds the CONTRACTOR projects the CONTRACTOR will be requesting as a progress payment in the next Partial Payment Estimate. The provisions of this paragraph do not supercede the provisions of Attachment B (payment schedule) to this contract, but are merely supplemental thereto.
- D-25.2 At least ten (10) days before the end of the month as each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the COUNTY'S Contract Administrator a Partial Payment Estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the COUNTY'S Contract Administrator may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the Partial Payment Estimate shall also be accompanied by such supporting data, such as paid invoices, or other written evidence satisfactory to the COUNTY, as will establish the COUNTY'S title to the material and equipment and protect the COUNTY'S interest therein, including applicable insurance. The COUNTY'S Contract Administrator will, within ten (10) days after receipt of each Partial Payment Estimate, either indicate in writing approval of the progress payment, and present the Partial Payment Estimate to the COUNTY, or return the Partial Payment Estimate to the CONTRACTOR indicating in writing the reasons for refusing to approve progress payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Partial Payment Estimate. The COUNTY will, within twenty (20) days of presentation of an approved Partial Payment Estimate, pay the CONTRACTOR a progress payment on the basis of the approved Partial Payment Estimate less the retainage. The retainage shall be an amount equal to 10% of said estimate. If at any time thereafter the progress of the WORK is deemed unsatisfactory, additional amounts may be retained. Upon substantial completion of the WORK, any amount retained may be paid to the CONTRACTOR. When the WORK has been substantially completed except for WORK which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the COUNTY are valid reasons for non-completion, the COUNTY may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the WORK to be completed. The provisions of this paragraph do not supercede the provisions of Attachment B (payment schedule) to this contract, but are merely supplemental thereto.
- D-25.3 Payments will not be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the CONTRACTOR. The provisions of this paragraph do not supercede the provisions of Attachment B (payment schedule) to this contract, but are merely supplemental thereto.
- D-25.4 All Contract progress payments and the final payment shall be approved in writing by the COUNTY.
- D-25.5 Prior to substantial completion, the COUNTY, with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

- D-25.6 The COUNTY shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK, except such as may be caused by agents or employees of the COUNTY.
- D-25.7 Upon completion and acceptance of the WORK, the COUNTY'S Contract Administrator shall issue a certificate attached to the final payment request that the WORK has been accepted under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the COUNTY, shall be paid to the CONTRACTOR thirty (30) days after the timely recording of a Notice of Completion, or within ninety (90) days after completion and acceptance of the WORK, whichever is earlier. The provisions of this paragraph do not supercede the provisions of Attachment B (payment schedule) to this contract, but are merely supplemental thereto.
- D-25.8 CONTRACTOR will indemnify and save the COUNTY or the COUNTY'S agents harmless from all claims growing out of the lawful demand of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. CONTRACTOR shall, at the COUNTY'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the COUNTY may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the COUNTY to either the CONTRACTOR, the CONTRACTOR'S SURETY, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the COUNTY shall be considered as a payment made under the CONTRACT DOCUMENTS by the COUNTY to the CONTRACTOR and the COUNTY shall not be liable to the CONTRACTOR for any such payments made in good faith.
- D-25.9 If the COUNTY fails to make payment within the time specified in paragraph D-25.7 of this Contract, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.
- D-25.10 The COUNTY'S Contract Administrator may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any approved partial payment estimate to such extent as may be necessary to protect the COUNTY from loss on account of:
- (a) Defective WORK not remedied.
  - (b) Claims filed or reasonable evidence indicating probable filing of claims.
  - (c) Failure of CONTRACTOR to make payments properly to SUBCONTRACTORS or for material or labor.
  - (d) A reasonable doubt that the WORK can be completed for the balance then unpaid.
  - (e) Damage to another CONTRACTOR.
  - (f) Performance of WORK in violation of the terms of the CONTRACT DOCUMENTS.
- D-25.11 Where WORK on unit price items are substantially complete but lack clean-up and/or corrections ordered by the COUNTY'S Contract Administrator, amounts shall be deducted from unit prices in partial payment estimates to amply cover such clean-up and corrections.
- D-25.12 In lieu of COUNTY retaining a portion of progress payments due CONTRACTOR, the CONTRACTOR may elect to deposit qualifying securities equivalent to the amount to be withheld. Upon such deposit under

an escrow agreement substantially in the form specified in section 22300(e) of the Public Contracts Code, the funds shall be released.

