SONOMA CLEAN POWER AUTHORITY

SANTA ROSA, CALIFORNIA

CONTRACT DOCUMENTS AND SPECIFICATIONS FOR

FEDERATED INDIANS OF GRATON RANCHERIA BESS FOR GRID RESILIENCE

TABLE OF CONTENTS

Page

00 11 16 – NOTICE INVITING BIDS 1

00 21 13 – INSTRUCTIONS TO BIDDERS 4

Article 0. SECURING DOCUMENTS 4

Article 1. EXAMINATION OF SITE AND CONTRACT DOCUMENTS 4

Article 2. INTERPRETATION OF DRAWINGS AND DOCUMENTS 4

Article 3. NOT USED 5

Article 4. ADDENDA 5

Article 5. NOT USED 5

Article 6. COMPLETION OF BID FORMS 5

Article 7. MODIFICATIONS OF BIDS 5

Article 8. SUBCONTRACTORS 5

Article 9. LICENSING REQUIREMENTS 5

Article 10. BID GUARANTEE (BOND) 6

Article 11. IRAN CONTRACTING ACT OF 2010 6

Article 12. NONCOLLUSION DECLARATION 6

Article 13. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION 7

Article 14. BIDDER INFORMATION AND EXPERIENCE FORM 7

Article 15. WORKERS' COMPENSATION CERTIFICATION 7

Article 16. COMPLIANCE WITH CARB REGULATIONS 7

Article 17. SIGNING OF BIDS 7

Article 18. SUBMISSION OF SEALED BIDS 8

Article 19. OPENING OF BIDS 8

Article 20. WITHDRAWAL OF BID 9

Article 21. BIDDERS INTERESTED IN MORE THAN ONE BID 9

Article 22. SUBSTITUTION OF SECURITY 9

Article 23. PREVAILING WAGES 9

Article 24. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS 9

Article 25. INSURANCE REQUIREMENTS 10

Article 26. PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS 10

Article 27. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES 10

Article 28. PERMIT AND INSPECTION FEE ALLOWANCE 10

Article 29. FILING OF BID PROTESTS 10

Article 30. BASIS OF AWARD; BALANCED BID 11

TABLE OF CONTENTS
(Continued)

Page

Article 31. AWARD PROCESS 11
Article 32. EXECUTION OF CONTRACT 11
Article 33. QUESTIONS 12
00 21 21- INDEMNITY AND RELEASE AGREEMENT 13
00 30 00- GEOTECHNICAL DATA AND EXISTING CONDITIONS 15
00 41 43 – BID FORMS 18
Article 1. INFORMATION ABOUT BIDDER 27
Article 2. LIST OF CURRENT PROJECTS (BACKLOG) 30
Article 3. LIST OF COMPLETED PROJECTS – LAST THREE YEARS 31
Article 4. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE 32
Article 5. VERIFICATION AND EXECUTION 33
00 50 50- NOTICE OF INTENT TO AWARD FOR CONSTRUCTION 39
00 51 00- NOTICE OF AWARD 40
00 52 13 – CONTRACT 42
00 61 13 – BOND FORMS 48
00 63 24- SUBSTITUTION REQUEST FORM (DURING PROCUREMENT) 59
00 63 25- SUBSTITUTION REQUEST FORM [DURING CONSTRUCTION] 61
00 65 23- AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS 64
00 65 36- WARRANTY FORM 67
00 72 13 – GENERAL CONDITIONS 69
Article 1. CONTRACT DOCUMENTS 69
Article 2. CONTRACT DOCUMENTS: COPIES & MAINTENANCE 69
Article 3. EXAMINATION OF DRAWINGS, SPECIFICATIONS AND SITE OF WORK 70
Article 4. EXISTENCE OF UTILITIES AT THE WORK SITE 70
Article 5. SOILS INVESTIGATIONS 71
Article 6. CONTRACTOR'S SUPERVISION 72
Article 7. WORKERS 72
Article 8. INDEPENDENT CONTRACTORS 72
Article 9. SUBCONTRACTS 72
Article 10. VERIFICATION OF EMPLOYMENT ELIGIBILITY 73
Article 11. REQUESTS FOR SUBSTITUTION 74
Article 12. SHOP DRAWINGS 75

TABLE OF CONTENTS
(Continued)

Page

Article 13. SUBMITTALS 76
Article 14. MATERIALS 76
Article 15. PERMITS AND LICENSES 77
Article 16. TRENCHES 77
Article 17. TEMPORARY FACILITIES AND CONTROLS 78
Article 18. NOT USED 78
Article 19. DIVERSION OF RECYCLABLE WASTE MATERIALS 78
Article 20. DISCOVERY OF HAZARDOUS MATERIALS 78
Article 21. SANITARY FACILITIES 78
Article 22. AIR POLLUTION CONTROL 79
Article 23. STORM WATER CONTROL 79
Article 24. LAYOUT AND FIELD ENGINEERING 79
Article 25. TESTS AND INSPECTIONS 79
Article 26. PROTECTION OF WORK, PERSONS, AND PROPERTY 80
Article 27. CONTRACTOR'S MEANS AND METHODS 81
Article 28. COMPLIANCE WITH CALIFORNIA AIR RESOURCES BOARD REGULATIONS 82
Article 29. AUTHORIZED REPRESENTATIVES 82
Article 30. HOURS OF WORK 82
Article 31. PAYROLL RECORDS 83
Article 32. PREVAILING WAGE REQUIREMENTS 84
Article 33. PUBLIC WORKS CONTRACTOR REGISTRATION 85
Article 34. EMPLOYMENT OF APPRENTICES 86
Article 35. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY 86
Article 36. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS 86
Article 37. LABOR/EMPLOYMENT SAFETY 86
Article 38. INSURANCE 87
Article 39. FORM AND PROOF OF CARRIAGE OF INSURANCE 91
Article 40. TIME FOR COMPLETION AND LIQUIDATED DAMAGES 92
Article 41. COST BREAKDOWN AND PERIODIC ESTIMATES 93
Article 42. PROGRESS ESTIMATES AND PAYMENT 94
Article 43. SECURITIES FOR MONEY WITHHELD 95
Article 44. CHANGES AND EXTRA WORK. 96
Article 45. FINAL ACCEPTANCE AND PAYMENT 108

TABLE OF CONTENTS
(Continued)

Page

Article 46. OCCUPANCY 109
Article 47. INDEMNIFICATION 109
Article 48. PROCEDURE FOR RESOLVING DISPUTES 110
Article 49. AGENCY'S RIGHT TO TERMINATE CONTRACT 113
Article 50. WARRANTY AND GUARANTEE OF WORK 116
Article 51. DOCUMENT RETENTION & EXAMINATION 119
Article 52. NOT USED 119
Article 53. NOTICE AND SERVICE THEREOF 119
Article 54. NOTICE OF THIRD PARTY CLAIMS 120
Article 55. STATE LICENSE BOARD NOTICE 120
Article 56. INTEGRATION 120
Article 57. ASSIGNMENT OF CONTRACT 120
Article 58. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY 120
Article 59. ASSIGNMENT OF ANTITRUST ACTIONS 121
Article 60. PROHIBITED INTERESTS 121
Article 61. CONTROLLING LAW 121
Article 62. JURISDICTION; VENUE 121
Article 63. LAWS AND REGULATIONS 121
Article 64. PATENTS 122
Article 65. OWNERSHIP OF CONTRACT DOCUMENTS 122
Article 66. NOTICE OF TAXABLE POSSESSORY INTEREST 122
Article 67. SURVIVAL OF OBLIGATIONS 122
00 73 13 – SPECIAL CONDITIONS 123
00 73 31- SPECIAL CONDITIONS - FUNDING CONTRACT REQUIREMENTS 126
EXHIBIT "A" CHANGE ORDER FORM 159
01 10 00- SUMMARY 161
01 20 00- PRICE AND PAYMENT PROCEDURES 169
01 26 00- CONTRACT MODIFICATION PROCEDURES 175
01 31 19- PROJECT MEETINGS 188
01 32 16- CONSTRUCTION PROGRESS SCHEDULE 189
01 33 00- SUBMITTAL PROCEDURES 191
01 35 20- SAFETY REQUIREMENTS 202
01 41 00- REGULATORY REQUIREMENTS 205

TABLE OF CONTENTS
(Continued)

Page

01 42 00- REFERENCES....210
01 50 00- TEMPORARY FACILITIES AND CONTROLS....219
01 60 00- PRODUCT REQUIREMENTS....222
01 74 00- CLEANING....226
01 75 00- STARTING AND ADJUSTING....228
SECTION 01 77 00- CLOSEOUT PROCEDURES....229

00 11 16 – NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that the Sonoma Clean Power Authority (Agency) invites and will receive sealed Bids up to but not later than **10:00 am on Thursday, January 28, 2027,** according to the clock in the Agency lobby**,** at the office of the Agency, located at 431 E Street, Santa Rosa, California, for the furnishing to Agency of all labor, equipment, materials, tools, services, transportation, permits, utilities, and all other items necessary for **Federated Indians of Graton Rancheria BESS for Grid Resilience** (the "Project"). At said time, Bids will be publicly opened and read aloud at the Agency Office. Bids received after said time shall be returned unopened. Bids shall be firm offers valid for a period of 90 calendar days after the Bid opening date.

Project Description: The Work for the Project consists of construction and installation of 90KWh of storage, including, without limitation, battery energy storage system and controller ("BESS"), copper wire, back up loads panel, conduit, switchblade disconnect switches and other material. This Project is in direct support of Section 40101(d) of the Infrastructure Investment and Jobs Act. The objective of this Project is to improve the resilience of the electric grid against disruptive events. Per Section 40101(a)(1), a disruptive event is an event in which operations of the electric grid are disrupted, preventively shut off, or cannot operate safely due to extreme weather, wildfire, or a natural disaster.

The project is located on the Federated Indians of Graton Rancheria reservation at its farm property located at 4528 Langner Ave, Rohnert Park, CA.

Work shall be completed within 60 Days from the date when Contract Time commences to run. Bidding Documents contain the full description of the Work.

Contact Information:

Mailing address and Office:
Sonoma Clean Power Authority
431 E Street Santa
Rosa, CA 95404

Phone: 707-890-8487

Email: projects@sonomacleanpower.org

Website address:
https://sonomacleanpower.org/

Online Solicitation:
https://sonomacleanpower.org/solicitations-business-opportunities

Bids must be submitted on the Agency's Bid Forms. Bidders may obtain a copy of the Contract Documents from https://sonomacleanpower.org/solicitations-business-opportunities. To the extent required by section 20103.7 of the Public Contract Code, upon request from a contractor plan room service, the Agency shall provide an electronic copy of the Contract Documents at no charge to the contractor plan room.

It is the responsibility of each prospective bidder to download and print all Bid Documents for review and to verify the completeness of Bid Documents before submitting a bid. Any Addenda will be posted on https://sonomacleanpower.org/solicitations-business-opportunities. It is the responsibility of each prospective bidder to check https://sonomacleanpower.org/solicitations-

business-opportunities on a daily basis through the close of bids for any applicable addenda or updates. The Agency does not assume any liability or responsibility based on any defective or incomplete copying, excerpting, scanning, faxing, downloading or printing of the Bid Documents. Information on https://sonomacleanpower.org/solicitations-business-opportunities may change without notice to prospective bidders. The Contract Documents shall supersede any information posted or transmitted by https://sonomacleanpower.org/solicitations-business-opportunities.

Each Bid shall be accompanied by cash, a certified or cashier's check, or Bid Bond secured from a surety company satisfactory to the Agency, the amount of which shall not be less than ten percent (10%) of the submitted Total Bid Price, made payable to Sonoma Clean Power Authority as bid security. The bid security shall be provided as a guarantee that within ten (10) working days after the Agency provides the successful bidder the Notice of Award, the successful Bidder will enter into a contract and provide the necessary bonds and certificates of insurance. The bid security will be declared forfeited if the successful Bidder fails to comply within said time. No interest will be paid on funds deposited with Agency.

A mandatory Pre-Bid Site Visit is scheduled for 1:00 pm on Tuesday, December 15, 2026 to review the Project's existing conditions at 4528 Langner Ave, Rohnert Park, CA 94928. Representatives of the Agency and site owner Federated Indians of Graton Rancheria will be present. This will be the Bidders' only opportunity to access the Site for purposes of investigating Site conditions.

Bidders will be provided the opportunity to investigate conditions at the Pre-Bid Site Visit. Bidders who may seek to conduct invasive investigations, explorations, tests, or studies shall request authorization, and any such granted authorization shall be subject to delivering an executed Section 00 21 21 (Indemnity and Release Agreement) and providing an insurance certificate as described therein prior to such investigations.

Questions raised from Bidders not specifically addressed within this Bidding Documents shall be answered in writing, and shall be published on the Agency's website https://sonomacleanpower.org/solicitations-business-opportunities.

The successful Bidder will be required to furnish a Faithful Performance Bond and a Labor and Material Payment Bond each in an amount equal to one hundred percent (100%) of the Contract Price. Each bond shall be in the forms set forth herein, shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120, and that is a California admitted surety insurer.

Pursuant to Section 22300 of the Public Contract Code of the State of California, the successful Bidder may substitute certain securities for funds withheld by Agency to ensure its performance under the contract.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The successful Bidder must comply with all prevailing wage laws applicable to the Project, and related requirements contained in the Contract Documents. To Bid on this Project, a contractor must be registered to perform public work pursuant to Labor Code section 1725.5. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at Agency's Office and are deemed included in the Bidding Documents. Upon request, Agency will make available copies to any interested party.

Also, the successful Bidder shall post the applicable prevailing wage rates at the Site in addition to all other job site notices prescribed by regulations.

In bidding on this Project, it shall be the Bidder's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this contract and applicable law in its Bid.

Unless otherwise provided in the Instructions for Bidders, each Bidder shall be a licensed contractor pursuant to sections 7000 et seq. of the Business and Professions Code in the following classification(s) throughout the time it submits its Bid and for the duration of the contract: **California "C-10 Electrical" Contractor License.**

Substitution requests shall be made within 35 calendar days after the award of the contract by submitting a request with the form provided in 00 63 24 (Substitution Request Form [During Procurement]. Pursuant to Public Contract Code Section 3400(b), the Agency may make findings designating that certain additional materials, methods or services by specific brand or trade name other than those listed in the Standard Specifications be used for the Project. Such findings, if any, as well as the materials, methods or services and their specific brand or trade names that must be used for the Project may be found in 00 73 13 Special Conditions.

Pursuant to Public Contract Code section 3400(b), if the Agency has made any findings designating certain materials, products, things, or services by specific brand or trade name, such findings and the materials, products, things, or services and their specific brand or trade names will be set forth in the Special Conditions.

Agency shall award the contract for the Project to the lowest responsive, responsible Bidder as determined by the Agency from the Base Bid alone.

Agency reserves the right, in its sole discretion, to reject any or all bids, to re-bid, or to waive any irregularities or informalities in any bids or in the bidding process.

Federal Funding Compliance. This Project will be funded in whole or in part by federal assistance from the U.S. Department of Energy under the Grid Resilience Grant Program. Accordingly, all work under the awarded Contract shall be subject to all applicable federal terms and conditions required under said grant, including the required terms and conditions set forth in Attachment 1 to Section 00 73 31 (Special Conditions - Funding Contract Requirements). Said federal terms and conditions are subject to update at time of award. By submitting a bid, Bidder shall be deemed to acknowledge the federal requirements and incorporated contract terms and conditions as set forth in Section 00 73 31 (Special Conditions - Funding Contract Requirements) in the event of Contract award.

For further information, contact the Director of Capital Projects and Engineering, at projects@sonomacleanpower.org.

END OF SECTION

00 21 13 – INSTRUCTIONS TO BIDDERS

ARTICLE 0. SECURING DOCUMENTS

Bids must be submitted to the Agency on the Bid Forms which are a part of the Bid Package for the Project. Bid and Contract Documents may be obtained from **https://sonomacleanpower.org/solicitations-business-opportunities** in the Notice Inviting Bids.

Any Addenda will be posted on https://sonomacleanpower.org/solicitations-business-opportunities. Failure to acknowledge all addenda may make a bid nonresponsive and not eligible for award of the contract.

ARTICLE 1. EXAMINATION OF SITE AND CONTRACT DOCUMENTS

At its own expense and prior to submitting its Bid, each Bidder shall visit the site of the proposed work and fully acquaint itself with the conditions relating to the construction and labor required so that the Bidder may fully understand the work, including but not limited to difficulties and restrictions attending the execution of the work under the contract. Each Bidder shall carefully examine the Drawings, and shall read the Specifications, Contract, and all other documents referenced herein. Each Bidder shall also determine the local conditions which may in any way affect the performance of the work, including local tax structure, contractors' licensing requirements, availability of required insurance, the prevailing wages and other relevant cost factors, shall familiarize itself with all federal, state and local laws, ordinances, rules, regulations and codes affecting the performance of the work, including the cost of permits and licenses required for the work, and shall make such surveys and investigations, including investigations of subsurface or latent physical conditions at the site or where work is to be performed as may be required. Bidders are responsible for consulting the standards referenced in the Contract. The failure or omission of any Bidder to receive or examine any contract documents, forms, instruments, addenda, or other documents, or to visit the site and acquaint itself with conditions there existing shall in no way relieve any Bidder from any obligation with respect to its Bid or to the contract and no relief for error or omission will be given except as required under State law. The submission of a Bid shall be taken as conclusive evidence of compliance with this Article.

ARTICLE 2. INTERPRETATION OF DRAWINGS AND DOCUMENTS

Prospective Bidders unclear as to the true meaning of any part of the Drawings, Specifications or other proposed contract documents may submit to the Director of Capital Projects and Engineering of the Agency a written request for interpretation. The prospective Bidder submitting the request is responsible for prompt delivery. Interpretation of the Drawings, Specifications or other proposed contract documents will be made only by a written addendum duly issued and a copy of such addenda will be provided at https://sonomacleanpower.org/solicitations-business-opportunities. The Agency will not be responsible for any other explanation or interpretations of the proposed documents. If a prospective Bidder becomes aware of any errors or omissions in any part of the Contract Documents, it is the obligation of the prospective Bidder to promptly bring it to the attention of the Agency.

ARTICLE 3. NOT USED

ARTICLE 4. ADDENDA

The Agency reserves the right to revise the Contract Documents prior to the Bid opening date. Revisions, if any, shall be made by written Addenda. All Addenda issued by the Agency shall be included in the Bid and made part of the Contract Documents. Pursuant to Public Contract Code Section 4104.5, if the Agency issues an Addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of Bids, the Agency will extend the deadline for submission of Bids. The Agency may determine, in its sole discretion, whether an Addendum warrants postponement of the Bid submission date. Please Note: Bidders are responsible for ensuring that they have received any and all Addenda. The Bidder shall indicate the Addenda received prior to bidding in the space provided in the Bid Form. Failure to indicate all Addenda will be cause for rejecting the Bid.

ARTICLE 5. NOT USED

ARTICLE 6. COMPLETION OF BID FORMS

Bids shall only be prepared using copies of the Section 00 41 43 (Bid Form) Bid Forms. The use of substitute Bid Forms other than clear and correct photocopies of those provided by the Agency will not be permitted. Bids shall be executed by an authorized signatory as described in these Instructions to Bidders. In addition, Bidders shall fill in all blank spaces (including inserting “N/A” where applicable), and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. USE OF BLACK OR BLUE INK, INDELIBLE PENCIL, OR A TYPEWRITER IS REQUIRED. Deviations in the Bid Forms may result in the Bid being deemed non-responsive.

ARTICLE 7. MODIFICATIONS OF BIDS

Each Bidder shall submit its Bid in strict conformity with the requirements stated herein. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a Bid may render it non-responsive and may cause its rejection. Bidders shall not delete, modify, or supplement the printed matter on the Bid Forms, or make substitutions thereon. Oral, telephonic and electronic modifications will not be considered.

ARTICLE 8. SUBCONTRACTORS

Bidder shall set forth the name, address of the place of business, Department of industrial Relations Registration Number, and contractor license number of each subcontractor who will perform work, labor, furnish materials or render services to the bidder on said contract and each subcontractor licensed by the State of California who, under subcontract to bidder, specially fabricates and installs a portion of the Work described in the Drawings and Specifications in an amount in excess of one half of one percent (0.5%) of the total bid price, and shall indicate the portion of the work to be done by such subcontractor in accordance with Public Contract Code Section 4104.

ARTICLE 9. LICENSING REQUIREMENTS

Pursuant to Business and Professions Code Section 7028.15 and Public Contract Code Section 3300, all bidders must possess proper licenses for performance of this Contract. Subcontractors

must possess the appropriate licenses for each specialty subcontracted. Pursuant to Business and Professions Code Section 7028.15, the Agency shall consider any bid submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be nonresponsive, and the Agency shall reject the Bid. The Agency shall have the right to request, and Bidders shall provide within ten (10) calendar days, evidence satisfactory to the Agency of all valid license(s) currently held by that Bidder and each of the Bidder's subcontractors, before awarding the Contract.

Notwithstanding anything contained herein, if the Work involves federal funds, the Contractor shall be properly licensed by the time the Contract is awarded, pursuant to the provisions of Public Contract Code section 20103.5.

ARTICLE 10. BID GUARANTEE (BOND)

Each bid shall be accompanied by: (a) cash; (b) a certified or cashier's check made payable to Sonoma Clean Power Authority; or (c) a Bid Bond secured from a surety company satisfactory to the Agency, the amount of which shall not be less than ten percent (10%) of the Total Bid Price, made payable to Sonoma Clean Power Authority as bid security. Personal sureties and unregistered surety companies are unacceptable. The surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The bid security shall be provided as a guarantee that within ten (10) working days after the Agency provides the successful bidder the Notice of Award, the successful bidder will enter into a contract and provide the necessary bonds and certificates of insurance. The bid security will be declared forfeited if the successful bidder fails to comply within said time, and Agency may enter into a contract with the next lowest responsive responsible bidder, or may call for new bids. No interest shall be paid on funds deposited with the Agency. Agency will return the security accompanying the bids of all unsuccessful bidders no later than 60 calendar days after award of the contract.