**D-26. ACCEPTANCE OF FINAL PAYMENT AS RELEASE**

The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the COUNTY of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the COUNTY and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under the CONTRACT DOCUMENTS or the performance and payment bonds.

**D-27. CHANGES IN THE WORK**

The COUNTY may, at any time, as the need arises, order changes within the scope of the WORK without invalidating this Contract. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by a written change order.

**D-28. CHANGES IN CONTRACT PRICE**

D-28.1 All changes, which affect the cost or time of the construction of the PROJECT, must be authorized by means of a written change order. The change order will include extra WORK, WORK for which quantities have been altered from those shown in the bidding schedule, as well as decreases or increases in the quantities of installed units which are different than those shown in the bidding schedule because of final measurements. All changes should be recorded on a change order as they occur. Each change order must contain complete and detailed justification for all items addressed by the change order. All change orders must be approved in writing by COUNTY prior to execution of the WORK by the CONTRACTOR.

D-28.2 The value of any WORK covered by a change order or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

- (a) Unit prices previously approved.
- (b) A negotiated total price with all costs for materials and labor outlined by the CONTRACTOR plus a mark-up item for overhead and profit limited to a maximum 15 percent (15%) of the outlined costs for the CONTRACTOR doing the WORK, and a maximum of an additional five percent (5%) for the prime CONTRACTOR if the WORK is performed by any SUBCONTRACTOR.

**D-29. TIME FOR COMPLETION; LIQUIDATED DAMAGES**

D-29.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on the date specified in the Notice To Proceed.

D-29.2 CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the CONTRACTOR and the COUNTY, that the contract time for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

D-29.3 If the CONTRACTOR shall fail to complete the WORK within the contract time, or extension of time granted by the COUNTY, then the CONTRACTOR will pay to the COUNTY the amount for liquidated damages as specified in the CONTRACT DOCUMENTS for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

D-29.4 CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following and the CONTRACTOR has promptly given written notice of such delay to the COUNTY or COUNTY'S Contract Administrator.

- (a) To any preference, priority or allocation order duly issued by the COUNTY.



- (b) To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the COUNTY, acts of another CONTRACTOR in the performance of a contract with the COUNTY, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather.
- (c) To any delays caused by the failure of the COUNTY or the owner of any utility to provide for removal or relocation of such utility facilities pursuant to Government Code section 4215.
- (d) To any delays of SUBCONTRACTORS occasioned by any of the causes specified in this paragraph.

**D-30. SUSPENSION OF WORK, TERMINATION, AND DELAY**

- D-30.1 The COUNTY may suspend the WORK or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by the CONTRACTOR, by written notice to the CONTRACTOR, which shall fix the date on which WORK shall be resumed. CONTRACTOR will resume that WORK on the dates so fixed. CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributing to any suspension.
- D-30.2 If the CONTRACTOR is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of its property, or if CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or repeatedly fails to supply sufficient skilled workmen or suitable material or equipment, or repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or disregards the authority of the COUNTY'S Contract Administrator, or otherwise violates any provision of the CONTRACT DOCUMENTS, then the COUNTY may, without prejudice to any other right or remedy and after giving the CONTRACTOR and its surety a minimum of ten (10) days from delivery of a written notice, terminate the services of the CONTRACTOR and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method the COUNTY may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the COUNTY. Such costs incurred by the COUNTY will be determined by the COUNTY'S Contract Administrator and incorporated in a change order.
- D-30.3 Where the CONTRACTOR'S services have been so terminated by the COUNTY, said termination shall not affect any right of the COUNTY against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the COUNTY due to the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.
- D-30.4 After ten (10) days from delivery of a written notice to the CONTRACTOR, the COUNTY may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate this Contract. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.
- D-30.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the COUNTY or under an order of court or other public authority, or the COUNTY fails to pay the CONTRACTOR substantially the sum due under the contract and approved by the COUNTY'S Contract Administrator or awarded by arbitrators within thirty (30) days after its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a written notice to the COUNTY'S Contract Administrator, terminate this Contract and recover from the COUNTY payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating this Contract, if the COUNTY has failed without good cause to make any payment as aforesaid, the CONTRACTOR may, upon ten (10) days written

notice to the COUNTY'S Contract Administrator, stop the WORK until paid all amounts then due, in which event and upon resumption of the WORK, change orders shall be issued for adjusting the contract price or extending the contract time or both to compensate for the costs and delays attributable to the stoppage of the WORK.

D-30.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the COUNTY or COUNTY'S Contract Administrator to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the contract price or an extension of the contract time, or both, shall be made by change order to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the COUNTY or COUNTY'S Contract Administrator.

### **D-31. RESOLUTION OF CONSTRUCTION CLAIMS**

D-31.1 Claim means a separate demand by the CONTRACTOR for (a) a time extension, (b) payment of money or damages arising from WORK done by, or on behalf of the CONTRACTOR, pursuant to this Contract, payment not otherwise expressly provided this Contract, or (c) any separate demand by the CONTRACTOR, the amount of which is disputed by the COUNTY. If this is a "public project" as defined in section 20150.2 of the California Public Contract Code, claims shall be resolved pursuant to sections 20104 *et seq.* of the California Public Contract Code. These sections are summarized as follows:

- (a) For claims less than \$50,000, the COUNTY shall respond in writing to all written claims within forty-five (45) days of receipt of the claim, or may request in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to any defenses the COUNTY may have against such claim. The COUNTY'S written response to the claim, as further documented, will be submitted to the CONTRACTOR within fifteen (15) days from receipt of the further documentation, or within a period of time no greater than that taken by the CONTRACTOR in producing the additional documentation, whichever is greater.
- (b) For claims over \$50,000 and less than or equal to \$375,000, the COUNTY shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to any defenses the COUNTY may have against such claim. The COUNTY'S written response to the claim, as further documented, will be submitted to the CONTRACTOR within thirty (30) days from receipt of the further documentation, or within a period of time no greater than that taken by the CONTRACTOR in producing the additional documentation, whichever is greater.
- (c) If the CONTRACTOR disputes the COUNTY'S written response, or the COUNTY fails to respond within the time specified, the CONTRACTOR may notify the COUNTY in writing within either fifteen (15) days of receipt of the COUNTY'S response, or within fifteen (15) days of the COUNTY'S failure to respond within the statutorily prescribed time, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand, the COUNTY shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
- (d) Following the meet and confer conference, if the claim or any portion remains in dispute, the CONTRACTOR may file a claim pursuant to Government Code Sections 900, *et seq.* The period of time within to file such a claim shall be defined in Public Contract Code Section 20104.2(e).

D-31.2 All claims, disputes, and other matters in question arising out of, or relating to, the CONTRACT DOCUMENTS or the breach thereof, except for claims that have been waived by the making and acceptance of final payment, as provided by paragraph D-26 of this Contract, may be decided by arbitration or mediation pursuant to section 20104.4 of the Public Contracts Code.

### **D-32. CORRECTION OF WORK**

D-32.1 CONTRACTOR shall promptly remove from the premises all WORK rejected by the COUNTY'S Contract Administrator or COUNTY for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the

WORK in accordance with the CONTRACT DOCUMENTS and without expense to the COUNTY and shall bear the expense of making good all WORK of other contractors destroyed or damaged by such removal or replacement.

D-32.2 All removal and replacement WORK shall be done at CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of written notice, the COUNTY may remove such WORK and store the materials at the expense of the CONTRACTOR.

**D-33. TAXES**

CONTRACTOR will pay all sales, consumer, use, and other similar taxes required by the laws of the place where the WORK is performed.

**D-34. SCHEDULES, REPORTS AND RECORDS**

D-34.1 CONTRACTOR shall submit to the COUNTY such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

D-34.2 Prior to the first partial payment estimate, the CONTRACTOR shall submit construction progress schedules showing the order in which the CONTRACTOR proposes to carry on the WORK, including dates at which the various parts of the WORK will be started, estimated date of completion of each part and, as applicable:

- (a) The dates at which special detail DRAWINGS will be required; and
- (b) Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

D-34.3 CONTRACTOR shall also submit a schedule of payments that the CONTRACTOR anticipates will be earned during the course of the WORK.

**END OF ATTACHMENT D**