ARTICLE 11. IRAN CONTRACTING ACT OF 2010

In accordance with Public Contract Code Section 2200 et seq., the Agency requires that any person that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the Agency with respect to goods or services of one million dollars ($1,000,000) or more, certify at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

The form of such Iran Contracting Certificate is included with the bid package and must be signed and dated under penalty of perjury.

ARTICLE 12. NONCOLLUSION DECLARATION

Bidders on all public works contracts are required to submit a declaration of noncollusion with their bid. This form is included with the bid package and must be signed and dated under penalty of perjury.

ARTICLE 13. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. To this end, Bidder shall sign and submit with its Bid the Public Works Contractor Registration Certification on the form provided, attesting to the facts contained therein. In addition, each Bidder shall provide the registration number for each listed subcontractor in the space provided in the Designation of Subcontractors form.

ARTICLE 14. BIDDER INFORMATION AND EXPERIENCE FORM

Each Bidder shall complete the questionnaire provided herein and shall submit the questionnaire along with its Bid. Failure to provide all information requested within the questionnaire along with the Bid may cause the bid to be rejected as non-responsive. The Agency reserves the right to reject any Bid if an investigation of the information submitted does not satisfy the Director of Capital Projects and Engineering that the Bidder is qualified to properly carry out the terms of the contract.

ARTICLE 15. WORKERS' COMPENSATION CERTIFICATION

In accordance with the provisions of Labor Code Section 3700, Contractor shall secure the payment of compensation to its employees. Contractor shall sign and file with the Agency the following certificate prior to performing the work under this Contract:

> I am aware of the provisions of Section 3700 of the Labor Code, which require 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 will comply with such provisions before commencing the performance of the work of this contract.

The form of such Workers' Compensation Certificate is included as part of this document.

ARTICLE 16. COMPLIANCE WITH CARB REGULATIONS

The Agency is a Public Works Awarding Body, as defined under Title 13 California Code of Regulations section 2449(c)(46). Accordingly, Bidders must submit, with their Bids, a valid Certificate of Reported Compliance ("CRC") for the Bidder's and its listed subcontractors' fleet (including any applicable leased equipment or vehicles). Bidder must complete and submit the Fleet Compliance Certification, on the form included in the bid package. Failure to provide a valid CRC for the Bidder's fleet, and for the fleets of all listed subcontractors, or failure to complete the Fleet Compliance Certification, may render the Bid non-responsive.

ARTICLE 17. SIGNING OF BIDS

All Bids submitted shall be executed by the Bidder or its authorized representative. Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors

or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the Bidder to each Bid and to any Contract arising therefrom.

If a Bidder is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also: (1) authorize that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom. The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

ARTICLE 18. SUBMISSION OF SEALED BIDS

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the Bid Guarantee and other required materials, in a sealed envelope, addressed and delivered or mailed, postage prepaid, to the Capital Projects and Engineering Department of the Agency. Mailed items must be received before the time and day set for the receipt of bids. The envelope shall bear the title of the work and the name of the bidder. No oral or telephonic bids will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by the Agency as provided herein. Bids received after the time and day set for the receipt of bids shall be returned to the bidder unopened. The envelope shall also contain the following in the lower left-hand corner thereof:

Bid of _____(Bidder's Name)
for the Federated Indians of Graton Rancheria BESS for Grid Resilience

Only where expressly permitted in the Notice Inviting Bids may bidders submit their bids via electronic transmission pursuant to Public Contract Code sections 1600 and 1601. Any acceptable method(s) of electronic transmission shall be stated in the Notice Inviting Bids. Agency may reject any bid not strictly complying with Agency's designated methods for delivery.

ARTICLE 19. OPENING OF BIDS

At the time and place set for the opening and reading of bids, or any time thereafter, each and every bid received prior to the time and day set for the receipt of bids will be publicly opened and read. The Agency will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the bidder. It is the bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the date(s) and time(s) indicated.

The public reading of each bid will include the following information:

A. **The business name of the bidder.**

B. **The bid amount.**

Bidders or their representatives and other interested persons may be present at the opening of the bids. The Agency may, in its sole discretion, elect to postpone the opening of the submitted Bids.

ARTICLE 20. WITHDRAWAL OF BID

Any bid may be withdrawn either personally or by written request, incurring no penalty, at any time prior to the scheduled closing time for receipt of bids. Requests to withdraw bids shall be worded so as not to reveal the amount of the original bid. Withdrawn bids may be resubmitted until the time and day set for the receipt of bids, provided that resubmitted bids are in conformance with the instructions herein.

Bids may be withdrawn after bid opening only by providing written notice to Agency within five (5) working days of the bid opening and in compliance with Public Contract Code Section 5100 et seq., or as otherwise may be allowed with the consent of the Agency.

ARTICLE 21. BIDDERS INTERESTED IN MORE THAN ONE BID

No Bidder shall be allowed to make, file or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm or corporation that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders. No person, firm, corporation, or other entity may submit a sub-proposal to a Bidder, or quote prices of materials to a Bidder, when also submitting a prime Bid on the same Project.

ARTICLE 22. SUBSTITUTION OF SECURITY

The Contract Documents call for monthly progress payments based upon the percentage of the Work completed. The Agency will retain a percentage of each progress payment as provided by the Contract Documents. At the request and expense of the successful Bidder, the Agency will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

ARTICLE 23. PREVAILING WAGES

The Agency has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract. These rates are on file at Agency's Office or may be obtained online at http://www.dir.ca.gov. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s).

ARTICLE 24. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code Sections 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the Agency. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

ARTICLE 25. INSURANCE REQUIREMENTS

Prior to commencing work, the successful bidder shall purchase and maintain insurance as set forth in the General Conditions.

ARTICLE 26. PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS

The successful bidder will be required to furnish a Labor and Material Payment Bond and a Faithful Performance Bond each in an amount equal to one hundred percent (100%) of the contract price. Each bond shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120 and is admitted by the State of California. Each bond shall be accompanied, upon the request of Agency, with all documents required by California Code of Civil Procedure Section 995.660 to the extent required by law. All bonding and insurance requirements shall be completed and submitted to Agency within ten (10) working days from the date the Agency provides the successful bidder with the Notice of Award.

ARTICLE 27. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by agencies having jurisdiction in the jurisdiction in which the Work will be located, unless otherwise expressly provided by the Contract Documents.

ARTICLE 28. PERMIT AND INSPECTION FEE ALLOWANCE

[Reserved]

ARTICLE 29. FILING OF BID PROTESTS

Bidders may file a “protest” of a Bid with the Agency’s Director of Capital Projects and Engineering. In order for a Bidder’s protest to be considered valid, the protest must:

A. Be filed in writing within five (5) calendar days after the issuance of the Notice of Intent to Award;

B. Clearly identify the specific irregularity or accusation;

C. Clearly identify the specific Agency staff determination or recommendation being protested;

D. Specify in detail the grounds for protest and the facts supporting the protest; and

E. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, the Agency may reject the protest without further review.

Only Bidders who Agency otherwise determines are responsive and responsible are eligible to protest a Bid; protests from any other Bidder will not be considered. In order to determine whether a protesting Bidder is responsive and responsible, Agency may evaluate all information contained

in any protesting Bidder's Bid, and conduct the same investigation and evaluation as Agency is entitled to take regarding an Apparent Low Bidder.

The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

If the protest is timely and complies with the above requirements, the Agency's Director of Capital Projects and Engineering, or other designated Agency staff member, shall review the protest, any response from the challenged Bidder(s), and all other relevant information. The Director of Capital Projects and Engineering will provide a written decision to the protestor.

The procedure and time limits set forth in this Article are mandatory and are the sole and exclusive remedy in the event of a Bid protest. Failure to comply with these procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the Bid protest, including filing a Government Code claim or legal proceedings.

ARTICLE 30. BASIS OF AWARD; BALANCED BID

The Agency shall award the Contract to the lowest responsible Bidder submitting a responsive Bid. The lowest Bid will be determined on the basis of the Total Bid Price.

The Agency may reject any Bid which, in its opinion when compared to other Bids received or to the Agency's internal estimates, does not accurately reflect the cost to perform the Work. The Agency may reject as non-responsive any Bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items.

ARTICLE 31. AWARD PROCESS

Once all Bids are opened and reviewed to determine the lowest responsive and responsible Bidder, the Agency may award the contract. The apparent successful Bidder should begin to prepare the following documents: (1) the Performance Bond; (2) the Payment Bond; and (3) the required insurance certificates and endorsements. Once the Agency notifies the Bidder of the award via issuance of the Notice of Award, the Bidder will have ten (10) working days from the date of this notification to execute the Contract and supply the Agency with all of the required documents and certifications. Once the Agency receives all of the properly drafted and executed documents and certifications from the Bidder, the Agency shall issue a Notice to Proceed to that Bidder. Contract time shall begin to run as of the date of the Notice to Proceed.

ARTICLE 32. EXECUTION OF CONTRACT

As required herein the Bidder to whom an award is made shall execute the Contract in the amount determined by the Contract Documents. The Agency may require appropriate evidence that the persons executing the Contract are duly empowered to do so. The Contract and bond forms to be executed by the successful Bidder are included within these Specifications and shall not be detached.

ARTICLE 33. QUESTIONS

Questions regarding this Notice Inviting Bids may be directed to Director of Capital Projects and Engineering, at projects@sonomacleanpower.org. No other members of the Agency's staff or Board of Directors shall be contacted about this procurement during the bidding process. Any and all inquiries and comments regarding this Bid must be communicated in writing, unless otherwise instructed by the Agency. The Agency may, in its sole discretion, disqualify any Bidder who engages in any prohibited communications.

END OF SECTION

00 21 21- INDEMNITY AND RELEASE AGREEMENT

Dated : _____

POTENTIAL BIDDER: _____

OWNER: Federated Indians of Graton Rancheria

SITE: 4528 Langner Ave, Rohnert Park, CA 94928

PROJECT: Federated Indians of Graton Rancheria BESS for Grid Resilience

In consideration of the above-referenced Owner and the Sonoma Clean Power Authority ("Agency") permitting the undersigned potential bidder ("Bidder") to have access to, and to conduct investigations and/or inspections on the Site, Bidder hereby agrees as follows:

1. Any activities by or on behalf of Bidder on or at the Site, including all due diligence activities, shall not, without express approval of Agency, damage the Site or any portion thereof or disturb or interfere with the rights or possession of the Owner or any tenant on the Site.

2. To the greatest extent permitted by law, Bidder hereby releases, and shall defend, indemnify and hold harmless Owner, Agency and the United States of America, and each of their respective officers, employees, consultants, representatives, and agents, and all other parties having any other interest in the Site, against any claim or liability, including attorney's fees, arising from or relating to any Site-related access, investigation, test, inspection and/or other activity conducted by Bidder or any of Bidder's officers, employees, consultants, representatives, and/or agents, regardless of whether claim or liability is caused in part by the negligence of Owner, Agency, or both of them, or by any released and indemnified party.

3. **Bidder, having had full opportunity to consult with independent counsel regarding this matter, expressly waives all benefits and rights otherwise available under section 1542 of the California Civil Code, which provides:**

   > **"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known, would have materially affected his or her settlement with the debtor or released party."**

   Bidder has read the foregoing waiver and understands that the releases here granted by Bidder apply to and include all known and unknown and unexpected claims. Bidder intends, by signing this Indemnity and Release Agreement, to release and assume the risk of unknown claims.

   By: _____
   Bidder initials

4. Bidder shall repair any damage to the Site or adjacent property resulting from Bidder, or Bidder's agent(s), activity at the Site, and return Site to its original condition as directed by Agency, and comply with and be subject to all other requirements and obligations

described or referenced in Section 00 30 00 (Geotechnical Data and Existing Conditions) and Section 00 72 13 (General Conditions) Section 00 73 13 (Special Conditions).

5. Attached hereto (or to be delivered separately before Bidder's visit to the Site) is documentation of the following insurance:
   a. Commercial General Liability Insurance with minimum Limits of $1,000,000 per Occurrence; $2,000,000 General Aggregate
   b. Workers Compensation and Employers Liability Insurance
      1) Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California
      2) Employers Liability with minimum limits of $1,000,000 per Accident; $1,000,000
      3) The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Owner and Agency, and either of them.
   c. Required Evidence of Insurance: Certificate of Insurance

6. Terms and Conditions of Access: Contractor acknowledges and shall comply as follows:

   [Times and coordination of access-TBD]

   Bidder expressly acknowledges and accepts the risks that due to the fact that structure(s) located on the Site was constructed in or about 1940, the Site may contain "Hazardous Materials" as the same are defined in the broadest manner under state and federal law. Such materials include asbestos, lead, and other hazardous materials, and may include others not yet known. Bidder shall be solely responsible for all due diligence, industry best practice, and other measures required and reasonable in connection with its activities and or access to the site in light of the potential presence of such hazardous materials.

7. Owner and Agency reserve all rights as to the Site and nothing herein is intended nor shall be construed as guarantee of any construction contract or any agreement for any future use, development, or disposition of the Site.

8. Although this Indemnity and Release Agreement is not a Contract Document (see Section 00 52 13 [Agreement]), it shall be fully effective and binding regardless of whether Bidder submits a Bid for the subject Project, is awarded a contract for the Project, or otherwise.

_____
Name of Bidder

By: _____ By:_____
Signature Signature

Its:_____ Its:_____
Title (If Corporation: Chairman, President or Vice President)

Title (If Corporation: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer)

END OF SECTION

00 30 00- GEOTECHNICAL DATA AND EXISTING CONDITIONS

ARTICLE 1 – REPORTS AND INFORMATION ON EXISTING CONDITIONS

1.1 Inspection of Reports:

A. Agency, its consultants, and prior contractors may have collected documents providing a general description of the Site and conditions of the Work. These documents may consist of geotechnical reports for and around the Site, contracts, contract specifications, tenant improvement contracts, as-built drawings, utility drawings, information regarding hazardous materials, and information regarding Underground Facilities (collectively, "Existing Conditions Data").

B. Bidders may inspect Existing Conditions Data. These documents are listed in Section 01 10 00 (Summary) and are available for review as identified therein. Copies may be obtained for the cost of reproduction and handling upon Bidder's payment for the costs.

C. Existing Conditions Data is for information only and does not describe labor, materials, or equipment furnished by Contractor, but rather, information regarding conditions of the Work. Such Existing Conditions Data is not a Contract Document.

ARTICLE 2 – USE OF EXISTING CONDITIONS DATA

2.1 Aboveground Existing Conditions:

A. Agency makes no warranty or representation of existing aboveground conditions, as-built conditions, or other aboveground actual conditions verifiable by reasonable independent investigation. These conditions are verifiable by Bidder by the performance of its own independent investigation that Bidder must perform prior to bidding, and Bidder must not rely on the information supplied by Agency regarding existing conditions.

B. Bidder represents and agrees that in submitting its Bid, it is not relying on any information regarding aboveground existing conditions supplied by Agency.

2.2 Underground Facilities:

A. Information supplied regarding existing Underground Facilities at or contiguous to the Site is based on information furnished to Agency by others (e.g., the builders of such Underground Facilities or others).

B. Agency assumes responsibility for only the general accuracy, completeness, or thoroughness of information regarding Underground Facilities owned by Agency. This express assumption of responsibility applies only if Bidder has conducted the independent investigation required of it under Section 00 72 13 (General Conditions) and discrepancies were not apparent. Bidder is solely responsible for any interpretation or conclusion drawn from this information.

C. Agency is not responsible for information regarding Underground Facilities owned by others.

2.3 Hazardous Materials Surveys:

A. Bidders may rely on Existing Conditions Data for general accuracy regarding the locations of potentially hazardous materials that may be encountered as part of Work. Agency does not warrant and makes no representation regarding the completeness or thoroughness of any data or information regarding existing conditions or hazardous materials including, but not limited to, quantities, characteristics, volumes, or associated structural features. Bidder represents and agrees that in submitting a Bid it is not relying on any such data, information, or deductions.

B. Data and information regarding the locations of hazardous materials are not part of Contract Documents.

2.4 Geotechnical Data:

A. Bidder may rely upon the general accuracy of the "technical data" contained in the Existing Conditions Data, but only insofar as it relates to subsurface conditions, provided Bidder has conducted the independent investigation required of it and discrepancies were not apparent.

B. The term "technical data" shall include actual reported depths, reported quantities, reported soil types, reported soil conditions, and reported material, equipment, or structures that were encountered during subsurface exploration. The term "technical data" does not include, and Bidder may not rely upon, any other data, interpretations, opinions or information shown or indicated in such drawings or reports that otherwise relate to subsurface conditions or described structures. The term "technical data" shall not include the location of Underground Facilities.

C. Bidder may not rely on the completeness of reports and drawings for the purposes of bidding or construction. Bidder is solely responsible for any interpretation or conclusion drawn from any "technical data" or any other data, interpretations, opinions, or information contained in supplied Existing Conditions Data.

D. Except as expressly set forth in this Section 00 30 00, Agency does not warrant, and makes no representation regarding, the accuracy or thoroughness of any Existing Conditions Data.

E. Bidder represents and agrees that in submitting its Bid, it is not relying on any geotechnical data supplied by Agency, except as specifically set forth herein.

ARTICLE 3 - INVESTIGATIONS

3.1 Required Investigations:

A. Before submitting a Bid, each Bidder shall be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance, or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of Contract Documents.

B. Bidders shall advise Agency in writing during the Bid period of any questions, suppositions, inferences, or deductions Bidders may have for Agency's review and

response.

C. Agency has provided time in the period prior to bidding for Bidder to perform these investigations.

3.2 Access to Site for Investigations:

A. Proposers seeking access to the Project site for purposes of site and bid due diligence may be permitted access, subject to separate written agreement from Agency and subject to terms and conditions, including releases as to existing site conditions and indemnification of Agency with regard to such access and any activities that occur as part of such access.

B. If separate authorization is granted, each Bidder will have access to the Site to conduct such examinations, investigations, explorations, tests, and studies, as are reasonable and as each Bidder otherwise deems necessary for submission of a Bid. Bidders must fill all holes and clean up and restore the Site to its former conditions upon completion of such explorations, investigations, tests, and studies. Such investigations may be performed only under the provisions of Section 00 21 13 (Instructions to Bidders) and Section 00 72 13 (General Conditions) including, but not limited to, proof of insurance and obligation to indemnify against claims arising from such investigation work. Each Bidder shall supply all equipment required to perform any investigations as each Bidder deems necessary. Agency has the right to limit the number of pieces of machinery operating at one time due to safety concerns.

END OF SECTION

00 41 43 – BID FORMS

1.1 **Bid.**

NAME OF BIDDER: _____

To Sonoma Clean Power Authority
431 E Street, Santa Rosa, CA 95404

The undersigned hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract Documents, including all plans, specifications, and all addenda, if any for the following Project:

Federated Indians of Graton Rancheria BESS for Grid Resilience

We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project, as described and in strict conformity with the Drawings, and these Specifications for TOTAL BID PRICE indicated herein.

The undersigned acknowledges receipt, understanding, and full consideration of the following addenda to the Contract Documents:

Addenda No(s). _____

1. Attached is the required Bid Security in the amount of not less than 10% of the Total Bid Price.
2. Attached is the completed Designation of Subcontractors form.
3. Attached is the fully executed Noncollusion Declaration form.
4. Attached is the completed Iran Contracting Act Certification form.
5. Attached is the completed Public Works Contractor Registration Certification form.
6. Attached is the completed Contractor's Certificate Regarding Workers' Compensation form.
7. Attached is the completed Bidder Information and Experience form.
8. Attached is the completed Fleet Compliance Certification form.

A. TOTAL BID PRICE:

TOTAL BID PRICE BASED ON BID SCHEDULE TOTAL OF UNIT PRICES
FOR Federated Indians of Graton Rancheria BESS for Grid Resilience

$_____
Total Bid Price in Numbers

_____
Total Bid Price in Written Form

In case of discrepancy between the written price and the numerical price, the written price shall prevail.

The undersigned agrees that this Bid Form constitutes a firm offer to the Agency which cannot be withdrawn for the number of calendar days indicated in the Instructions to Bidders from and after the Bid opening, or until a Contract for the Work is fully executed by the Agency and a third party, whichever is earlier.

The successful bidder hereby agrees to sign the contract and furnish the necessary bonds and certificates of insurance within ten (10) working days after the Agency provides the successful bidder with the Notice of Award.

Upon receipt of the signed contract and other required documents, the contract will be executed by the Agency, after which the Agency will prepare a letter giving Contractor Notice to Proceed. The official starting date shall be the date of the Notice to Proceed, unless otherwise specified. The undersigned agrees to begin the Work within ten (10) working days of the date of the Notice to Proceed, unless otherwise specified.

The undersigned has examined the location of the proposed work and is familiar with the Drawings and Specifications and the local conditions at the place where work is to be done.

If awarded the contract, the undersigned agrees that there shall be paid by the undersigned and by all subcontractors to all laborers, workers and mechanics employed in the execution of such contract no less than the prevailing wage rate within Sonoma County for each craft, classification, or type of worker needed to complete the Work contemplated by this contract as established by the Director of the Department of Industrial Relations. A copy of the prevailing rate of per diem wages are on file at the Agency's Administration Office and shall be made available to interested parties upon request.

Enclosed find cash, bidder's bond, or cashier's or certified check No. _____ from the _____ Bank in the amount of _____, which is not less than ten percent (10%) of this bid, payable to Sonoma Clean Power Authority as bid security and which is given as a guarantee that the undersigned will enter into a contract and provide the necessary bonds and certificates of insurance if awarded the Work.

The bidder furthermore agrees that in case of bidder's default in executing said contract and furnishing required bonds and certificates of insurance, the cash, bidder's bond, or cashier's or certified check accompanying this proposal and the money payable thereon shall become and shall remain the property of the Sonoma Clean Power Authority.

Bidder is an individual _____, or corporation _____, or partnership _____, organized under the laws of the State of _____.

Bidder confirms license(s) required by California State Contractor's License Law for the performance of the subject project are in full effect and proper order. The following are the Bidder's applicable license number(s), with their expiration date(s) and class of license(s):

_____

_____

_____

If the Bidder is a joint venture, each member of the joint venture must include the required licensing information.

Sureties that will furnish the Faithful Performance Bond and the Labor and Material Payment Bond, in the form specified herein, in an amount equal to one hundred percent (100%) of the contract price within ten (10) working days from the date the Agency provides the successful bidder the Notice of Award. Sureties must meet all of the State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120 and must be authorized by the State of California.

The insurance company or companies to provide the insurance required in the contract documents must have a Financial Strength Rating of not less than "A-" and a Financial Size Category of not less than "Class VII" according to the latest Best Key Rating Guide, with the exception of the California Compensation Insurance Fund. At the sole discretion of the Agency, the Agency may waive the Financial Strength Rating and the Financial Size Category classifications for Workers' Compensation insurance.

(signatures continued on next page)

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

Executed at _____, on this ____ day of _____, _____.

(Bidders Name – Print or Type)

_____
(Name and Title)

(Corporate Seal)

_____
(Signature)

Names of individual members of firm or names and titles of all officers of corporation and their addresses are listed below:

Name_____ Title_____

Complete Address_____

Phone_____ FAX_____

Name_____ Title_____

Complete Address_____

Phone_____ FAX_____

Name_____ Title_____

Complete Address_____

Phone_____ FAX_____

Name_____ Title_____

Complete Address_____

Phone_____ FAX_____

1.2 **BID SECURITY FORM**

[Note: Not required when other form of Bidder's Security, e.g. cash, certified check or cashier's check, accompanies bid.]

KNOW ALL BY THESE PRESENTS:

That the undersigned [name of contractor] as Principal and the undersigned as surety are held and firmly bound unto the SONOMA CLEAN POWER AUTHORITY, a public agency of the state of California ("Agency"), as obligee, in the penal sum of _____ Dollars ($) lawful money of the United States of America being at least ten percent (10%) of the aggregate amount of said Principal _____'s bid, for the payment of which, well and truly to be made, we bind ourselves, our successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal is submitting a bid for [full project name].

THE CONDITION OF THIS OBLIGATION IS SUCH that if the bid submitted by the said Principal be accepted and the Contract be awarded to said Principal and said Principal shall within the required periods enter into the Contract so awarded and provide the required Construction Performance Bond, Construction Labor and Material Payment Bond, insurance certificates, Guarantee, and all other endorsements, forms, and documents required under **SECTION 00 11 16 – NOTICE INVITING BIDS and 00 21 13 – INSTRUCTIONS TO BIDDERS**, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument this_ day of _____, 20___.

(Corporate Seal)

_____
Contractor/Principal

By_____

Title _____

(Corporate Seal)

_____
Surety

By_____
Attorney-in-Fact

(Attache Attorney-in-Fact Certificate)

Title_____

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory
Name(s) of Signer(s)

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF BID BOND

1.3 **List of Subcontractors**

In compliance with the Subletting and Subcontracting Fair Practices Act Chapter 4 (commencing at Section 4100), Part 1, Division 2 of the Public Contract Code of the State of California and any amendments thereof, Bidder shall set forth below: (a) the name and the location of the place of business, (b) the California contractor license number, (c) the DIR public works contractor registration number unless exempt pursuant to Labor Code Sections 1725.5 and 1771.1, and (d) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the work or improvement to be performed under this Contract in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price. Notwithstanding the foregoing, if the work involves the construction of streets and highways, then the Bidder shall list each subcontractor who will perform work or labor or render service to the Bidder in or about the work in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price or $10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

If a Bidder fails to specify a subcontractor or if a contractor specifies more than one subcontractor for the same portion of work, then the Bidder shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself.

Work to be done by Subcontractor	Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	% of Work

Work to be done by Subcontractor	Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	% of Work

(Attach additional sheets if necessary)

Name of Bidder_____

Signature_____

Name and Title_____

Dated_____

1.4 **Bidder Information and Experience Form**

ARTICLE 1. INFORMATION ABOUT BIDDER

(Indicate not applicable ("N/A") where appropriate.)

NOTE: Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

a. Name of Bidder:
_____

b. Type, if Entity: _____

c. Bidder
Address:_____

_____

_____
Facsimile Number Telephone Number

_____
Email Address

d. How many years has Bidder's organization been in business as a Contractor?
_____

e. How many years has Bidder's organization been in business under its present name? _____

f. Under what other or former names has Bidder's organization operated?_____

g. If Bidder's organization is a corporation, answer the following:

h. Date of Incorporation: _____

i. State of Incorporation: _____

1. President's Name: _____
2. Vice-President's Name(s): _____
3. Secretary's Name: _____
4. Treasurer's Name: _____

5. If an individual or a partnership, answer the following:

    a. Date of Organization: _____

    b. Name and address of all partners (state whether general or limited partnership):

    _____

    _____

    _____

6. If other than a corporation or partnership, describe organization and name principals:

    _____

    _____

7. List other states in which Bidder's organization is legally qualified to do business.

_____

_____

_____

8. What type of work does the Bidder normally perform with its own forces?

_____

_____

9. Has Bidder ever failed to complete any work awarded to it? If so, note when, where, and why:

_____

_____

10. Within the last five years, has any officer or partner of Bidder's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

_____

_____

11. List Trade References:

_____

_____

_____

_____

12. List Bank References (Bank and Branch Address):

_____

_____

_____

_____

13. Name of Bonding Company and Name and Address of Agent:

_____

_____

_____

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

ARTICLE 2. LIST OF CURRENT PROJECTS (BACKLOG)

[**Duplicate Page if needed for listing additional current projects.**]

Project	Description of Bidder's Work	Completion Date	Cost of Bidder's Work

ARTICLE 3. LIST OF COMPLETED PROJECTS – LAST THREE YEARS

[**Duplicate Page if needed for listing additional completed projects.**]

Please include only those projects which are similar enough to demonstrate Bidder's ability to perform the required Work.

Project	Description of Bidder's Work	Completion Date	Cost of Bidder's Work

ARTICLE 4. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

Personnel:

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

A. List each person's job title, name and percent of time to be allocated to this project:

B. Summarize each person's specialized education:

C. List each person's years of construction experience relevant to the project:

D. Summarize such experience:

Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the Agency.

Changes Occurring Since Prequalification

If any substantive changes have occurred since Bidder submitted its prequalification package for this Project, Bidder shall list them below. If none are listed, Bidder certifies that no substantive changes have occurred.

Additional Bidder's Statements:

If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

ARTICLE 5. VERIFICATION AND EXECUTION

These Bid Forms shall be executed only by a duly authorized official of the Bidder:

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder_____

Signature_____

Name_____

Title_____

Date_____

1.5 **Non-Collusion Declaration**

The undersigned declares:

I am the _____ of _____, the party making the foregoing Bid.

The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid Price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid Price, or of that of any other Bidder. All statements contained in the Bid are true. The Bidder has not, directly or indirectly, submitted his or her Bid Price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Name of Bidder_____

Signature_____

Name_____

Title_____

1.6 **Iran Contracting Act Certification.**

(Public Contract Code section 2200 et seq.)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq*.) is true and correct:

☐ The Contractor is not:

1. identified on the current list of person and entities engaged in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or

2. a financial instruction that extends, for 45 days or more, credit in the amount of $20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

☐ The Agency has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the Agency will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

☐ The amount of the Contract payable to the Contractor for the Project does not exceed $1,000,000.

Signature:_____

Printed Name:_____

Title:_____

Firm Name:_____

Date:_____

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of $250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

1.7 Public Works Contractor Registration Certification

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See http://www.dir.ca.gov/Public-Works/PublicWorks.html for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations or is otherwise exempt under applicable law and regulation.[1]

Name of Bidder:_____

DIR Registration Number:_____

DIR Registration Expiration:_____

Small Project Exemption: _____ Yes or _____ No

Unless Bidder is exempt pursuant to the small project exemption, Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Bidder_____

Signature_____

Name and Title_____

Dated_____

[1] If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

1.8 **Contractor's Certificate Regarding Workers' Compensation.**

I am aware of the provisions of section 3700 of the Labor Code which require 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 will comply with such provisions before commencing the performance of the work of this Contract.

Name of Bidder _____

Signature _____

Name _____

Title _____

Dated _____

1.9 **Fleet Compliance Certification**

Bidder hereby acknowledges that they have reviewed the California Air Resources Board's policies, rules and regulations and are familiar with the requirements of Title 13, California Code of Regulations, Division 3, Chapter 9, effective on January 1, 2024 (the "Regulation"). Bidder hereby certifies, subject to penalty for perjury, that the option checked below relating to the Bidder's fleet, and/or that of their subcontractor(s) ("Fleet") is true and correct:

- ☐ The Fleet is subject to the requirements of the Regulation, and the appropriate Certificate(s) of Reported Compliance have been attached hereto.

- ☐ The Fleet is exempt from the Regulation under section 2449.1(f)(2), and a signed description of the subject vehicles, and reasoning for exemption has been attached hereto.

- ☐ Bidder and/or their subcontractor is unable to procure R99 or R100 renewable diesel fuel as defined in the Regulation pursuant to section 2449.1(f)(3). Bidder shall keep detailed records describing the normal refueling methods, their attempts to procure renewable diesel fuel and proof that shows they were not able to procure renewable diesel (i.e. third party correspondence or vendor bids).

- ☐ The Fleet is exempt from the requirements of the Regulation pursuant to section 2449(i)(4) because this Project has been deemed an Emergency, as defined under section 2449(c)(18). Bidder shall only operate the exempted vehicles in the emergency situation and records of the exempted vehicles must be maintained, pursuant to section 2449(i)(4).

- ☐ The Fleet does not fall under the Regulation or are otherwise exempted and a detailed reasoning is attached hereto.

Name of Bidder:_____

Signature: _____

Name: _____

Title: _____

Date: _____

00 50 50- NOTICE OF INTENT TO AWARD FOR CONSTRUCTION

DATE POSTED: _____

PROJECT TITLE: Federated Indians of Graton Rancheria BESS for Grid Resilience

The Director of Capital Projects and Engineering of the Sonoma Clean Power Authority, intends to award of the above-referenced Project to _____.

SONOMA CLEAN POWER AUTHORITY

By: _____
Rebecca Simonson
Director of Capital Projects and Engineering

Date: _____

END OF SECTION

00 51 00- NOTICE OF AWARD

Dated _____

TO:_____

ADDRESS: _____

CONTRACT FOR: Federated Indians of Graton Rancheria BESS for Grid Resilience

The Contract Sum of your contract is _____Dollars ($_____).

1. One copy of the proposed Contract and Bond Forms accompany this Notice of Award.

2. You must comply with the following conditions precedent by 5:00 p.m. of the 10th working day following the date of this Notice of Award, that is, by [month day, year].

    a. Deliver to Agency one fully executed counterpart of Section 00 52 13 (Contract) with your original signature on the signature page.
    b. Deliver to Agency one original of Section 00 61 13 (Performance Bond Form), executed by you and your surety.
    c. Deliver to Agency one original of Section 00 61 13 (Payment Bond Form), executed by you and your surety.
    d. Deliver to Agency one original copy of Section 00 65 36 (Warranty Form), executed by you.
    e. Deliver to Agency original set of the insurance certificates with endorsements required under Section 00 72 13 (General Conditions).
    f. Deliver to Agency the Certifications set forth under Section 00 73 13 (Special Conditions), Federal Contract Terms and Conditions.

3. Failure to comply with these conditions within the time specified will entitle Agency to consider your Bid abandoned, to annul this Notice of Award, and to declare your Bid security forfeited.

4. Upon receipt of all required deliverables, Agency will return to you one fully signed counterpart of Section 00 52 13 (Agreement).

5. Before you may start any Work at the Site, you must attend a preconstruction conference. The preconstruction conference may be arranged through the Director of Capital Projects and Engineering (___) ___-

_____.] Questions regarding bonds and insurance may be directed to [_____] at the same number. All other inquiries regarding the Project should be directed to [_____]. In accordance with Section 01 32 16 (Construction Progress Schedule), at the preconstruction conference you must provide your baseline Progress Schedule.

6. Upon commencement of the Work, you and each of your Subcontractors shall certify, maintain, and furnish payroll records as required by the Division of Labor Standards Enforcement, in accordance with California Labor Code section 1776, and in accordance with federal grant requirements.

SONOMA CLEAN POWER AUTHORITY

BY:_____
Rebecca Simonson
Director of Capital Projects and Engineering

END OF SECTION

00 52 13 – CONTRACT

This CONTRACT, Federated Indians of Graton Rancheria BESS for Grid Resilience is made and entered into this ____ day of _____, 20__, by and between Sonoma Clean Power Authority, sometimes hereinafter called "Agency," and [insert], sometimes hereinafter called "Contractor."

In consideration of the mutual covenants hereinafter set forth, Contractor and Agency agree as follows:

1. **SCOPE OF WORK.** The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, supervision, administration, handling, materials, equipment, tools, utility services, and transportation to complete all Work required in strict compliance with the Contract Documents, below, for the following Project:

Project Name: Federated Indians of Graton Rancheria BESS for Grid Resilience

Project Location: 4528 Langner Ave, Rohnert Park, CA 94928

Project includes all work necessary and appropriate to deliver and complete the Project, including construction and installation of 90KWh of storage, including, without limitation, battery energy storage system and controller ("BESS"), copper wire, back up loads panel, conduit, switchblade disconnect switches and other material. Project Work excludes commissioning and interconnection of completed Work.

The Contractor and its surety(s) shall be liable to the Agency for any damages arising as a result of the Contractor's failure to comply with this obligation.

2. **TIME FOR COMPLETION.** Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the Agency's Notice to Proceed (the "Commencement Date"). By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

Contractor shall achieve Substantial Completion of the entire Work within 30 Days from the Commencement Date.

Contractor shall achieve Final Completion of the entire Work 60 Days from the Commencement Date.

3. **CONTRACT PRICE.** The Agency shall pay to the Contractor as full compensation for completion of the Work in accordance with the Contract Documents, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of spelled out dollars ($XXXXX). Payment shall be made as set forth in the General Conditions.

4. **LIQUIDATED DAMAGES.** In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the Agency as set forth below for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor

agrees the Agency may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

As liquidated damages for delay, Contractor shall pay Agency five hundred dollars ($500.00) foreach Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.

As liquidated damages for delay, Contractor shall pay Agency two hundred fifty dollars ($250.00) for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

5. **COMPONENT PARTS OF THE CONTRACT.** The "Contract Documents" consist of the following documents, including all changes, Addenda, and modifications thereto:

Contract
Notice of Award
Notice to Proceed
Performance Bond
Payment (Labor and Materials) Bond
General Conditions
Special Conditions
Special Conditions - Funding Contract Requirements
Technical Specifications
Addenda
Standard Specifications for Public Works Construction "Greenbook", latest edition, excluding Sections 1-9
Approved and fully executed change orders
All other documents expressly referenced or incorporated into the Contract

There are no Contract Documents other than those as stated in this Document 00 52 13. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties as to the Project.

6. Contractor has listed the following Subcontractors pursuant to the Subcontractor Listing Law, California Public Contract Code section 4100 *et seq*.:

Name of Subcontractor and Location of Mill or Shop	Description of Work: Reference To Bid Items	Subcontractor's License No.

7. Agency's Project Manager:

   Agency has designated Patrick Le, Capital Projects Engineer, as its Agency's Project Manager and as Agency's Representative in all matters relating to the Contract Documents.

   Agency's Project Manager shall have final authority over all matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of Agency, to accept work, and to make decisions or actions binding on Agency, and shall have sole signature authority on behalf of Agency.

   Agency's Project Manager and all other Agency's Representative(s), if any, are the beneficiary of all Contractor obligations to Agency, including without limitation, all releases and indemnities.

8. Contractor's Project Manager:

   Contractor has designated _____ as its project manager and as its representative in all matters relating to the Contract Documents.

9. **PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.** Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

10. **INDEMNIFICATION.** Contractor shall provide indemnification and defense as set forth in the General Conditions.

11. **PREVAILING WAGES.** Contractor shall comply with all applicable prevailing wage requirements under the California Labor Code and related regulations, including as set forth in the General Conditions.

12. **MISCELLANEOUS**

TERMS. Terms and abbreviations used in this Contract are defined in the General Conditions and will have the meaning indicated therein.

INDEPENDENT CONTRACTOR. Nothing contained in these Contract Documents or inferable therefrom shall be deemed or construed to make Contractor the servant or employee of Agency, or create any partnership, joint venture, or other association between Agency and Contractor.

NO PERSONAL LIABILITY. It is understood and agreed that in no instance are the persons signing this Contract for or on behalf of Agency or acting as an employee, agent, or representative of Agency, liable on this Contract or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Agency is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, effective as of the day and year above written.

[ ]	**SONOMA CLEAN POWER AUTHORITY**
_____ Name of Contractor	
By _____	By_____ Geof Syphers, CEO
Name and Title: _____	Date: _____
License No. _____	
Date: _____	

(CONTRACTOR'S SIGNATURE MUST BE NOTARIZED AND CORPORATE SEAL AFFIXED, IF APPLICABLE)

Approved as to form this _____day of _____ 20___.

_____
Attorney for Sonoma Clean Power Authority

END OF CONTRACT FORM

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

1.12 PERFORMANCE BOND FORM

THIS CONSTRUCTION PERFORMANCE BOND ("Bond") dated _____, in the penal sum of _____ [which is one hundred percent of the Contract Price], and is entered into by and between the parties listed below to ensure the faithful performance of the Contract listed below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 12, attached to this page. Any singular reference to _____ [insert name of Contractor] ("Contractor"), _____ [insert name of Surety] ("Surety"), Sonoma Clean Power Authority, a public agency ("Agency"), or other party shall be considered plural where applicable.

CONTRACTOR: **SURETY:**

Name _____ Name _____

Address_____ Principal Place of Business_____

_____ _____

City/State/Zip City/State/Zip

CONTRACT: **Federated Indians of Graton Rancheria BESS for Grid Resilience**

at _____, California

Signed_____, 20____ in the Amount of $_____ (the "Penal Sum")

CONTRACTOR AS PRINCIPAL SURETY

Company: (Corp. Seal) Company: (Corp. Seal)

Signature:_____ Signature:_____

Name and Title:_____ Name and Title:_____

_____ _____

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Agency for the complete and proper performance of the Contract, which is incorporated herein by reference.

2. If Contractor completely and properly performs all of its obligations under the Contract, Surety and Contractor shall have no obligation under this Bond.

3. If there is no Agency Default, Surety's obligation under this Bond shall arise after:

   3.1. Agency has declared a Contractor Default under the Contract pursuant to the terms of the Contract; and

   3.2. Agency has agreed to pay the Balance of the Contract Price:

      3.2.1. To Surety in accordance with the terms of this Bond and the Contract; or

      3.2.2. To a contractor selected to perform the Contract in accordance with the terms of this Bond and the Contract.

4. When Agency has satisfied the conditions of Paragraph 3, Surety shall promptly (within 30 Days) and at Surety's expense elect to take one of the following actions:

   4.1. Arrange for Contractor, with consent of Agency, to perform and complete the Contract (but Agency may withhold consent, entirely within its discretion, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3, or 4.4, below); or

   4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; provided that Surety may not select Contractor as its agent or independent contractor without Agency's consent; or

   4.3. Undertake to perform and complete the Contract by obtaining bids from qualified contractors acceptable to Agency for a contract for performance and completion of the Contract and, upon determination by Agency of the lowest responsive and responsible Bidder, arrange for a contract to be prepared for execution by Agency and the contractor selected with Agency's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract; and, if Surety's obligations defined in Paragraph 6, below, exceed the Balance of the Contract Price, then Surety shall pay to Agency the amount of such excess upon Agency's demand; or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances and, after investigation and consultation with Agency, tender the full penal sum of the bond.

5. If Surety does not proceed as provided in Paragraph 4, above, then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from Agency to Surety demanding that Surety perform its obligations under this Bond. At all times Agency shall be entitled to enforce any remedy available to Agency at law or under the Contract, including without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, or coordinate Work with other consultants or contractors.

6. Surety's monetary obligation under this Bond is limited by the amount of this Bond identified herein as the Penal Sum. This monetary obligation shall augment the Balance of the Contract Price. Subject to these limits, Surety's obligations under this Bond are commensurate with the obligations of Contractor under the Contract. Surety's obligations shall include, but are not limited to:

   6.1. The responsibilities of Contractor under the Contract for completion of the Contract and correction of Defective Work;

   6.2. The responsibilities of Contractor under the Contract to pay liquidated damages, and for damages for which no liquidated damages are specified in the Contract, actual damages caused by non-performance of the Contract including, but not limited to, all valid and proper backcharges, offsets, payments, indemnities, or other damages;

   6.3. Additional legal, design professional, and delay costs resulting from Contractor Default or resulting from the actions or failure to act of the Surety under Paragraph 4, above (but excluding attorney's fees incurred to enforce this Bond).

7. No right of action shall accrue on this Bond to any person or entity other than Agency or its successors or assigns.

8. Surety hereby waives notice of any change, alteration or addition, to the Contract or to related subcontracts, purchase orders, and other obligations, including changes of time. Surety consents to all terms of the Contract, including provisions on changes to the Contract. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work required thereunder, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond.

9. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between Agency and Contractor regarding the Contract, or in the courts of the County of Sonoma, or in a court of competent jurisdiction in the location in which the Work is located. Communications from Agency to Surety under Paragraph 3.1 of this Bond shall be deemed to include the necessary agreements under Paragraph 3.2 of this Bond unless expressly stated otherwise.

10. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to Agency shall be mailed or

delivered as provided in the Contract. Actual receipt of notice by Surety, Agency or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.

11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.

12. Definitions.

12.1. Balance of the Contract Price: The total amount payable by Agency to Contractor pursuant to the terms of the Contract after all proper adjustments have been made under the Contract, for example, deductions for progress payments made, and increases/decreases for approved Modifications to the Contract.

12.2. Contract: The agreement between Agency and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.

12.3. Contractor Default: Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract including, but not limited to, “default” or any other condition allowing a termination for cause as provided in General Conditions.

12.4. Agency Default: Material failure of Agency, which has neither been remedied nor waived, to pay Contractor progress payments due under the Contract or to perform other material terms of the Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Contract.

END OF SECTION

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

END OF PERFORMANCE BOND

1.2 PAYMENT BOND FORM (Labor and Materials).

THIS CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND ("Bond") is dated _____[date], is in the penal sum of [one hundred percent of the Contract Sum], and is entered into by and between the parties listed below to ensure the payment of claimants under the Contract listed below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 13, attached to this page. Any singular reference to _____[insert name of Contractor] ("Contractor"), _____[insert name of Surety] ("Surety"), Sonoma Clean Power Authority, a public agency ("Agency"), or other party shall be considered plural where applicable.

CONTRACTOR: **SURETY:**

Name_____ Name _____

Address_____ Principal Place of Business_____

_____ _____

City/State/Zip City/State/Zip

CONTRACT: **Federated Indians of Graton Rancheria BESS for Grid Resilience**

at _____, California

Signed_____, 20____ in the Amount of $_____ (the "Penal Sum")

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature:_____ Signature:_____

Name and Title:_____ Name and Title:_____

_____ _____

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Agency and to Claimants, to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to Agency, this obligation shall be null and void if Contractor:

   2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants; and

   2.2. Defends, indemnifies, and holds harmless Agency from all claims, demands, liens, or suits by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Agency has promptly notified Contractor and Surety (at the address set forth on the signature page of this Bond) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Agency Default.

3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly through its Subcontractors, for all sums due Claimants. If Contractor or its Subcontractors fail to pay any of the persons named in section 9100 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to Work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor or Subcontractors pursuant to section 13020 of the Unemployment Insurance Code, with respect to such Work and labor, then Surety shall pay for the same, and also, in case suit is brought upon this Bond, a reasonable attorney's fee, to be fixed by the court.

4. Consistent with the California Mechanic's Lien Law, Civil Code section 8000, *et seq*., Surety shall have no obligation to Claimants under this Bond unless the Claimant has satisfied all applicable notice requirements.

5. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety under this Bond.

6. Amounts due Contractor under the Contract shall be applied first to satisfy claims, if any, under any Construction Performance Bond and second, to satisfy obligations of Contractor and Surety under this Bond.

7. Agency shall not be liable for payment of any costs, expenses, or attorney's fees of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

8. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations. Surety further hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the Work to be performed thereunder, or materials or equipment to be furnished thereunder or the Specifications accompanying the same, shall in any way

affect its obligations under this Bond, and it does hereby waive any requirement of notice or any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications or any other changes.

9. Suit against Surety on this Bond may be brought by any Claimant or its assigns at any time after the Claimant has furnished the last of the labor or materials or both, but, per Civil Code section 9558, must be commenced before the expiration of six months after the period in which stop notices may be filed as provided in Civil Code section 9356.

10. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to Agency shall be mailed or delivered as provided in the Contract. Actual receipt of notice by Surety, Agency, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.

11. This Bond has been furnished to comply with the California Mechanic's Lien Law including, but not limited to, Civil Code sections 9550, 9554, et seq. Any provision in this Bond conflicting with said statutory requirements shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

13. Definitions.

    13.1.1 Claimant: An individual or entity having a direct contract with Contractor or with a Subcontractor of Contractor to furnish labor, materials, or equipment for use in the performance of the Contract, as further defined in California Civil Code section 9100. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural, and engineering services required for performance of the Work of Contractor and Contractor's Subcontractors, and all other items for which a stop notice might be asserted. The term Claimant shall also include the Unemployment Development Department as referred to in Civil Code section 9554(b).

    13.1.2 Contract: The agreement between Agency and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.

    13.1.3 Agency Default: Material failure of Agency, which has neither been remedied nor waived, to pay Contractor as required by the Contract, provided that failure is the cause of the failure of Contractor to pay the Claimants and is sufficient to justify termination of the Contract.

END OF SECTION

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PAYMENT BOND

00 63 24- SUBSTITUTION REQUEST FORM (DURING PROCUREMENT)

To: **Patrick Le**, Sonoma Clean Power Authority
Email: projects@sonomacleanpower.org
Project: Federated Indians of Graton Rancheria BESS for Grid Resilience
Contractor:
Subcontractor/Supplier:
Drawing Sheet Reference/Detail No:
Specification Section:
The undersigned Bidder submits for consideration the following equipment instead of the specified item for the above Project:

Section	Paragraph	Specified Item

Proposed Substitution:

The undersigned encloses the information required herein. If this Document 002600 is being submitted by a Bidder wishing to use "equal" item(s) as provided in the Instructions to Bidders, the undersigned Bidder must also enclose the technical information (other than cost) otherwise required for a post-Award of Contract Request for Substitution ("RFS") under Section 016000 (Product Requirements). However, if this Document 002600 is being submitted under provisions of Contract Documents after Award of Contract, the undersigned Contractor must include all information (including cost) required under Section 016000 (Product Requirements).

The undersigned has (a) attached manufacturer's literature, including complete technical data and laboratory test results, if applicable, (b) attached an explanation of why proposed substitution is a true equivalent to specified item, (c) included complete information on changes to Contract Documents that the proposed substitution will require for its proper installation, and (d) filled in the blanks below:

A. Does the substitution affect dimensions shown on Drawings?

B. Are the manufacturer's guarantees and warranties on the proposed substitution items identical to those on the specified items? If there are differences, please specify each and every difference in detail.

C. What effect does the substitution have on other contractors, trades, or suppliers?

D. What are the differences between the proposed substitution and the specified item? If proposed substitution has a color or pattern, provide a color board showing proposed substitution in relation to the other adjacent colors and patterns.

E. Will granting the requested substitution cause any schedule delay? (If yes, please explain)

The undersigned Bidder certifies that the function, appearance, and quality of the proposed substitution are equivalent or superior to those of the specified item.

Submitted by:
Bidder/ Contractor: **Name:**

Signature: **Date:**

Address: **City/State/Zip:**

Telephone:

For Use by Sonoma Clean Power Authority:
Accepted_____. Not Accepted_____. Accepted as noted____. Received too late____.

By:
Project Manager's Supervisor **Date:**

Remarks:

END OF DOCUMENT

00 63 25- SUBSTITUTION REQUEST FORM [DURING CONSTRUCTION]

To:
Capital Projects and Engineering
Sonoma Clean Power Authority

Substitution Request By:	Company Name:

PROJECT: **Contractor:**

[Full Project Name]

Transmittal Record	**Attn:**	**Company Name:**	**Date Sent:**	**Date Rec'd:**	**Date Due:**
Contractor to Owner					
Owner to Consultant (if applicable)					

Consultant to Owner (if applicable)

Owner to Contractor

We hereby submit for your consideration the following product instead of the specified item for the Project:

Section / Drawing	**Paragraph**	**Specified Item**

Proposed Substitution:

We have (a) attached manufacturer's literature, including complete technical data and laboratory test results, if applicable, (b) attached an explanation of why proposed substitution is a true equivalent to specified item, (c) included complete information on changes to Contract Documents that the proposed substitution will require for its proper installation, and (d) filled in the blanks below:

Contractor to complete questions that follow and certifies to the accuracy of all answers:

A. Does the substitution affect dimensions shown on Drawings? Yes __ / No __. If No, please explain proposed mitigation and why substitution is equivalent to originally specified item:
B. Will the undersigned be responsible for additional Project costs for design and construction resulting from the proposed substitution? Yes __ / No __. If No, please state reasons explain why substitution is equivalent to originally specified item:
C. Will substitution cause change to Project Schedule, or to critical delivery dates? Add? Shorten? If the substitution will add to schedule dates or affect critical activities, please explain why substitution is equivalent to originally specified item:
D. Please describe differences between proposed substitution and specified item. Please explain and identify any and all differences, and please explain why substitution is equivalent to originally specified item:
E. What is the Cost Differential to Contractor in original specified item and proposed substitution including all mark-ups?
F. Are Manufacturer's warranties for the proposed item the same as for item specified? Yes ___; No____. If No, please explain why substitution is equivalent to originally specified item. Provide the proposed warranty form with Project-specific references signed by the manufacturers authorized representative:
G. Does Contractor accept full responsibility for delays caused by redesign of other items of the Work necessitated by substitution? Yes __ / No __. If No, please state reasons and explain why substitution is equivalent to originally specified item:

H. Does Contractor certify that the function, appearance, and quality are equivalent or superior to the specified item? Yes _ / No _. If No, please explain why substitution is equivalent to originally specified item:
I. Does the substitution meet or exceed performance standards of proposed item? Yes __ / No . If No, explain why why substitution is equivalent to originally specified item:

We certify that the function, appearance, and quality of the proposed substitution are equivalent or superior to those of the specified item, except as we may specifically state otherwise in this request.

Submitted by:_____ Signature:

Company Name:_____ Date:

Address:_____ Phone/ Fax:
Email:

Remarks:

Owner Response:

- Accepted
- Not Accepted
- Accepted As Noted
- Received Too Late

Remarks:

By:

END OF SECTION

00 65 23- AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS ("Agreement and Release"), made and entered into this _____ [date] day of _____ [month], _____ [year], by and between the Sonoma Clean Power Authority, a public agency ('Agency"), and _____ [name of Contractor] ("Contractor"), whose place of business is at _____ _____ [address of Contractor].

RECITALS

A. Agency and Contractor entered into Contract **Federated Indians of Graton Rancheria BESS for Grid Resilience** (the "Contract").
B. The Work under the Contract has been completed.

Now, therefore, it is mutually agreed between Agency and Contractor as follows:

AGREEMENT

1. Contractor will not be assessed liquidated damages except as detailed below:

Original Contract Sum $ _____

Modified Contract Sum $ _____

Payment to Date $ _____

Liquidated Damages $ _____

Payment Due Contractor $ _____

2. Subject to the provisions of this Agreement and Release, Agency will forthwith pay to Contractor the sum of $_____ Dollars and _____ Cents ($_____) under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with Agency as of the date of such payment.

3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against Agency arising from the Contract, except for the claims described in Paragraph 4 herein. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against Agency, and all of its agents, employees, consultants, inspectors, representatives, assignees and transferees, except for the Disputed Claims set forth in Paragraph 4 herein. Nothing in this Agreement and Release shall limit or modify Contractor's continuing obligations described in Paragraph 6 herein.

4. The following claims submitted under Document 0072 13 (General Conditions) are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

Claim No.	Date Submitted	Description of Claim	Amount of Claim

[Insert information, including attachment if necessary]

5. Consistent with California Public Contract Code Section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 2 herein, Contractor hereby releases and forever discharges Agency, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract

6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.

7. Contractor shall immediately defend, indemnify and hold harmless Agency, any Agency's Representatives, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in Paragraph 4 herein.

8. Contractor hereby waives the provisions of California Civil Code Section 1542, which provide as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Contractor has read the foregoing waiver and understands that the releases here granted by Contractor apply to and include all known and unknown and unexpected claims. Contractor intends, by signing this Agreement and Release, to release and assume the risk of unknown claims.

By: _____
Contractor initials

9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, Agency, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.

11. All rights of Agency shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

*** * * CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING * * ***

SONOMA CLEAN POWER AUTHORITY,
A Public Agency

By:

Geof Syphers, CEO

[CONTRACTOR]

By:

Name:

Its:

By:

Name:

Its:

REVIEWED AS TO FORM:

Counsel

, 20

END OF DOCUMENT

00 65 36- WARRANTY FORM

To the Sonoma Clean Power Authority ("Agency"), for the construction of

Federated Indians of Graton Rancheria BESS for Grid Resilience

at 4528 Langner Ave, Rohnert Park, California.

The undersigned Contractor hereby guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

Contractor hereby grants to the Agency for a period of one (1) year following the date of Substantial Completion of the Work, or such longer period specified in the Contract Documents ("Warranty period"), its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.

Neither final payment nor use or occupancy of the Work performed by Contractor shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve Contractor of liability in respect to any express guarantees, warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting there from which shall appear within the Warranty period.

If at any time during the Warranty period any Work is found to be Defective, Contractor shall promptly (within forty-eight [48] hours of notification by County, but no later than five [5] days following notification by County), without cost to Agency and in accordance with Agency's written instructions, correct such Defective Work. Contractor shall remove any Defective Work identified by Agency and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Agency may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Agency shall have all rights and remedies granted by law.

Inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the Warranty period.

This Guaranty is in addition to any other warranties of Contractor contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Contractor under the Contract Documents and at law with respect to Contractor's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Warranty and any warranty or obligation of Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of Contractor.

All abbreviations and undefined terms used in this Guaranty shall have the meanings set forth in the Contract Documents, including, without limitation, Document 00 72 13 (General Conditions).

[Contractor's Name]

By:
[Signature]

[Please Print Name Here]

Title:

Business Address:

Date:

END OF DOCUMENT

00 72 13 – GENERAL CONDITIONS

ARTICLE 1. CONTRACT DOCUMENTS

A. **Contract Documents.** The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.

B. **Order of Precedence of Documents.**

1. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
   a. Modifications (addenda, approved changed order) in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;

   b. Agreement (Section 00 52 13), and terms and conditions referenced therein;

   c. Special Conditions (Section 00 73 13 et seq), if included;

   d. General Conditions (Section 00 72 13);

   e. Division 1 Specifications, if included;

   f. Drawings and Technical Specifications (Division 2 and above);

   g. Written numbers over figures, unless obviously incorrect;

   h. Figured dimensions over scaled dimensions;

   i. Large-scale Drawings over small-scale Drawings.

2. Any conflict between Drawings and Technical Specifications (Division 2 and above) will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.

3. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.

All Technical Specifications included in the Project Manual shall be included within the Contract Documents unless identified otherwise.

ARTICLE 2. CONTRACT DOCUMENTS: COPIES & MAINTENANCE

Contractor will be furnished, free of charge, **two (2)** copies of the Contract Documents. Additional copies may be obtained at cost of reproduction.

Contractor shall maintain a clean, undamaged set of Contract Documents, including submittals, at the Project site.

ARTICLE 3. EXAMINATION OF DRAWINGS, SPECIFICATIONS AND SITE OF WORK

A. **Examination of Contract Documents.** Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work notwithstanding any such error, inconsistency or ambiguity , or lack of sufficient detail or explanation , Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.

B. **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

C. **Quality of Parts,** Construction and Finish. All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.

ARTICLE 4. EXISTENCE OF UTILITIES AT THE WORK SITE

A. The Agency has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. The positions of known utilities as derived from such records are shown on the Plans.

B. Unless indicated otherwise on the Plans and Specifications, no excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the Plans. Water service connections may be shown on the Plans showing general locations of such connections. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. The Contractor shall immediately notify the Agency in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.

C. If applicable, all water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of the Work.

D. Notwithstanding the above, pursuant to section 4215 of the Government Code, the Agency has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the invitation for Bids, the Agency shall assume the responsibility for their timely removal, relocation, or protection. Consistent with Government Code

Section 4215, as between Agency and Contractor, Agency will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site only if such utilities are not identified in the Contract Documents or any existing condition information provided by Agency. Agency will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or any existing condition information with reasonable accuracy, and equipment on the Project necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay was caused by the failure of Agency or the utility to provide for removal or relocation of such utility facilities.

E. Contractor, except in an emergency, shall contact the appropriate regional notification center, at 811 or 1-800-642-2444 or on-line at www.digalert.org at least two working days prior to commencing any excavation if the excavation will be performed in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the Agency, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the Agency has been given the identification number by the Contractor.

ARTICLE 5. SOILS INVESTIGATIONS

A. **Reports and Drawings.** The Special Conditions identify:

- those reports known to the Agency of explorations and tests of subsurface conditions at or contiguous to the site; and

- those drawings known to the Agency of physical conditions relating to existing surface or subsurface structures at the site (except Underground Facilities).

B. **Limited Reliance by Contractor on Technical Data Authorized.** Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, which were expressly not created or obtained to evaluate or assist in the evaluation of constructability, and are not Contract Documents. Contractor shall make its own interpretation of the "technical data" and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such "technical data," Contractor may not rely upon or make any claim against the Agency, Agency's Representative, or Engineer of Record, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

- the completeness of such reports and drawings for Contractor's purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

- other data, interpretations, opinions, conclusions and information contained in such reports or shown or indicated in such drawings; or

- any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

ARTICLE 6. CONTRACTOR’S SUPERVISION

Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the Agency. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

ARTICLE 7. WORKERS

A. Contractor shall not employ on the Project any unfit person or anyone not skilled in the Work assigned to him or her.

B. Any person in the employ of the Contractor whom the Agency may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.

ARTICLE 8. INDEPENDENT CONTRACTORS

Contractor shall be an independent contractor for the Agency and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of Agency and are not entitled to benefits of any kind normally provided employees of Agency, including but not limited to, state unemployment compensation or workers’ compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.

ARTICLE 9. SUBCONTRACTS

A. Subcontract agreements shall preserve and protect the rights of Agency under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor’s written agreement (1) to be bound to the terms of Contract Documents and (2) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward Agency under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.) Contractor shall be as fully responsible to the Agency for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the Agency.

B. **The Agency reserves the right to accept all subcontractors.** The Agency’s acceptance of any subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.

C. Prior to substituting any subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

D. Contractor shall provide for the assignment to Agency of all rights any Subcontractor (of any tier) may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents. Subcontracts shall provide and acknowledge Agency as an intended third-party beneficiary of each subcontract and supply contract (of any tier).

E. **Contingent Assignment of Subcontracts:**

1. Contractor hereby assigns to Agency each Subcontract for a portion of the Work, provided that:
   - The assignment is effective only after Agency's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) as set forth herein;
   - The assignment is effective only for the Subcontracts which Agency expressly accepts by notifying the Subcontractor in writing;
   - The assignment is subject to the prior rights, if any, of the Surety, obligated by Section 00 61 13 (Performance Bond Form) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
   - After the effectiveness of an assignment, Contractor shall, at its sole cost and expense (except as otherwise provided in this Section 00 72 13), sign all instruments and take all actions reasonably requested by Agency to evidence and confirm the effectiveness of the assignment in Agency; and
   - Nothing in this Paragraph shall modify or limit any of Contractor's obligations to Agency arising from acts or omissions occurring before the effectiveness of any Subcontract assignment including, but not limited to, all defense, indemnity, and hold-harmless obligations arising from or related to the assigned Subcontract.

ARTICLE 10. VERIFICATION OF EMPLOYMENT ELIGIBILITY

A. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986 ("ICRA"), as may be amended from time to time, and shall require all subcontractors, sub-subcontractors and consultants to comply with the same. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Contract, and shall not violate any such law at any time during the term of the Contract. Contractor shall avoid any violation of any such law during the term of this Contract by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the Agency or its representatives for inspection and copy at any time during normal business hours. The Agency shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for or referred to herein.

B. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any part of the Work or of this Contract to make the same verifications and comply with all requirements and restrictions provided for herein.

C. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the Agency to terminate the Contract for cause: (1) failure of the Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

D. In addition, Contractor agrees to indemnify, defend and hold harmless Agency, its agents, officers, and employees, from any liability, damages, or causes of action arising out of or relating to any claims that Contractor's employees, or employees of any subcontractor hired by Contractor, are not authorized to work in the United States for Contractor or its subcontractor and/or any other claims based upon alleged IRCA violations committed by Contractor or Contractor's Subcontractors.

ARTICLE 11. REQUESTS FOR SUBSTITUTION

A. For the purposes of this provision, the term "substitution" shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Standard Specifications or otherwise referenced herein.

B. Pursuant to Public Contract Code section 3400(b), the Agency may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.

C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in the Contract Documents. However, the Agency has adopted uniform standards for certain materials, processes, and articles.

D. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any "or equal" material, process, or article no later than thirty-five (35) calendar days after award of Contract. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the Agency, the Contractor shall provide the material, method or service specified herein. The Agency shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.

E. Substantiating data as described above shall include, at a minimum, the following information:

- A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.
- Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.
- A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.
- Information detailing the durability and lifecycle costs of the proposed substitution.

F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.

G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.

H. The Contractor shall bear the costs of all Agency work associated with the review of substitution requests.

I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

ARTICLE 12. SHOP DRAWINGS

A. Contractor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in its own Work or in that of any other contractor, subcontractor, or worker on the Project, one (1) copy of all shop drawings, calculations, schedules, and materials list, and all other provisions required by the Contract Documents. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Engineer. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the transmittal letter of the submittal.

B. Contractor shall make any corrections required by the Engineer. Engineer's acceptance of shop drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called Engineer's attention to such deviations at time of submission and has secured the Engineer's written acceptance. Engineer's acceptance of shop drawings shall not relieve Contractor from responsibility for errors in shop drawings.

ARTICLE 13. SUBMITTALS

A. Contractor shall furnish to the Engineer for approval, prior to purchasing or commencing any Work, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the Contract Documents. The log shall indicate whether samples will be provided in accordance with other provisions of this Contract.

B. Contractor will provide samples and submittals, together with catalogs and supporting data required by the Engineer, to the Engineer within a reasonable time period to provide for adequate review and avoid delays in the Work.

C. These requirements shall not authorize any extension of time for performance of this Contract. Engineer will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples and submittals.

ARTICLE 14. MATERIALS

A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.

B. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.

C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.

D. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the Agency free from any claims, liens, or charges.

E. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of the Agency or any independent contractor.

F. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the Agency shall not be liable for Contractor's failure to do so. No additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Form, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.

ARTICLE 15. PERMITS AND LICENSES

A. Unless otherwise required by AHJ, Contractor shall obtain all necessary permits and licenses for the construction of the Project, including encroachment permits, and shall pay all fees required by law and shall comply with all laws, ordinances, rules and regulations relating to the Work and to the preservation of public health and safety. Before final acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the Agency.

B. [Reserved].

ARTICLE 16. TRENCHES

A. **Trenches Five Feet or More in Depth.** Contractor shall submit to the Engineer at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the “competent person” as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The “competent person” shall prepare and provide daily trenching/excavation inspection reports to the Engineer. Contractor shall also obtain and submit a copy of its California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit for any trenches or excavations that are five feet or more in depth and into which a person is required to descend.

B. **Excavations Deeper than Four Feet.** If any of the following conditions is encountered at Site when digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall give a written Notice of Differing Site Conditions to Agency promptly before conditions are disturbed, except in an emergency as set forth in this Section 00 72 13, and in no event later than seven Days after first observance of:

- 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.

- Subsurface or latent physical conditions at the site differing from those indicated in the Contract Documents.

- Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

The Agency shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in 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 the Contract Documents.

In the event that a dispute arises between the Agency and the Contractor as to whether the conditions materially 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 the Contract, but shall proceed with all Work to be performed under the 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 parties.

ARTICLE 17. TEMPORARY FACILITIES AND CONTROLS

A. Unless expressly provided otherwise in the Contract Documents, Contractor shall provide all temporary utilities, including without limitation, electricity, water, natural gas, lighting, heating, cooling and ventilating devices, telephone, sanitary facilities, barriers, fences and enclosures, tree and plant protection, fire protection, pollution, erosion, Storm Water Pollution Prevention controls, noise and traffic control, and any other necessary services required for construction, testing, or completion of the Work.

B. See Technical Specifications, Section 01 50 00 Temporary Facilities and Controls for additional requirements.

ARTICLE 18. NOT USED

ARTICLE 19. DIVERSION OF RECYCLABLE WASTE MATERIALS

Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with all AHJ waste diversion ordinances. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by Agency or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

ARTICLE 20. DISCOVERY OF HAZARDOUS MATERIALS

Should Contractor encounter material reasonably believes to be polychlorinated biphenyl (PCB) or other toxic waste or hazardous material not already identified in the Special Conditions which have not been rendered harmless at the Project site, the Contractor shall immediately stop work at the affected Project site and shall report the condition to the Agency in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Agency and Contractor.

ARTICLE 21. SANITARY FACILITIES

Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with local codes and ordinances. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets

and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other Sanitary Facilities required by Cal/OSHA shall be the responsibility of the Contractor.

ARTICLE 22. AIR POLLUTION CONTROL

Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes, including, but not limited to, those required by the Bay Area Air Quality Management District. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

ARTICLE 23. STORM WATER CONTROL

A. The Contractor shall perform all construction operations in such a manner as to comply, and ensure all subcontractors to comply, with all applicable Federal, State, and local laws, orders, and regulations concerning the control and abatement of water pollution; and all terms and conditions of any applicable permits issued for the Project. In the event there is a conflict between Federal, State, and local laws, regulations, and requirements, the most stringent shall apply.

B. Contractor violations. If noncompliance should occur, the Contractor shall report this to the Agency Representative immediately, with the specific information submitted in writing within 2 Days. Consistent violations of applicable Federal, State, or local laws, orders, regulations, or Water Quality Standards may result in Agency stopping all site activity until compliance is ensured. The Contractor shall not be entitled to any change in Contract Price or Contract Times, claim for damage, or additional compensation by reason of such a work stoppage. Corrective measures required to bring activities into compliance shall be at the Contractor's expense.

C. In addition to compliance with the State Water Resources Control Board (SWRCB), Order No. –2009-0009 – DWQ, National Pollutant Discharge Elimination System (NPDES) Permit, Contractor shall comply with the lawful requirements of any applicable municipality, district, drainage district, flood control district, and other local agencies regarding discharges of storm water, surface water, groundwater or other nuisance waters off of the Project site.

D. See Technical Specifications, Section 01 57 23 Temporary Storm Water Pollution Control for additional requirements.

ARTICLE 24. LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out the Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense.

ARTICLE 25. TESTS AND INSPECTIONS

A. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or AHJ requires any part of the Work to be tested or Approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for observation or

inspection. If inspection is by a public authority other than the Agency, Contractor shall promptly inform the Agency of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for Agency testing and Agency inspection shall be paid by the Agency. Except as specifically noted, scheduling, conducting and paying for such inspections shall be solely Contractor's responsibility. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

B. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.

C. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the Agency, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

D. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the Agency so that the Agency may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.

E. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the Agency, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

F. **Reexamination of Work may be ordered by the Agency.** If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the Agency shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

ARTICLE 26. PROTECTION OF WORK, PERSONS, AND PROPERTY

A. Contractor shall be responsible for initiating, maintaining, and supervising all safety and Site security precautions and programs in connection with Work, and shall develop and implement a Site security and safety plan throughout construction. Contractor shall comply with all safety requirements specified in any safety program established by Agency, or required by state, federal, or local laws and ordinances. The Contractor shall be responsible for all damages to the Work, persons, or property that occurs as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by the Agency. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and regulations to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs,

barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

B. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if so authorized or instructed by the Engineer or the Agency. Any compensation claimed by Contractor on account of emergency work shall be determined by and agreed upon by the Agency and the Contractor.

ARTICLE 27. CONTRACTOR'S MEANS AND METHODS

A. In exercising its responsibilities and authorities under the Contract Documents, Agency does not assume any duties or responsibilities to any Subcontractor or supplier and does not assume any duty of care to Contractor, Contractor's Subcontractors or suppliers. Except as expressly set forth in the Contract Documents, in exercising their respective responsibilities and authorities under the Contract Documents, neither Engineer nor any Agency's Representative assumes any duties or responsibilities to any Subcontractor, sub-Subcontractor or supplier nor assumes any duty of care to Contractor or any Subcontractor, sub-Subcontractor or suppliers.

B. Work shall be performed under Agency's general observation and administration. Contractor shall comply with Agency's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Contractor of any obligations or liabilities under the Contract Documents. Agency's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.

C. Agency may engage an independent consultant or architect (collectively for purposes of this Paragraph, "Consultant") to assist in administering the Work. If so engaged, Consultant will advise and consult with Agency, but will have authority to act on behalf of Agency only to extent provided in the Contract Documents or as set forth in writing by Agency. Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with Work. Consultant will not be responsible for or have control over the acts or omissions of Contractor, Subcontractors or their agents or employees, or any other persons performing Work.

D. Contractor shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Contractor shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and procedures, safety precautions and programs in connection with the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards. Contractor shall be responsible to see that the completed Work complies accurately with Contract Documents.

ARTICLE 28. COMPLIANCE WITH CALIFORNIA AIR RESOURCES BOARD REGULATIONS

A. Contractor shall comply, and shall ensure all subcontractors comply, with all applicable requirements of the most current version of the regulations imposed by California Air Resources Board ("CARB") including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("Regulation").

B. Throughout the Project, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor's and its subcontractors' fleets including, without limitation, the Certificates of Reported Compliance ("CRCs"), fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep or maintain pursuant to the Regulation upon two (2) calendar days' notice from the Agency.

C. Contractor shall be solely liable for any and all costs associated with compliance with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation. Contractor shall defend, indemnify and hold harmless the Agency, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Regulation.

ARTICLE 29. AUTHORIZED REPRESENTATIVES

The Agency shall designate representatives, who shall have the right to be present at the Project site at all times. The Agency may designate an inspector who shall have the right to observe all of the Contractor's Work. The inspector shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Contractor shall provide safe and proper facilities for such access.

ARTICLE 30. HOURS OF WORK

A. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

B. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the Agency and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

C. The Contractor shall pay to the Agency a penalty of twenty-five dollars ($25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

D. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the Agency.

E. Agency may inspect during normal working hours from 7:00 a.m. to 5:00 p.m. Monday through Friday, at no charge. Inspection before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval the working day may be changed to other limits subject to city/county ordinance.

F. There shall be no operation, use, or allowance of operation or use, of any of the following at the Project site, other than between the hours of 7:00 a.m. to 5:00 p.m., on Business Days, unless otherwise approved by the Agency:

- Powered Vehicles
- Construction Equipment
- Loading and Unloading Vehicles
- Domestic Power Tools

ARTICLE 31. PAYROLL RECORDS

A. Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, 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 employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.

B. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In accordance with Labor Code section 1771.4 and unless exempt thereunder, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

C. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any

delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the Agency. Contractor shall defend, indemnify and hold the Agency, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

D. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the Agency. The Contractor shall also provide the following:

- A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

- A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.

E. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

F. Except where required by law, any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the Agency, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the contract shall not be marked or obliterated.

G. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

H. The responsibility for compliance with this Article shall rest upon the Contractor.

ARTICLE 32. PREVAILING WAGE REQUIREMENTS

A. The Contractor is aware of the requirements of Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of

per diem wages for (1) work of a similar character in the locality in which the Work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and Agency to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the Agency's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the Agency, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws. Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation, California Labor Code sections 1725.5, 1776, and 1811. Failure to so comply shall constitute a default under this Contract.

B. The Contractor shall forfeit as a penalty to the Agency not more than Two Hundred Dollars ($200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

C. Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

ARTICLE 33. PUBLIC WORKS CONTRACTOR REGISTRATION

Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its subcontractors must be registered with the Department of Industrial Relations and qualified to perform public work prior to the execution of a contract to perform public works, subject only to the allowances of Labor Code sections 1725.5 and 1771.1. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in all subcontracts and ensure that all subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project.

ARTICLE 34. EMPLOYMENT OF APPRENTICES

A. Contractor and all subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices.

B. Information regarding 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.

C. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars ($100.00) for each calendar day of non-compliance, pursuant to Labor Code section 1777.7.

D. The responsibility for compliance with this Article shall rest upon the Contractor.

ARTICLE 35. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to ensure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

ARTICLE 36. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the Agency. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

ARTICLE 37. LABOR/EMPLOYMENT SAFETY

The Contractor shall comply with all applicable laws and regulations of the federal, state, and local government, including Cal/OSHA requirements and requirements for verification of employees' legal right to work in the United States.

The Contractor shall maintain emergency first aid treatment for its employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512.

The Contractor shall submit the Illness and Injury Prevention Program and a Project site specific safety program to the Agency prior to beginning Work at the Project site. Contractor shall maintain a confined space program that meets or exceeds regulatory requirements (CCR Title 8, Division 1, Chapter 4) and industry standards. Contractor shall adhere to an acceptable lock out tag out program.

ARTICLE 38. INSURANCE

The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article and Article 39. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the Agency that it has secured all insurance required hereunder. Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Contractor that the subcontractor has secured all insurance required under this Article. If Contractor fails to maintain Insurance which is required pursuant to the Contract Documents, it shall be deemed a material breach. The Agency, at its sole option, may terminate the Contract for default and obtain damages from Contractor resulting from said breach. Alternatively, the Agency may purchase the required Insurance, and without further notice to Contractor, the Agency may deduct from sums due to Contractor any premium costs advanced by the Agency for such insurance. Contractor shall furnish Agency with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the Agency. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the Agency. All certificates and endorsements must be received and approved by the Agency before Work commences.

A. **Additional Insureds; Waiver of Subrogation**. The Agency, Owner, and the United States of America, and each of their officials, officers, employees, agents and authorized volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability, Automobile Liability, and Pollution insurance, including any excess and umbrella coverages, using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against the Agency.

B. **Workers' Compensation Insurance with Statutory Limits as Required by the Labor Code of the State of California**. The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is

required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the Agency certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the Agency, if in the form and coverage as set forth in the Contract Documents. Workers' compensation coverage provided through the California State Compensation Insurance Fund shall be deemed acceptable to the Agency notwithstanding any insurer rating requirements contained elsewhere in the Contract Documents.

C. **Employer's Liability Insurance**. Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars ($1,000,000.00) per person per accident, one million dollars ($1,000,000) Disease per employee, and one million dollars ($1,000,000) Disease per policy. Contractor shall provide Agency with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the Agency.

D. **Commercial General Liability Insurance**. Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than $2,000,000 per occurrence for bodily injury, personal injury and property damage, $4,000,000 general aggregate, and $4,000,000 products/completed operations aggregate. The general aggregate shall apply separately to this Project.

1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the Agency, and shall not preclude the Agency from taking such other actions available to the Agency under other provisions of the Contract Documents or law.

2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.

3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that

part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.

4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the Agency may require additional coverage to be purchased by Contractor to restore the required limits. Required limits may be satisfied through a combination of primary, umbrella, and excess liability policies. Any umbrella or excess liability policy shall be written on a follow-form basis over the required underlying liability coverages unless otherwise approved by the Agency. To the extent provided under the policy, Additional Insured status afforded under the underlying policies shall apply to such umbrella or excess coverage.

5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

6. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds $25,000 it must be approved in advance by the Agency. Contractor is responsible for any deductible or self-insured retention and shall fund it upon the Agency's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving the Agency.

E. **Automobile Liability Insurance**. Contractor shall provide "occurrence" form Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, two million dollars ($2,000,000) per accident for bodily injury and property damage. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess and/or Umbrella Liability Insurance. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the Agency. All policies of automobile insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

F. **Builder's Risk ["All Risk"]**

1. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The Agency accepts no responsibility for the Work until the Work is formally accepted by the Agency. The Contractor shall provide a certificate evidencing this coverage before commencing performance of the Work.

2. The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and

Agency, its elected officials, officers, employees, agents and authorized volunteers, as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by Agency.

3. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to Agency to ensure adequacy and sublimit.

4. In addition, the policy shall meet the following requirements:

    a. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.

    b. Coverage shall include all materials stored on site and in transit.

    c. Coverage shall include Contractor's tools and equipment.

    d. Insurance shall include machinery and material hoist coverage.

G. **Contractor's Pollution Liability Coverage**. Contractor shall provide pollution liability insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 aggregate.

    1. This insurance shall cover:

        a. bodily injury, sickness, disease, sustained by any person, including death;

        b. property damage, including physical injury to or destruction of tangible property including the resulting loss of use thereof;

        c. cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed including diminution of value and natural resources damages;

        d. costs of emergency response, mitigation, containment, monitoring, remediation, removal, cleanup, and restoration resulting from a pollution condition;

e. claims arising from the transportation, hauling, loading, unloading, transfer, treatment, storage, or disposal of pollutants;

f. loss arising from pollutants including but not limited to fungus, bacteria, asbestos, lead, silica, and contaminated drywall;

g. contractual liability coverage for liability assumed by Contractor under a written contract or agreement;

h. claims arising from owned and non-owned disposal sites utilized in the performance of this Agreement; and

i. defense costs, including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims.

2. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of work.

3. Contractor shall maintain the insurance for the entire period of the Work including any warranty period, plus an additional two (2) years after the end of the warranty period.

H. Contractor shall require all tiers of sub-contractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in writing by Agency. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the Agency harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the Agency as a result thereof.

ARTICLE 39. FORM AND PROOF OF CARRIAGE OF INSURANCE

A. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California Carrier(s) shall have an A.M. Best rating of not less than an A:VII, with the exception for the California State Compensation Insurance Fund. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the Agency the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to the Agency indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

B. **Each insurance policy required by this Contract shall be endorsed to state that**: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Agency; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Agency, its officials, officers, agents, employees, and volunteers. Contractor shall

provide written notice to the Agency within three (3) business days after becoming aware that: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased

C. The Certificates(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the Agency prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the Agency may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the Agency 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 coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the Agency 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 Article. 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. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the Agency's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

E. Agency reserves the right to increase the minimum amounts of insurance should conditions of work warrant such increase. Contractor shall increase required insurance amounts upon direction by the Agency.

F. Contractor shall promptly report to the Agency any and all insurance claims, notices of claim, or lawsuits arising out of or relating to the Work under this Contract, including claims involving Contractor, any subcontractor of any tier, or any insurance maintained in connection with the Work..

ARTICLE 40. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

A. **Time for Completion/Liquidated Damages.** Time is of the essence in the completion of the Work. Work shall be commenced within ten (10) Days of the date stated in the Agency's Notice to Proceed (or as otherwise stated therein) and shall be completed by Contractor in the time specified in the Contract Documents. The Agency is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the Agency's receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from the Agency (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion and the Contract completion date. If the Work is not completed as stated in the Contract Documents, it is understood that the Agency will suffer damage. In accordance with Government Code section 53069.85, it being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the Agency as fixed and liquidated damages, and

not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages. All liquidated damages amounts shall apply cumulatively.

Liquidated damages for delay shall only cover project administrative (such as Project management and consultant expenses) and time cost damages suffered by Agency as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Agency (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent Agency, in case of Contractor's default, from terminating the Contractor.

B. **Inclement Weather.** Contractor shall abide by the Engineer's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule.

C. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to Acts of God or other unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within five (5) Days of identifying any such delay notify the Agency in writing of causes of delay. The Agency shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. No delay claims related to a force majeure event shall be permitted.

D. **No Damages for Reasonable Delay.** The Agency's liability to Contractor for delays for which the Agency is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the Agency be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable Agency delay, including delays caused by items that are the responsibility of the Agency pursuant to Government Code section 4215, shall be based on actual costs only; no proportions or formulas shall be used to calculate any delay damages.

ARTICLE 41. COST BREAKDOWN AND PERIODIC ESTIMATES

Contractor shall furnish on forms approved by the Agency:

A. Prior to Notice to Proceed with the Contract, a detailed estimate giving a complete breakdown of the Contract price, if the Contract amount is a lump sum.

B. A monthly itemized estimate of Work done for the purpose of making progress payments. In order for the Agency to consider and evaluate each progress payment application, the Contractor shall submit a detailed measurement of Work performed and a progress estimate of the value thereof before the tenth (10th) Day of the following month.

C. Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid Form.

D. Following the Agency's Acceptance of the Work, the Contractor shall submit to the Agency a written statement of the final quantities of unit price items for inclusion in the final payment request.

E. The Agency shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

ARTICLE 42. PROGRESS ESTIMATES AND PAYMENT

A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include any amount earned for authorized extra work. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the Agency has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. From the remainder a further deduction may be made in accordance with Section B below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.

B. The Agency may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in his judgment may be necessary to cover:

1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.

2. Defective work not remedied.

3. Failure of Contractor to make proper payments to his subcontractor or for material or labor.

4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.

5. Damage to another contractor or a third party.

6. Amounts which may be due the Agency for claims against Contractor.

7. Failure of Contractor to keep the record ("as-built") drawings up to date.

8. Failure to provide update on construction schedule as required herein.

9. Site cleanup.

10. Failure to comply with Contract Documents.

11. Liquidated damages.

12. Legally permitted penalties.

C. The Agency may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (B)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the Agency shall be deemed the agent of Contractor and any payment so made by the Agency shall be considered as a payment made under contract by the Agency to Contractor and the Agency shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The Agency will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

D. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The Agency shall make the progress payment within 30 calendar days after the receipt of an undisputed and properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the Agency to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of days by which the Engineer exceeds the seven (7) Day requirement.

E. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the Agency.

ARTICLE 43. SECURITIES FOR MONEY WITHHELD

Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the Agency to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the Agency to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the Agency or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

ARTICLE 44. CHANGES AND EXTRA WORK.

A. **Contract Change Orders**.

1. The Agency, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Contract Price and Contract Time shall be adjusted accordingly. Except as otherwise provided herein, all such changes in the Work shall be authorized by Change Order in the form provided in Exhibit A, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract Price or the Contract Time, and the full and final settlement of the subject of the Change Order, including all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

2. Contractor shall promptly execute changes in the Work as directed in writing by the Agency even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Contract Price or Contract Time. All claims for additional compensation to the Contractor shall be presented in writing. No claim will be considered after the Work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by Contractor.

3. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract.

4. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done.

5. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the work, including Additional Work, promptly and expeditiously.

6. Contractor shall make available to the Agency any of the Contractor’s documents related to the Project immediately upon request of the Agency.

7. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor’s surety or sureties.

B. **Contract Price Change**.

1. Process for Determining Adjustments in Contract Price.

    a. **Agency Initiated Change**. The Contractor must submit a complete cost proposal, including any change in the Contract Price or Contract Time, within seven (7) Days after receipt of a scope of a proposed change order initiated by the Agency, unless the Agency requests that proposals be submitted in less than seven (7) Days.

b. **Contractor Initiated Change**. The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed change order.

c. Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the Agency.

d. Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by the Agency, including but not limited to estimates and quotations from subcontractors or material suppliers, as the Agency may reasonably request. Contractor shall certify the accuracy of all Change Order Requests under penalty of perjury.

e. If the Contractor fails to submit a complete cost proposal within the seven (7) Day period (or as requested), the Agency has the right to order the Contractor in writing to commence the Work immediately on a time and materials basis and/or issue a lump sum change to the Contract Price and/or Contract Time in accordance with the Agency's estimate. If the change is issued based on the Agency's estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) Days following completion of the added/deleted work, the Contractor presents written proof that the Agency's estimate was in error.

2. Unit Price Change Orders.

a. When the actual quantity of a Unit Price item varies from the Bid Form, compensation for the change in quantity will be calculated by multiplying the actual quantity by the Unit Price. This calculation may result in either an additive or deductive Final Change Order pursuant to the Contract Documents.

b. No Mark up for Overhead and Profit. Because the Contract Unit Prices provided in the Bid Form include Overhead and Profit as determined by Contractor at the time of Bid submission, no mark up or deduction for Overhead and Profit will be included in Unit Price Change Orders.

c. Bid items included on the Bid Form may be deducted from the Work in their entirety without any negotiated extra costs.

d. Contractor acknowledges that unit quantities are estimates and agrees that the estimated unit quantities listed on the Bid Form will be adjusted to reflect the actual unit quantities which may result in an adjustment to the Contract Unit Prices. Such an adjustment will be made by execution of a final additive or deductive Change Order following Contractor's completion of the Work. Upon notification, Contractor's failure to respond within seven (7) Days will result in Agency's issuance of a unit quantity adjustment to the Contract Unit Prices and/or Contract Time in accordance with the Contract Documents.

e. The Agency or Contractor may make a Claim for an adjustment in the Unit Price in accordance with the Contract Documents if:

i. the quantity of any item of Unit Price Work performed by Contractor differs by twenty-five percent (25%) or more from the estimated quantity of such item indicated in the Contract; and

ii. there is no corresponding adjustment with respect to any other item of Work; and

iii. Contractor believes that Contractor is entitled to an increase in Unit Price as a result of having incurred additional expense or the Agency believes that the Agency is entitled to a decrease in Unit Price and the parties are unable to agree as to the amount of any such increase or decrease.

3. Lump Sum Change Orders. Compensation for Lump Sum Change Orders shall be limited to expenditures necessitated specifically by the Additional 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 Additional 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 Additional Work cost will not be permitted unless the Contractor establishes the necessity for such new classifications. 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. Materials costs shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then the Agency shall determine the materials cost, at its sole discretion.

c. Tool and Equipment Use. Costs for the use of small tools, which are tools that have a replacement value of $1,000 or less, shall be considered included in the Overhead and Profit mark-ups established below. 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.

4. Time and Materials Change Orders.

a. General. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by Contractor for labor, materials, and equipment in the proper performance of Additional Work.

Except as otherwise may be agreed to in writing by the Agency, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the following items.

b. Timely and Final Documentation.

i. T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the Agency's Representative for an approval signature each day Additional Work is performed. Failure to get the Agency's Representative's approval signature each Day shall result in a waiver of Contractor's right to claim these costs. The Agency's Representative's signature on time sheets only serves as verification that the Work was performed and is not indicative of Agency's agreement to Contractor's entitlement to the cost.

ii. T&M Daily Summary Sheets. All documentation of incurred costs ("T&M Daily Summary Sheets") shall be submitted by Contractor within three (3) Days of incurring the cost for labor, material, equipment, and special services as Additional Work is performed. Contractor's actual costs shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Each T&M Daily Summary Sheet shall include Contractor's actual costs incurred for the Additional Work performed that day and a cumulative total of Contractor's actual costs incurred for the Additional Work. Contractor's failure to provide a T&M Daily Summary Sheet showing a total cost summary within three (3) Days but within five (5) Days of performance of the Work will result in the Contractor's otherwise allowable overhead and profit being reduced by 50% for that portion of Additional Work which was not documented in a timely manner. Contractor's failure to submit the T&M Daily Summary Sheet within five (5) Days of performance of the Work will result in a total waiver of Contractor's right to claim these costs.

iii. T&M Total Cost Summary Sheet. Contractor shall submit a T&M Total Cost Summary Sheet, which shall include total actual costs, within seven (7) Days following completion of Agency approved Additional Work. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Contractor's failure to submit the T&M Total Cost Summary Sheet within seven (7) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the T&M Summary Sheets or the performance of the Additional Work.

c. Labor. The Contractor will be paid the cost of labor for the workers used in the actual and direct performance of the Work. The cost of labor will be the sum of the actual wages paid (which shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes) substantiated by timesheets and certified payroll for wages prevailing for each craft or type of workers performing the Additional

Work at the time the Additional Work is done, and the labor surcharge set forth in the Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the Work is accomplished and which is a part of the Contract. The labor surcharge shall constitute full compensation for all payments imposed by Federal, State, or local laws and for all other payments made to, or on behalf of, the workers, other than actual wages.

i. Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.

ii. Foreman Exception. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Additional Work shall be paid. Indirect labor costs, including, without limitation, the superintendent, project manager, and other labor identified in the Contract Documents will be considered Overhead.

d. Materials. The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Project site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.

i. Trade discounts available to the purchaser shall be credited to the Agency notwithstanding the fact that such discounts may not have been taken by Contractor.

ii. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the Agency's Representative.

iii. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on Additional Work items or the current wholesale price for such materials delivered to the Project site, whichever price is lower.

iv. If, in the opinion of the Agency's Representative, the cost of materials is excessive, or Contractor does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Project site less trade discounts.

v. The Agency reserves the right to furnish materials for the Additional Work and no Claim shall be allowed by Contractor for costs of such materials or Indirect Costs or profit on Agency furnished materials.

e. Equipment.

i. Rental Time. The rental time to be paid for equipment on the Project site shall be the time the equipment is in productive operation on the

Additional Work being performed and, in addition, shall include the time required to move the equipment to the location of the Additional Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except that moving time will not be paid if the equipment is used on other than the Additional Work, even though located at the site of the Additional Work.

(a) Rental Time Not Allowed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

(b) Computation Method. The following shall be used in computing the rental time of equipment on the Project site.

(c) When hourly rates are paid, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.

(d) When daily rates are paid, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation, and any part of an hour in excess of 4 hours will be considered one day of operation.

ii. Rental Rates. Contractor will be paid for the use of equipment at the lesser of (i) the actual rental rate, or (ii) the rental rate listed for that equipment in the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the Contract was executed. Such rental rates will be used to compute payments for equipment whether the equipment is under Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate (i.e., daily, monthly) resulting in the least total cost to the Agency for the total period of use. If it is deemed necessary by Contractor to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by the Agency's Representative. Contractor may furnish cost data which might assist the Agency's Representative in the establishment of the rental rate.

iii. Contractor-Owned Equipment.

(a) For Contractor-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month.

(b) For Contractor-owned equipment, the rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation, unless, in the instance of standby time, the equipment could be actively used by Contractor on another project, then Agency shall pay for the entirety of the time the

equipment is on Site. It shall be Contractor's burden to demonstrate to the Agency that the equipment could be actively used on another project.

iv. All equipment shall, in the opinion of the Agency's Representative, be in good working condition and suitable for the purpose for which the equipment is to be used.

v. Before construction equipment is used on the Additional Work, Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Agency's Representative, in duplicate, a description of the equipment and its identifying number and the scheduled Additional Work activities planned.

vi. Unless otherwise specified, manufacturer's rating and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

f. Special Services. Special work or services are defined as that Additional Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.

vii. Invoices for Special Services. When the Agency's Representative and Contractor determine that a special service is required which cannot be performed by the forces of Contractor or those of any of its Subcontractors, the special service may be performed by an entity especially skilled in the Additional Work. Invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs, after validation of market values by the Agency's Representative.

viii. Discount and Allowance. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of Overhead and Profit specified herein, a total allowance not to exceed fifteen percent (15%) for Overhead and Profit will be added to invoices for Special Services.

ix. When the Agency determines, in its sole discretion, that competitive bidding is necessary for certain special services, Contractor shall solicit competitive bids for those special services.

g. Excluded Costs. The term Time and Material shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by Contractor's allowance for Overhead and Profit.

i. Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, Engineers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Additional Work;

ii. Office Expenses. Expenses of Contractor's principal and branch offices;

iii. Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;

iv. Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;

v. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents;

vi. Small Tools. Cost of small tools valued at less than $1,000 and that remain the property of Contractor;

vii. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;

viii. Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;

ix. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;

x. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.

h. Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be according to the following:

xi. “Net Cost” is defined as consisting of costs of labor, materials, and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up. Contractor shall provide Agency with documentation of the costs, including, but not limited to, payroll records, invoices, and such other information as Agency may reasonably request.

xii. For Work performed by the Contractor’s forces, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Net Cost of the Work.

xiii. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the subcontractor’s Net Cost of the Work to which the Contractor may add five percent (5%) of the subcontractor’s Net Cost.

xiv. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor’s Net Cost for Work to which the subcontractor and general contractor shall divide (as they may mutually agree) an additional five percent (5%) of the Net Cost of the lower tier subcontractor.

xv. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by Agency exceed twenty percent (20%) of the Net Cost as defined herein, of the party that performs the Work.

5. All of the following costs are included in the markups for overhead and profit described above, and Contractor shall not receive any additional compensation for: Submittals, drawings, field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary On-Site facilities (Offices, Telephones, High Speed Internet Access, Plumbing, Electrical Power, Lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final Cleanup; Other Incidental Work; Related Warranties; insurance and bond premiums.

6. For added or deducted Work by subcontractors, the Contractor shall furnish to the Agency the subcontractor’s signed detailed record of the cost of labor, material and equipment, including the subcontractor markup for overhead and profit. The same requirement shall apply to sub-subcontractors

7. For added or deducted work furnished by a vendor or supplier, the Contractor shall furnish to the Agency a detailed record of the cost to the Contractor, signed by such vendor or supplier.

8. Any change in the Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an increase in the Contract Price; overhead and profit allowances shall not be applied if the net total cost is a deduction to the Contract Price. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.

9. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order for Work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the Agency's change order form in an attempt to reserve additional rights.

10. If the Agency disagrees with the proposal submitted by Contractor, it will notify the Contractor and the Agency will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with the Agency, a Change Order will be issued by the Agency. If no agreement can be reached, the Agency shall have the right to issue a unilateral Change Order setting forth its 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 Agency within fifteen (15) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order, and providing such supporting documentation for its position as the Agency may require.

C. <u>Change of Contract Times.</u>

1. The Contract Times may only be changed by a Change Order.

2. All changes in the Contract Price and/or adjustments to the Contract Times related to each change shall be included in Contractor's COR pursuant to this Article. No cost or time will be allowed for cumulative effects of multiple changes. All Change Orders must state that the Contract Time is not changed or is either increased or decreased by a specific number of days. Failure to include a change to time shall waive any change to the time unless the parties mutually agree in writing to postpone a determination of the change to time resulting from the Change Order.

3. Notice of the amount of the request for adjustment in the Contract Times with supporting data shall be delivered within seven (7) Days after such start of occurrence, unless Agency's Representative allows an additional period of time to ascertain more accurate data in support of the request. No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed.

4. Agency may elect, at Agency's sole discretion, to grant an extension in Contract Times, without Contractor's request, because of delays or other factors.

5. Use of Float and Critical Path.

    a. Float is for the benefit of the Project. Float shall not be considered for the exclusive use or benefit of either the Agency or the Contractor.

    b. Contractor shall not be entitled to compensation, and Agency will not compensate Contractor, for delays which impact early completion. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float.

6. Contractor's entitlement to an extension of the Contract Times is limited to an Agency-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. No time extension shall be allowed unless, and then only to the extent that, the Agency-caused delay extends the critical path beyond the previously approved Contract Time. If approved, the increase in time required to complete the Work shall be added to the Contract Time.

    a. Contractor shall not be entitled to an adjustment in the Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

    b. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions (as determined by the Agency), Act of God, acts or failures to act of utility owners not under the control of Agency, or other causes not the fault of and beyond control of Agency and Contractor, then Contractor shall be entitled to a time extension when the Work stopped is on the critical path. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays. Contractor must submit a timely request in accordance with the requirements of this Article.

    c. <u>Utility-Related Delays.</u>

        i. Contractor shall immediately notify in writing the utility owner and Agency's Representative of its construction schedule and any subsequent changes in the construction schedule which will affect the time available for protection, removal, or relocation of utilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with this Article.

        ii. Contractor shall not be entitled to damages or additional payment for delays attributable to utility relocations or alterations if correctly located, as noted in the Contract Documents or by the Underground Service Alert survey.

7. Content for Requests for Contract Extension. Contractor's justification for entitlement shall be clear and complete citing specific Contract Document references and reasons on which Contractor's entitlement is based. At a minimum, each request for a time extension must include:

a. Each request for an extension of Contract Time must identify the impacting event, in narrative form, providing a description of the delay event and sufficient justification as to why the Contractor is entitled to a time extension. Contractor must demonstrate that the delay arises from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and any Subcontractors or Suppliers, or any other persons or organizations employed by any of them or for whose acts any of them may be liable, and that such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding Contract Times, despite Contractor's reasonable and diligent actions to guard against those effects.

b. Each request for an extension of Contract Time must include a time impact analysis in CPM format, using the Contemporaneous Impacted As-Planned Schedule Analysis to calculate the impact of the delay event.

8. No Damages for Reasonable Delay.

   a. Agency's liability to Contractor for delays for which Agency is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall Agency be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.

   b. Damages caused by unreasonable Agency delay that impact the critical path, including delays caused by items that are the responsibility of the Agency pursuant to Government Code section 4215, shall be compensated at the Daily Rate established in the Special Conditions. No other calculations, proportions or formulas shall be used to calculate any delay damages.

   c. Agency and Agency's Representative, and the officers, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

9. Contractor's failure, neglect, or refusal to comply with the requirements of the Contract Documents, or any portion thereof, shall bar Contractor's request for extensions of the Contract Times. Such failure, neglect, or refusal prejudices Agency's and Agency's Representative's ability to recognize and mitigate delay, and such failure, neglect, or refusal prevent the timely analysis of requests for extensions of Contract Times, and whether such extensions may be warranted. Contractor hereby waives all rights to extensions of Contract Times due to delays or accelerations that result from or occur during periods of time for which Contractor fails, neglects, or refuses to fully comply with the requirements of this Article.

ARTICLE 45. FINAL ACCEPTANCE AND PAYMENT

A. **The acceptance of the Work on behalf of the Agency will be made by the Engineer.** Such acceptance by the Agency shall not constitute a waiver of defects. When the Work has been accepted there shall be paid to Contractor a sum equal to the contract price less any amounts previously paid Contractor and less any amounts withheld by the Agency from Contractor under the terms of the contract. The final five percent (5%), or the percentage specified in the notice inviting bids shall not become due and payable until five (5) calendar days shall have elapsed after the expiration of the period within which all claims may be filed under the provisions of Civil Code section 9356. If the Contractor has placed securities with the Agency as described herein, the Contractor shall be paid a sum equal to one hundred percent (100%) of the contract price less any amounts due the Agency under the terms of the Contract.

B. Unless Contractor advises the Agency in writing prior to acceptance of the final five percent (5%) or the percentage specified in the notice inviting bids or the return of securities held as described herein, said acceptance shall operate as a release to the Agency of all claims and all liability to Contractor for all things done or furnished in connection with this work and for every act of negligence of the Agency and for all other claims relating to or arising out of this work. If Contractor advises the Agency in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due the Contractor, the Agency may pay the undisputed amount contingent upon the Contractor furnishing a release of all undisputed claims against the Agency with the disputed claims in stated amounts being specifically excluded by Contractor from the operation of the release. No payments, however, final or otherwise, shall operate to release Contractor or its sureties from the Faithful Performance Bond, Labor and Material Payment Bond, or from any other obligation under this contract.

C. In case of suspension of the contract any unpaid balance shall be and become the sole and absolute property of the Agency to the extent necessary to repay the Agency any excess in the cost of the Work above the contract price.

D. Final payment shall be made no later than 60 days after the date of acceptance of the Work by the Agency or the date of occupation, beneficial use and enjoyment of the Work by the Agency including any operation only for testing, start-up or commissioning accompanied by cessation of labor on the Work, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8136. In the event of a dispute between the Agency and the Contractor, the Agency may withhold from the final payment an amount not to exceed 150% of the disputed amount.

E. Within ten (10) calendar days from the time that all or any portion of the retention proceeds are received by Contractor, Contractor shall pay each of its subcontractors from whom retention has been withheld each subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor if the payment is consistent with the terms of the subcontract.

ARTICLE 46. OCCUPANCY

The Agency reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

ARTICLE 47. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the Agency's choosing), indemnify and hold harmless the Agency, Owner, and the United States of America and each of their officials, officers, agents, employees, and representatives, and each of them from and against:

A. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the Agency or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the Agency or its officials, officers, employees, or authorized volunteers.

B. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.

C. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;

D. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under the agreement. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

Contractor shall immediately defend, at Contractor's own cost, expense and risk, with counsel of Agency's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Agency, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Agency, its officials, officers, employees, agents, employees and

representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the Agency, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

ARTICLE 48. PROCEDURE FOR RESOLVING DISPUTES

Contractor shall timely comply with all notices and requests for changes to the Contract Time or Contract Price, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the Contract Price or Contract Time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

A. **Intent.** Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with said statutes.

B. **Claims.** For purposes of this Article, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with Article 44 "Changes and Extra Work" has been denied by the Agency, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the Agency. Claims governed by this Article may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the procedures contained in Article 44, Changes and Extra Work, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than the date of final payment. The claim shall be submitted in writing to the Agency and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

C. **Supporting Documentation.** The Contractor shall submit all claims in the following format:

    1. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

    2. List of documents relating to claim:

a. Specifications

b. Drawings

c. Clarifications (Requests for Information)

d. Schedules

e. Other

3. Chronology of events and correspondence

4. Analysis of claim merit

5. Analysis of claim cost

6. Time impact analysis in CPM format

7. If Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

D. **Agency's Response.** Upon receipt of a claim pursuant to this Article, Agency shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the Agency issues its written statement.

1. If the Agency needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Agency's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Agency shall have up to three Days following the next duly publicly noticed meeting of the Agency's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

2. Within 30 Days of receipt of a claim, the Agency may request in writing additional documentation supporting the claim or relating to defenses or claims the Agency may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of Agency and the Contractor. The Agency's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than $15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

E. **Meet and Confer.** If the Contractor disputes the Agency's written response, or the Agency fails to respond within the time prescribed, the Contractor may so notify the Agency, in writing, either within 15 Days of receipt of the Agency's response or within 15 Days of the Agency's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the Agency shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

F. **Mediation.** Within 10 working Days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Agency shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the Agency issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Agency and the Contractor sharing the associated costs equally. The Agency and Contractor shall mutually agree to a mediator within 10 working Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

2. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3. Unless otherwise agreed to by the Agency and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

G. **Procedures After Mediation.** If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

H. **Civil Actions.** The following procedures are established for all civil actions filed to resolve claims of $375,000 or less:

1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

I. **Government Code Claims.** In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the Agency. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the Agency may be filed. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.**

J. **Non-Waiver**. The Agency's failure to respond to a claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety.

ARTICLE 49. AGENCY'S RIGHT TO TERMINATE CONTRACT

A. **Termination for Cause by the Agency:**

1. In the sole estimation of the Agency, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the Agency may serve written notice upon the Contractor and its Surety of the Agency's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) calendar days unless such violations have ceased and arrangements satisfactory to the Agency have been made for correction of said violations.

2. In the event that the Agency serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform the Contract. If the Surety does not: (1) give the Agency written notice of Surety's intention to take over and commence performance of the Contract within 15 calendar days of the Agency's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of the Contract within 30 calendar days of the Agency's service of said notice upon Surety; then the Agency may take over the Work and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.

3. In the event that the Agency elects to obtain an alternative performance of the Contract as specified above: (1) the Agency may, without liability for so doing, take possession of and utilize in completion of the Work such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion (A special lien to secure the claims of the Agency in the event of such suspension is hereby created against any property of Contractor taken into the possession of the Agency under the terms hereof and such lien may be enforced by sale of such property without notice to Contractor. The proceeds of the sale after deducting all expenses thereof and connected therewith shall be credited to Contractor. If the net credits shall be in excess of the claims of the Agency against Contractor, the balance will be paid to Contractor or Contractor’s legal representatives.); and (2) Surety shall be liable to the Agency for any cost or other damage to the Agency necessitated by the Agency securing an alternate performance pursuant to this Article.

4. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accord with the provisions herein. No other loss, cost, damage, expense, or liability may be claimed, requested or recovered by Contractor.

B. **Termination for Convenience by the Agency:**

1. The Agency may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, if the Agency determines that a termination is in the Agency's interest.

2. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the Agency, the extent of termination, and the Effective Date of such termination.

3. After receipt of Notice of Termination, and except as directed by the Agency's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

    a. Stop Work as specified in the Notice.

    b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

    c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

    d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.

    e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.

    f. Submit to the Agency's Representative, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the Agency's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than 30 calendar days after the Effective Date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as “Termination Costs occasioned by the Agency's Termination for Convenience.”

4. Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed.

5. In the event that the Agency exercises its right to terminate this Contract pursuant to this clause, the Agency shall pay the Contractor, upon the Contractor's

submission of the documentation required by this clause and other applicable provisions of the Contract Documents, the following amounts:

a. All actual reimbursable costs incurred according to the provisions of this Contract.

b. A reasonable allowance for profit on the cost of the Work performed, provided Contractor establishes to the satisfaction of the Agency's Representative that it is reasonably probable that Contractor would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed fifteen (15%) percent of the costs.

c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Contract under this Article.

C. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the Agency may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the Agency or the Contract is terminated.

ARTICLE 50. WARRANTY AND GUARANTEE OF WORK

A. Contractor hereby warrants that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this Warranty. Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every phase of the Work and completing Work in accordance with the terms of Contract Documents. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of Contract Documents. Contractor warrants that Work, including but not limited to each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, architecture and/or engineering, materials, construction and workmanship. Contractor warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses and permits, Drawings and Specifications and all descriptions set forth therein, and all other requirements of Contract Documents. Contractor shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.

B. **Contractor’s Variation from Contract Document Requirements**. If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor’s expense.

C. Contractor hereby agrees to repair or replace, at the discretion of the Agency, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) **within a period of one (1) year** from the date of the Notice of Completion of the Project without any expense whatever to the Agency, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.

D. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as Agency may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) calendar days after being notified in writing of required repairs, to the reasonable satisfaction of the Agency, the Agency shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the Agency for any expenses incurred hereunder immediately upon demand.

E. In addition to the warranty set forth in this Article, Contractor shall obtain for Agency all warranties that would be given in normal commercial practice and assign to Agency any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the Agency with all warranty and guarantee documents prior to final Acceptance of the Project by the Agency as required.

F. When specifically indicated in the Contract Documents or when directed by the Engineer, the Agency may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the Agency for installation by the Contractor to be voided or reduced, Contractor shall indemnify Agency from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the Agency for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.

G. The Contractor shall remedy at its expense any damage to Agency-owned or controlled real or personal property.

H. The Agency 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 commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect, or damage; the

Agency shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.

I. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the Agency may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.

J. **Acceptance of Defective Work.**

1. If, instead of requiring correction or removal and replacement of Defective Work, the Agency prefers to accept it, Agency may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Agency's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.

2. If any acceptance of defective work occurs prior to release of the Project Retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Agency shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by Agency.

3. If the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to Agency.

4. If the acceptance of Defective Work occurs after release of the Project Retention, an appropriate amount will be paid by Contractor to Agency.

K. **Agency May Correct Defective Work.**

1. If Contractor fails within a reasonable time after written notice from Agency's Representative to correct Defective Work, or to remove and replace rejected Work as required by Agency, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Agency may, after seven (7) Days' written notice to Contractor, correct, or remedy any such deficiency.

2. In connection with such corrective or remedial action, Agency may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Agency has paid Contractor but which are stored elsewhere. Contractor shall allow Agency and Agency's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable Agency to exercise the rights and remedies to correct the Defective Work.

3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Agency correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work; and Agency shall be entitled to an appropriate decrease in the Contract Price.

4. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Defective Work.

5. If the Change Order is executed after all payments under the Contract have been paid by Agency and the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to Agency.

6. If the Change Order is executed after release of the Project Retention, an appropriate amount will be paid by Contractor to Agency.

7. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to Agency correcting Defective work.

L. Nothing in the Warranty or in the Contract Documents shall be construed to limit the rights and remedies available to Agency at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

ARTICLE 51. DOCUMENT RETENTION & EXAMINATION

A. In accordance with Government Code section 8546.7, records of both the Agency and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

B. Contractor shall make available to the Agency any of the Contractor's other documents related to the Project immediately upon request of the Agency.

C. In addition to the State Auditor rights above, the Agency 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 Agency, for a period of four (4) years after final payment.

ARTICLE 52. NOT USED

ARTICLE 53. NOTICE AND SERVICE THEREOF

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Bid Forms. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing

for service of notice. Notice to Agency shall be addressed to the Agency as designated in the Notice Inviting Bids unless Agency designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) calendar days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

ARTICLE 54. NOTICE OF THIRD PARTY CLAIMS

Pursuant to Public Contract Code section 9201, the Agency shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The Agency is entitled to recover reasonable costs incurred in providing such notification.

ARTICLE 55. STATE LICENSE BOARD NOTICE

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

ARTICLE 56. INTEGRATION

A. **Oral Modifications Ineffective.** No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.

B. **Contract Documents Represent Entire Contract.** The Contract Documents represent the entire agreement of the Agency and Contractor.

ARTICLE 57. ASSIGNMENT OF CONTRACT

Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this Contract without the prior written consent of the Agency. Any assignment or change of Contractor's legal name without the written consent of the Agency shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

ARTICLE 58. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the Agency in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect Agency's rights under the Contract, including but not limited to the bonds.

ARTICLE 59. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Public Contract Code section 7103.5, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the Agency all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC, 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 the purchase of goods, services, or materials pursuant to this contract or any subcontract. This assignment shall be made and become effective at the time the Agency tenders final payment to the Contractor, without further acknowledgment by the parties.

ARTICLE 60. PROHIBITED INTERESTS

No Agency official or representative who is authorized in such capacity and on behalf of the Agency to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

ARTICLE 61. CONTROLLING LAW

Notwithstanding any subcontract or other contract with any subcontractor, supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

ARTICLE 62. JURISDICTION; VENUE

Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of Sonoma County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

ARTICLE 63. LAWS AND REGULATIONS

A. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, it shall bear all costs arising therefrom.

B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (“ADA”) (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA regulations.

ARTICLE 64. PATENTS

Contractor shall hold and save the Agency, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this contract.

ARTICLE 65. OWNERSHIP OF CONTRACT DOCUMENTS

All Contract Documents furnished by the Agency are Agency property. They are not to be used by Contractor or any subcontractor on other work nor shall Contractor claim any right to such documents. With exception of one complete set of Contract Documents, all documents shall be returned to the Agency on request at completion of the Work.

ARTICLE 66. NOTICE OF TAXABLE POSSESSORY INTEREST

In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

ARTICLE 67. SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

00 73 13 – SPECIAL CONDITIONS

1.1 Engineer of Record.

A. For purposes of this Project, the Engineer of Record shall be: [None]

1.2 Location of the Project.

A. The Project is located on the Federated Indians of Graton Rancheria reservation at its farmhouse located at 4528 Langner Ave, Rohnert Park, CA 94928.The battery energy storage system will be wall-mounted on the north side of the farmhouse building.

While accessing the Project area, Contractor shall not unreasonably disturb operations or the facilities, equipment, appurtenances, or furnishings at the site or permit any person under Contactor's control to commit such acts.

1.3 Project Specifications

A. Battery Energy Storage System with controller and automatic transfer switch

1. Wall-mounted

2. 90kWh total system battery capacity

a. Six (6) – FranklinWH aPower1 15Kwh, or equivalent per performance below
(i) 90% round trip efficiency
(ii) LFP chemistry
(iii) 8kW continuous Max Real Power (Charge)
(iv) 10kW continuous Max Real Power (Discharge)
(v) 10kA Maximum Short-Circuit Current Rating
(vi) 5kVA Max Apparent Power
(vii) 21A Max Continuous Output Current
(viii) AC-Coupled
(ix) 2 W+N+PE
(x) Warranty: 15 years or 60MWh aggregated throughput
(xi) Off-Grid Specs
- <1% THDU
- +/- 1% Voltage Regulation Accuracy
- +/- .1 Hz frequency Accuracy
- 5 kW Max Half-Wave Load Capability
- 185 A LRA Max Load Start Capability
- 15kW @10s Max Peak Output Power
- 25kW @ 1s Max Transient load capacity
- 100% Load Imbalance Ratio

(xii) Compliance Information
- UL 9540, UL 9540A, UL 1973, UL 1741, UL1741 SB, UL 1741 PCS, UL 1741 CRD, UL 1741 Multimode, UL 60730-1, UL 3141, IEEE 1547, IEEE 1547.1, UN 38.3, CSA C22.2 No. 107.1:16 Certifications

- AC 156, OSHPD, IEEE 693-2005 (high) Seismic Certification

(xiii) Mechanical and Environmental

- NEMA Type 3R Enclosure
- IP56 and IP67 Ingress Protection
- -4 °F to 122 °F and operates up to 131 °F at 5kW derated output
- Up to 100% RH Operating Humidity

3. Automatic transfer switch

4. Intelligent Controller

   a. FranklinWH aPower 2 with agate controller, or equivalent per performance below
      (i) 200A Grid Input over Current Protection Device
      (ii) 125A aPower Over Current Protection Device
      (iii) 80A Solar Input over Current Protection Device
      (iv) 200A Backup Load Port Over Current Protection Device
      (v) 200A Non-backup Load Port Over Current Protection Device
      (vi) 200A Generator Over Current Protection Device (generator module is optional)
      (vii) 200A Smart Circuits over Current Protection Device (smart circuit is optional)
      (viii) 22kA Maximum Supply Fault Current
      (ix) 280A Busbar Rating
      (x) Ethernet/4G/Wifi/Bluetooth Communications
      (xi) Category 2 Over Voltage Category
      (xii) AC-Coupled
      (xiii) 2 W+N+PE
      (xiv) 12 years of manufacturer warranty on components
      (xv) Compliance Information
         - UL 1741, UL 1741 PCS, UL 67, UL 869A, UL 916, CAN / CSA C22.2 No. 107.1-16, CSA C22.2 No. 29, CSA C22.2 No. 0.19 Certifications
         - AC 156, OSHPD, IEEE 693-2005 (high) Seismic Certification
      (xvi) Mechanical and Environmental Specs
         - NEMA Type 3R Enclosure
         - -4 °F to 122 °F Operating Temperature
         - Up 100% RH Operating Humidity

5. Integrated with existing solar array

   a. 16.20 DC kW (12.56 AC kW) Total Solar PV Capacity
   b. (36) CTTC450HC12-08 Modules
   c. (36) Enphase IQ8AC-72-M-US Microinverters

All installation of manufactured equipment, fixtures, and instruments to be pursuant to and in strict compliance with all manufacturer specifications and warranty conditions.

1.4 Reverse Liquidated Damages Due to Unreasonable Agency Delay.

A. In compliance with the provisions of California Public Contract Code § 7102, the Contractor will be compensated for damages incurred due to delays in completing the Work due solely to the fault of the Agency, where such delay is unreasonable under the circumstances and not contemplated by the parties and such delay is not the result of Additional Work. The Contractor and Agency agree that determining actual damages is impracticable and extremely difficult. As such, the Contractor shall be entitled to the appropriate time extension and to payment of liquidated damages in the sum of $250 per Day of delay in excess of the time specified for the Completion of the Work. Such amount shall constitute the only payment allowed and shall necessarily include all overhead (direct or indirect), all profit, all administrative costs, all bond costs, all labor, materials, equipment and rental costs, and any other costs, expenses and fees incurred or sustained as a result of such delay. The Contractor expressly agrees to be limited solely to the liquidated damages for all such delays as defined in this subsection.

1.5 Coordination with Other Contractors.

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1.6 Tariff Risk allocation

Contractor shall include all tariffs, duties, and import-related charges in the Total Bid Price, based on rates in effect as of the date of Bid submission.

1.7 Code Compliance Assessment

Contractor shall obtain review and approval from Owner's code compliance consultant "Apex Compliance" for the Project. Consultant costs related to that review and approval shall be borne by Owner. Owner to provide contact information for Apex Compliance upon request from Contractor.

END OF SECTION

00 73 31- SPECIAL CONDITIONS - FUNDING CONTRACT REQUIREMENTS

PART 1 GENERAL

1.1 SUMMARY

A. This Section 00 73 31 includes Contract requirements applicable to Contract Documents related to funding sources.

B. This Section 00 73 31 contains Contract requirements in addition to all generally applicable and Work-specific regulatory requirements set forth elsewhere in the Specifications.

1.2 FUNDING SOURCE

A. The Project is funded in whole or part under the U.S. Department of Energy Grid Deployment Office. All requirements under said funding are incorporated herein as part of the Contract. With regard to all work under this Contract, Contractor shall comply and acknowledges compliance with all applicable funding program requirements and the terms and conditions set forth in Attachment 1, incorporated herein by reference.

B. Indian Preference. To the extent permitted by law, Bidders shall provide preference in the award of contracts and subcontracts for the Project to Indian organizations or Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452), in accordance with Section 7(b) of the Indian Self-Determination Act (25 U.S.C. 5307(b) and shall in all solicitations in furtherance of the Project include necessary wording describing contract requirements and qualifications as appropriate including the basis and award criteria for providing Indian preference.

C. As set forth in Attachment 1, if awarded, then Contractor must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. Contractor will be notified of any DOE-sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events.

END OF SECTION

Attachment 1
FEDERAL REQUIREMENTS – DEPARTMENT OF ENERGY
Grid Resilience Utility and Industry Grant
Procurement Contracts (non-subawards)
Construction and Services (non R&D) Agreements
[Revise date 9-18-26]

1. DEFINITIONS

1.1 Government means the United States of America and any executive department or agency thereof.

1.2 DOE means the federal Department of Energy.

1.3 Third Party Subcontract means a subcontract at any tier entered into by Contractor or any subcontractor or subcontractor, financed in whole or in part with federal assistance derived from the DOE.

1.4 For purposes of this Exhibit, **Consultant** may be referred to as "Contractor" or "contractor."

1.5 Agreement or **"Contract"** means that certain Agreement between the Sonoma Clean Power Authority ("SCP") and Contractor, and to which this Exhibit is made a part.

2. GENERAL REQUIREMENTS

2.1 This is an acknowledgement that DOE financial assistance will be used to fund all or a portion of this Agreement.

2.2 In performance of and for all work and activities under this Agreement, Contractor shall at all times comply with all applicable federal laws, regulations, executive orders, Office of Budget and Management circulars, DOE policies, procedures, directives, and program or grant conditions, as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of the *Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* as found in 2 C.F.R.[2] Part 200, as adopted and supplemented by 2 CFR Part 910 (subject to any deviations issued pursuant to 2 CFR 910.133 — Deviation authority), and Public law 117-58, also known as the Bipartisan Infrastructure Law (BIL); and including the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990, the Civil Rights Act of 1964 (Title VI); the Civil Rights Act of 1968 (Title VIII); the Drug-Free Workplace Act of 1988; the Drug Abuse Office and Treatment Act of 1972; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; the Public Health Service Act of 1912; the Education Amendments of 1972 (Title IX); the Equal Opportunity in Education Act; the Energy Policy and Conservation Act; the False Claims Act; the Hotel and Motel Fire Safety Act of 1990; the National Environmental Policy Act; the Rehabilitation Act of 1973; the Whistleblower Protection Act (including 41 USC 4712); the Hatch Act (5 U.S.C.[3] 1501 et seq.); and all related and DOE-mandated federal regulations, including under Tittle 10, CFR. Strict compliance is required.

2.3 Whether or not expressly set forth herein, all contractual provisions required by DOE (including as may be amended or modified from time to time) are hereby incorporated by reference, including all provisions and requirements under 2 CFR Part 200 Appendix II "Contract Provisions for Non–Federal Entity Contracts Under Federal Awards," which is hereby incorporated herein by reference as if fully set forth herein. This agreement may be amended to further incorporate and expressly state new, revised, and or subsequent contractual provisions required by DOE. In the event of any conflict between any provision of this Agreement, this Exhibit, or any DOE term, condition, or requirement, the stricter standard shall apply.

[2] Code of Federal Regulations ("CFR").
[3] United States Code ("USC").

Contractor shall refer any inconsistency or perceived inconsistency between this Agreement and any federal requirement to SCP for guidance. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause SCP to be in violation of any DOE term, condition, or requirement.

2.4 Contractor shall ensure it has the necessary processes and systems in place to comply with applicable federal reporting requirements, including those contained in 2 CFR Part 170 as applicable.

2.5 Contractor agrees to include the herein-stated clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

3. ADDITIONAL DOE TERMS AND CONDITIONS

3.1 NATIONAL POLICY ASSURANCES

All National Policy Assurances are hereby incorporated by reference and are accepted as terms and conditions applicable to all performance of and work and activities under this Agreement. The National Policy Assurances are available at https://nsf-gov-resources.nsf.gov/files/appendix-c-r.pdf. Contractor shall comply with all applicable Assurances and associated requirements.

3.2 NONDISCRIMINATION CLAUSE

Contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, denial of family care leave, or based on any other prohibited basis. Contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Without limiting the foregoing, Contractor shall comply with applicable provisions of the following federal policies and laws prohibiting discrimination:

3.2.1 On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 USC 2000d, et seq.), as implemented by 10 CFR Part 1040;

3.2.2 On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR Part 60;

3.2.3 On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.)., as implemented by 10 CFR Part 1040;

3.2.4 On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90, per 10 CFR Part 1040;

3.2.5 On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR Part 41 and 10 CFR Part 1040; the Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.); and the Americans with Disabilities Act (42 USC 12101 et. Seq);

3.2.6 On the basis of religion, in Executive Order 13798 and the Attorney General's Memorandum of October 6, 2017, as implemented at 2 CFR 200.300.

3.3 ENCOURAGING SEAT BELT USE AND REDUCED TEXT MESSAGING WHILE DRIVING

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to, and to encourage its subcontractors to, adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles. Pursuant to Executive Oder 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce, and encourage its employees and subcontractors to adopt and enforce, policies that ban text messaging while driving.

3.4 FOREIGN NATIONAL PARTICIPATION – APPROVAL REQUIRED

If SCP (including any of its contractors) anticipates involving foreign nationals in the performance of this award, SCP must provide DOE with specific information about each foreign national to ensure compliance with the requirements for foreign national participation and access approvals. The volume and type of information required may depend on various factors associated with the award. Accordingly, if Contractor anticipates involving any foreign national in the performance of this Agreement, Contractor must inform SCP prior to engaging the foreign national and shall provide the required information to enable SCP to provide DOE with specific information about each foreign national to ensure compliance with the requirements for foreign national participation and access approvals.

Approval for foreign nationals in Principal Investigator/Co-Principal Investigator roles, from countries of risk (i.e., China, Iran, North Korea, and Russia), and from countries identified on the U.S. Department of State's list of State Sponsors of Terrorism (https://www.state.gov/state-sponsors-of-terrorism/) must be obtained from DOE before they can participate in the performance of any work under this Agreement.

A "foreign national" is defined as any person who is not a United States citizen by birth or naturalization. DOE may elect to deny a foreign national's participation in the award. Likewise, DOE may elect to deny a foreign national's access to a DOE sites, information, technologies, equipment, programs, or personnel.

3.5 FEDERAL STEWARDSHIP AND SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Contractor shall provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

3.6 FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

Contractor shall ensure that any required permits are obtained and shall comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this Agreement.

3.7 INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP

3.7.1 Contractor shall immediately notify SCP and the DOE of the occurrence of any of the following events:

(i) Contractor's, or that of any parent or controlling entity of Contractor, filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act;

(ii) Contractor's consent to the institution of an involuntary case under the Bankruptcy Act against Contractor or any parent or controlling entity of Contractor;
(iii) the filing of any similar proceeding for or against Contractor, or any parent or controlling entity of Contractor, or any consent to, the dissolution, winding-up or readjustment of Contractor's debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over Contractor, under any other applicable state or federal law; or
(iv) Contractor's insolvency due to inability to pay debts generally as they become due.

3.7.2 Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced above; (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project under this Agreement.

3.7.3 Upon the occurrence of any of the four events described above, DOE reserves the right to conduct a review of the award to determine compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the DOE review determines that there are significant deficiencies or concerns with performance under the award, DOE reserves the right to impose additional requirements, as needed, including (i) change to payment method; or (ii) institute payment controls.

3.7.4 Failure to comply with this term may be considered a material noncompliance of the federal financial assistance award by the Government.

3.8 PERFORMANCE OF WORK IN UNITED STATES

All work performed under this Agreement must be performed in the United States and at least **100%** of the direct labor cost for the project (including subrecipient labor) shall be incurred in the United States, absent a written waiver approved by DOE and prior approval.

3.9 INDEMNITY

Contractor shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

3.10 LOBBYING RESTRICTIONS

By accepting payment under this Agreement, Contractor agrees that none of the funds paid under this Agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

3.11 NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES

In accordance with Section 747 of Division E of the Consolidated and Further Continuing Appropriations Act of 2015 (Pub. L. No. 113-235), by entering into this Agreement, Contractor attests that it does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste,

fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information. Contractor further attests that it does not and will not use any federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains provisions as permitted by applicable federal law, regulation, or Executive Order.

3.12 EXPORT CONTROL RESPONSIBILITIES

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as "Export Controls."

Contractor shall comply with all applicable U.S. Export Controls laws and regulations in the performance of this Agreement and in the distribution and use of resulting work. Contractor will be responsible for obtaining the appropriate licenses or other approvals, for the shipment or transfer of export-controlled items, including technology, unless an exemption or exception applies. Contractor will also be responsible for obtaining the appropriate licenses or other approvals before authorizing access to any export-controlled items, including technology, by a foreign person or entity in the performance of this award. Under no circumstances will foreign entities (organizations, companies, or persons) receive access to export-controlled items, including technology, unless authorized pursuant to law or regulation. Contractor must immediately report to SCP, to allow SCP to report to DOE, any Export Controls violations related to activity or obligations under this Agreement, the project funded under this award, and provide the corrective action(s) to prevent future violations.

3.13 PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES- SECTION 889 COMPLIANCE

3.13.1 In accordance with Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216, Contractor is prohibited from using or expending any project funds (federal or non-federal) to:

(a) Procure or obtain;
(b) Extend or renew a contract to procure or obtain;
(c) Enter, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system;
(d) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
(e) Provide, as part of its performance of this Agreement or any subcontract or other related contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

3.13.2 "Covered telecommunications" equipment and/or services is that:

1. Produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
3. Telecommunications or video surveillance services provided by such entities or using such equipment;
4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
5. Any systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

3.13.3 Reporting requirement

(1) In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during Agreement performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, then Contractor shall report the information below to SCP.
(2) The required report shall contain the following:
(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
(ii) Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

3.13.4 Subcontracts. Contractor shall insert the substance of this Article, including this paragraph, in all subcontracts and other contractual instruments.

3.14 PROHIBITION RELATED TO FOREIGN GOVERNMENT-SPONSORED TALENT RECRUITMENT PROGRAMS AND MALIGN PROGRAMS

3.14.1 Prohibition

Persons participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk or a Malign Foreign Talent Recruitment Program are prohibited from participating in the project or from receipt of any funds under this Agreement. Contractor must exercise ongoing due diligence to reasonably ensure that no individuals participating on the DOE-funded project are participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk or a Malign Foreign Talent Recruitment Program. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy. Further, Contractor must notify DOE within five (5) business days upon learning that an owner of the Contractor or any subcontractor or individual on the project team is or is believed to be participating in a

Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk or a Malign Foreign Talent Recruitment Program. DOE may modify and add Agreement requirements related to this prohibition to the extent required by law.

Contractor, as a covered individual, shall ensure that, should circumstances change which impact the responses previously provided on either the CPS Common Form or the Biosketch (if applicable), the individual must submit an updated CPS Common Form and/or updated Biosketch. Updated CPS Common Form(s) and updated Biosketch(es) must be submitted no later than within thirty (30) calendar days after the end of the quarterly reporting period in which the change occurred.

3.14.2 Definitions

Foreign Government-Sponsored Talent Recruitment Program. An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

Malign Foreign Talent Recruitment Program. A program, position, or activity that includes compensation in the form of cash, in-kind compensation, other types of remuneration or consideration directly provided by a foreign government instrumentality or entity, or their agent, in exchange for engaging in or facilitating the unauthorized transfer of intellectual property, data, or nonpublic data or any violation of the terms and conditions of federal funding, or any program sponsored by a foreign county of concern or any entity in a foreign county of concern, an academic institution on the list developed under section 1286(c)(8) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 4001 note; Public Law 115-232), or a foreign talent recruitment program on the list developed under section 1286(c)(9) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 4001 note; Public Law 115-232).

Foreign Country of Risk. DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

"**Foreign country of concern**" means the People's Republic of China, the Democratic People's Republic of Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined to be a country of concern by the Secretary of State per sec. 10638(2) of P.L. 117-167, and including countries of risk designated by the Department of Energy.

3.15 TRANSPARENCY OF FOREIGN CONNECTIONS

Contractor must notify SCP within fifteen (15) business days of learning of the following circumstances in relation to Contractor or any subcontractor:

1. The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of Contractor or any subcontractors that increases foreign ownership related to a country of risk;
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk;
6. Any current or pending foreign business entity, offshore entity, or entity outside the United States related to Contractor or any subcontractor.
7. Any principal investigator, project manager, or other covered individual, or business owner, officer that is party to a Malign Foreign Talent Recruitment Program.
8. Any current or pending change in ownership structure that increases foreign ownership related to a foreign country of concern;
9. Any new or pending parent company, joint venture, or subsidiary, of Contractor that is based in or receives funding from any foreign country of concern;
10. Any new or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an entity based in, or funded by, any foreign country of concern;
11. Any new or pending venture capital or institutional investment by an entity that has a general partner or other individual holding a leadership role who has a foreign affiliation with any foreign country of concern;
12. Any new or pending technology licensing or intellectual property sales or transfers to a foreign country of concern where the underlying technology is in the same technology area (e.g., biotechnology, energy generation and storage, advanced computing) as the project;
13. Any new or pending foreign business entity, offshore entity, or entity outside the United States that is based in, or funded by, any foreign country of concern;
14. Any changes to Contractor's (or any subcontractor's) board of directors, including additions to the number of directors, identity of new directors, or changes to any board observers;
15. Any new or pending indebtedness, liabilities, or obligations to an entity based in, or funded by, any foreign country of concern;
16. Any of the following changes to the equipment proposed for use on the project: i. Federal Acquisition Security Council (FASC)-prohibited unmanned aircraft systems or the operation thereof. ii. Coded equipment where the source code is written in a foreign country of concern. iii. Equipment from a foreign country of concern that will be connected to the internet or other remote communication system. iv. Any entity from a foreign country of concern that will have physical or remote access to any part of the equipment used on the project after delivery; or
17. If the project is supporting the deployment of battery energy storage systems (BESS), any changes to BESS vendors, integrators, suppliers, and/or manufacturers.

3.16 FOREIGN CONNECTION AND DUE DILIGENCE REVIEWS AND MONITORING

All DOE-supported projects and contractors are subject to ongoing due diligence reviews and monitoring, including to identify potential research, technology and economic security (RTES) risks from undue foreign influence; ensure transparency in foreign connections and collaborations; assess compliance with the RTES requirements set forth in the award; and, if applicable, compliance with risk mitigation measures. As part of the due diligence reviews and monitoring, DOE may require additional disclosures and information to inform the reviews. Contractor shall comply with all due diligence review requests. All project participants are subject to due diligence reviews.

3.17 AFFIRMATIVE ACTION AND PAY TRANSPARENCY REQUIREMENTS
(Construction contracts exceeding $10,000 annually)

Contractor is subject to the requirements of Executive Order 11246:

(1) Contractor is prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.

(2) Contractor is required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subcontractors.

(3) Contractor is prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take. See OFCCP's Technical Assistance Guide at: https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fe cb6c710ec.

Additionally, for construction projects valued at $35 million or more and lasting more than one year, Recipients, subrecipients, contractors, or subcontractors may be selected by OFCCP to participate in the Mega Construction Project Program. DOE, under relevant legal authorities including Sections 205 and 303(a) of Executive Order 11246, will require participation as a condition of the award. This program offers extensive compliance assistance with EO 11246. For more information regarding this program, see https://www.dol.gov/agencies/ofccp/construction/mega-program.

3.18 BUY CLEAN

DOE encourages the use of environmentally friendly construction practices in the performance of this Agreement. In particular, DOE encourages that the performance of this Agreement include considering the use of low-carbon materials which have substantially lower levels of embodied greenhouse-gas emissions

associated with all relevant stages of production, use, and disposal, as compared to estimated industry averages of similar materials or products as demonstrated by their environmental product declaration.

3.19 CORPORATE FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES

Contractor attests that it has not been convicted of a felony criminal violation under federal law in the 24 months preceding the date of Agreement execution and further attests that its corporation does not have any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

3.20 PROHIBITION ON THE USE OF FUNDS FOR ACTIVITIES RELATED TO FEDERAL ACQUISITION SECURITY COUNCIL (FASC)-PROHIBITED UNMANNED AIRCRAFT SYSTEMS

No funds under this Agreement may be used by Contractor: (i) To procure a FASC-prohibited unmanned aircraft system; or (ii) In connection with the operation of a FASC-prohibited unmanned aircraft system.

The terms "FASC-prohibited unmanned aircraft system" and "unmanned aircraft system" have the definitions provided in 48 CFR 40.201, or successor regulation.

3.21 COMPUTER NETWORK RESTRICTIONS

Contractor shall not expend any Federal funds to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

3.22NATIONAL ENVIRONMENTAL PROTECTION ACT

Contractor acknowledges that this Agreement and the work thereunder is subject to compliance with the National Environmental Policy Act (NEPA)(42 U.S.C. 4321, et seq.).
Contractor must immediately notify SCP of any adverse environmental event that significantly impacts social, cultural, economic, and natural resources (i.e., any significant environmental permit violation, incident which causes a significant process or hazard control system failure, environmental contamination or the need for environmental cleanup) immediately upon occurrence.

3.23 USE OF UNITED STATES-FLAG VESSELS. Contractor agrees:

(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to both the DOE (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Agreement.

3.24 DOMESTIC ENTITY REQUIREMENT

Contractor must be and continue to be a domestic entity qualified to conduct business in the United States and receive federal funding.

3.25 FOREIGN TRAVEL RESTRICTIONS

No foreign or international travel may be paid for with funds under this Agreement, unless approved in advance in writing by SCP. If approved, such travel will be subject to certain conditions and restrictions.

3.26.FOREIGN COLLABORATION CONSIDERATIONS

Contractor shall provide SCP, who will notify DOE, with advanced written notification of any existing or potential collaboration with foreign entities, organizations, or governments in connection with work or activity under this Agreement. Further guidance from DOE must be awaited prior to contacting the proposed foreign entity, organization or government regarding any existing or potential collaboration or negotiating the terms of any potential agreement.

3.27.ENTITY OF CONCERN PROHIBITION

No Entity of Concern as defined in Section 10114 of Public Law 117-167 (42 USC 18912), may receive any grant, contract, cooperative agreement, or loan of $10 million or more in Department of Energy funds including funds made available by the Consolidated Appropriations Act, 2024 (Public Law 118-42). In addition, for all awards involving Departmental activities authorized under Public Law 117-167, no Entity of Concern (including an individual that owns or controls, is owned or controlled by, or is under common ownership or control with an Entity of Concern) may receive DOE funds or perform work under the award, subject to certain penalties. See Section 10114 of Public Law 117-167 (42 USC 18912) and Division D, Title III, Section 310 of Division D of the Consolidated Appropriations Act of 2024 (Pub. L. No. 118-42) for additional information.

Contractor must exercise ongoing due diligence to reasonably ensure that no such Entity of Concern is participating on work under this Agreement. If, at any time, Contractor becomes aware that any participant on the Agreement or project is an Entity of Concern and therefore is unable to fully comply with this term, Contractor shall promptly stop all work on this Agreement, notify SCP, and not proceed with Agreement work without further authorization.

3.28 ENERGY DATA EXCHANGE (EDX) REQUIREMENTS

Any data products generated using funding under this Agreement must be submitted to the Energy Data eXchange (EDX). Data products include but are not limited to software code, tools, applications, webpages, portfolios, images, videos, and datasets. Information provided to EDX will be made publicly available, unless otherwise prohibited under the award. Contractor shall submit to SCP no later than annually any data

products generated using funds under this Agreement, in form and format as requested by SCP. All final data products shall also be submitted to SCP.

3.29 MANDATORY NOTIFICATIONS

In order to comply with DOE requirements, SCP must notify DOE in the case of certain events. Accordingly, Contractor shall promptly notify SCP in writing about the following, and in the time frame as may be specified:

3.29.1 Any fatality, injury, or illness that results in loss of consciousness or requires medical treatment beyond first aid involving an employee, or member of the public, resulting in any way from the performance of this Agreement.

3.29.2 Any incident arising out of or relating to work under the Agreement that has the potential for high visibility in the media, upon occurrence.

3.29.3 Any violations of Federal, State, Tribal, and local laws (i.e., environmental, health, safety, or labor laws and regulations) arising out of or relating to work under the Agreement, upon occurrence.

3.29.4 Any notices or claims of patent or copyright infringement arising out of or relating to the performance of the Agreement, upon occurrence.

3.29.5 Significant problems relating to the administrative, programmatic, technical, environmental (i.e., compliance with permits, etc.), or financial aspects of the Agreement immediately, upon occurrence.

3.29.6 Any noncompliance with approved Federal, Tribal, State, and Local permits, licenses, authorizations, and approvals, upon occurrence.

3.29.7 Any adverse environmental event that significantly impacts social, cultural, economic, and natural resources (i.e., any significant environmental permit violation, incident

which causes a significant process or hazard control system failure, environmental contamination or the need for environmental cleanup) immediately upon occurrence.

3.29.8 Any information arising during the award that may require national security classification, immediately and no later than five (5) days).

3.29.9 Any information alleging a violation of a prohibition identified in 2 CFR 175.105(a,) immediately upon occurrence.

3.29.10 Any violations of the lobbying restrictions under this Agreement or law, upon occurrence.

3.29.11 Any information regarding fraud, waste, abuse, or mismanagement, immediately upon occurrence.

3.29.12 Significant negative developments such as problems, delays, or adverse conditions identified in accordance with 2 CFR 200.329(e), at least 20 working days prior to occurrence or as known.

3.29.13 Insolvency, bankruptcy, receivership, or an audit determination that Contractor may not proceed as a going concern, immediately and no later than 5 days.

3.29.14 Plans for Tribal interactions in sufficient time to determine the need for DOE participation prior to such interactions.

3.29.15 Confirmation or belief that an owner of Contractor or any individual on the project team is participating in a Malign Foreign Talent Recruitment Program, within five (5) business days of learning of the participation.

3.29.16 Participation in the project by an Entity of Concern immediately upon occurrence.

3.29.17 Export control investigations, indictments, charges, convictions, and violations at the SCP level immediately upon occurrence.

3.29.18 Any loss, damage, or theft of equipment that will have an impact on the project, within fifteen (15) business days of occurrence.

3.29.19 Any conditions identified in the Transparency of Foreign Connections Term, within fifteen (15) business days of the planned interactions or learning of a previously undisclosed interaction or equipment covered under this Term.

3.29.20 Any improper claims or excess payments arising out of or relating to work under the Agreement, immediately upon occurrence.

3.30 IMPACTED INDIAN TRIBES

If any activities anticipated to take place under this agreement could potentially impact the resources or reserved rights of Indian Tribe(s), as defined in 25 U.S.C. § 5304 (e), then Contractor agrees to develop and maintain active and open communications with the potentially impacted Indian Tribe(s), during the period of performance of the Agreement, and, if necessary, after the end of the Agreement. If any activities are proposed that could impact Tribal resources or reserved rights, including but not limited to lands, cultural sites, sacred sites, water rights, mineral rights, fishing rights, and hunting rights, Contractor shall notify SCP, who will notify DOE. SCP and Contractor must coordinate with DOE on all Tribal interactions, as appropriate. DOE will determine if formal government-to-government consultation is needed, and DOE will conduct that consultation accordingly.

4. ACCESS TO RECORDS

4.1 Contractor shall provide any information, documents, site access, personnel access, accounts, or other assistance requested by SCP, DOE or federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to Contractor's records relating to this Agreement, for examination and copying, as required by federal regulations and other applicable laws or program guidance.

4.2 Contractor shall provide SCP, the DOE, the DOE Inspector General, the federal Government Accountability Office, the Comptroller General of the United States, and any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, investigations examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Contractor shall provide reasonable access to project or other work sites pertaining to the work being completed under the Agreement, for purposes of required grant audits, investigations, and/or federal stewardship. DOE authorized representatives must have access to records in accordance with 2 CFR 200.337 to conduct audits, execute site visits, conduct research, technology and economic security due diligence reviews and monitoring, or for any other official use.

4.3 Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than five years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date all projects, programs, and close outs are completed, except in the event of audit, litigation, or settlement of claims arising from this Agreement, in which case, Contractor agrees to maintain same until the SCP, DOE, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Contractor shall grant SCP the option of retention of the records, books, papers, and documents in unalterable, electronic form if Contractor elects to dispose of said documents following the mandatory retention period.

4.4 The requirements set forth above are all in addition to, and should not be considered to be in lieu of, any more stringent requirement set forth in the Agreement.

5. DEBARMENT AND SUSPENSION

5.1 This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

5.2 Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

5.3 Contractor represents, warrants, and certifies that it, and its principals, is and are not debarred, suspended, or otherwise excluded from or disqualified or ineligible for participation in Federal assistance programs or activities, including under Executive Order 12549, "Debarment and Suspension" or Executive Order 12689, and that it (and each of its principals) is not on the Excluded Parties List System in the System for Award Management (SAM) or on any comparable list of precluded persons, entities, or facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or any federal regulation, including 2 CFR Part 180.

5.4 This certification is a material representation of fact relied upon by SCP. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to SCP, the Government may pursue available remedies, including but not limited to suspension and/or debarment.

5.5 The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6. NO OBLIGATION OF FEDERAL GOVERNMENT

Contractor acknowledges and agrees that the federal government is not a party to this Agreement and is not subject to any obligations or liabilities to SCP, Contractor, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the Agreement, claims arising out of transactions executed in support of the Agreement, or for the actions of SCP or any third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Agreement.

7. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE (all contracts meeting the definition of "federally assisted construction contract" under 41 CFR 60-1.3)

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60-1.4 is hereby incorporated by reference.

During the performance of this Agreement, the contractor agrees as follows:

7.1 The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, color, religion, sex, sexual orientation, gender identity, or national origin. 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.

7.2 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, sexual orientation, gender identity, or national origin.

7.3 The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

7.4 The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

7.5 The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

7.6 The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7.7 In the event of the contractor's noncompliance with the nondiscrimination clauses 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 and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7.8 The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the

applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

8. CONTRACT WORK HOURS AND SAFETY STANDARDS (all contracts in excess of $100,000 that involve the employment of mechanics, laborers (including watchmen and guards) (as defined by federal law and regulation), or construction work, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

Contractor and all subcontractors shall comply with the Contract Work Hours and Safety Standards Act, 40 USC 3701 through 3708 (including sections 3702 and 3704), as supplemented by Department of Labor regulations at 29 CFR Part 5, which are incorporated hereto. Contractor and all subcontractors shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is subject to conditions, as stated in the Act and regulations. No laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety.

Compliance with the Contract Work Hours and Safety Standards Act. In accordance with 29 CFR sections 5.5(d) and 5.5(e), all required contract clauses, appropriate wage determinations, and other provisions under 29 CFR Part 5 are hereby incorporated by reference and apply as a matter of law. Accordingly, references in this Article 8 are to the following subsections in conformance with the sections and subsections of 29 CFR Section 5.5.

29 CFR 5.5:

(b)(1): **Overtime requirements**. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b)(2): **Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1).

(b)(3): **Withholding for unpaid wages and liquidated damages-**

(i) Withholding process. The SCP and the Government may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, any other Federal contract with the same prime

contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 USC 3901-3907.

(b)(4): **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in 29 CFR Part 5;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or 29 CFR Part 5;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or 29 CFR Part 5; or

(iv) Informing any other person about their rights under CWHSSA or 29 CFR Part 5.

(b)(5): **Required records.** Unless specified otherwise herein, Contractor and all subcontractors must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of at least 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid. Further, the records to be maintained under this paragraph must be made available by the contractor and subcontractors for inspection, copying, or transcription by authorized representatives of SCP, the Government, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.

(b)(6): **Subcontracts.** The contractor (and all subcontractors) shall insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (6) of this section, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in these paragraphs (b)(1) through (6). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the

underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

Contractor (and all subcontractors) shall insert in any subcontracts the following clauses, and a clause requiring all subcontractors to include these clauses in any lower tier subcontracts:

29 CFR 5.5:

(a)(1): Minimum wages.

(i) **Wage rates and fringe benefits.** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of this section (i.e., 29 CFR 5.5), the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(1)(iii) of this section) and the Davis-Bacon poster (WH–1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) **Frequently recurring classifications.**

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to 29 CFR § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:

(*1*) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
(*2*) The classification is used in the area by the construction industry; and
(*3*) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(*3*) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) **Conformance.**

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
(2) The classification is used in the area by the construction industry; and
(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to *DBAconformance@dol.gov*. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to *DBAconformance@dol.gov,* refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) **Fringe benefits not expressed as an hourly rate.** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) **Unfunded plans.** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 CFR § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) **Interest**. In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(a)(2): Withholding —

(i) **Withholding requirements.** The SCP and the Government may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in 29 CFR § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, the SCP and the Government may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
(ii) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
(B) A contracting agency for its reprocurement costs;
(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
(D) A contractor's assignee(s);
(E) A contractor's successor(s); or
(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(a)(3): Records and certified payrolls —

(i) **Basic record requirements** —
(A) **Length of record retention.** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all

laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(B) **Information required.** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) **Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under paragraph (a)(1)(v) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) **Additional records relating to apprenticeship.** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) **Certified payroll requirements** —

(A) **Frequency and method of submission.** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the Government if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the Government. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(B) **Information required.** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

(C) **Statement of Compliance.** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;

(2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) **Use of Optional Form WH–347.** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(C) of this section.

(E) **Signature.** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) **Falsification.** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(G) **Length of certified payroll retention.** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) **Contracts, subcontracts, and related documents.** The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) **Required disclosures and access** —

(A) **Required record disclosures and access to workers.** The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that SCP, the Government, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR § 5.1, available for inspection, copying, or transcription by authorized representatives of SCP, the Government, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) **Sanctions for non-compliance with records and worker access requirements.** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CFR § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD

within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) **Required information disclosures.** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to SCP, the Government if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to SCP, the Government, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(a)(4): Apprentices and equal employment opportunity —

(i) **Apprentices** —

(A) **Rate of pay.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) **Fringe benefits.** Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) **Apprenticeship ratio.** The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any

apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) **Reciprocity of ratios and wage rates.** Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) **Equal employment opportunity.** The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(a)(5): Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(a)(6): Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as SCP or the Government may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(a)(7): Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(a)(8): Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(a)(9): Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(a)(10): Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR § 5.12(a).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 CFR § 5.12(a).
(iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(a)(11): Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or
(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

9. NOTICE OF REPORTING REQUIREMENTS

Contractor acknowledges that reporting requirements apply as a condition of the related DOE funding. Contractor agrees to comply with all applicable reporting requirements, including those contained in any grant terms and conditions, notices of funding opportunity, or any program guidance associated with any DOE funding related to this Agreement. Upon notification from SCP of a reporting requirement involving Contractor or Contractor work, Contractor shall respond as requested.

10. LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT AND DATA RIGHTS

10.1 Contractor agrees that DOE reserves and shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal purposes:

10.1.1 The copyright in any work developed with the assistance of funds provided under this Agreement;

10.1.2 Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.

10.2 Contractor grants to the SCP, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Agreement to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Agreement but not first produced in the performance of this Agreement, the Contractor will identify such data and grant to the SCP or acquire on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Agreement, the Contractor will deliver to the SCP data first produced in the

performance of this Agreement and data required by the Agreement but not first produced in the performance of this Agreement in formats acceptable by the SCP.

11. INTELLECTUAL PROPERTY AND RIGHTS TO INVENTIONS

Intellectual property rights are subject to 2 CFR 200.315 (e.g. institution of higher education or nonprofit organizations) or 2 CFR 910.362 (e.g. for-profit).

The Federal awarding agency does not waive the Federal Government's rights concerning data first produced under the award, as described in 2 CFR §200.315(d). The Government in general has unlimited rights in technical data created under a DOE agreement. Delivery or third-party licensing of proprietary software or data developed solely at private expense will not normally be required except as specifically negotiated in a particular agreement to satisfy DOE's own needs or to ensure the commercialization of technology developed under a DOE agreement.

12. CLEAN AIR AND WATER POLLUTION REQUIREMENTS (all contracts and subcontracts, in excess $150,000)

12.1 Clean Air Act

12.1.1 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. (42 USC 7401-7671q), including Executive Order 11738.

12.1.2 Contractor agrees to report each violation to the SCP and understands and agrees that the SCP will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (DOE), and the appropriate Environmental Protection Agency Regional Office.

12.1.3 Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by DOE.

12.2 Federal Water Pollution Control Act

12.2.1 Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. (33 USC 1251-1388), including Executive Order 11738.

12.2.2 Contractor agrees to report each violation to the SCP and understands and agrees that the SCP will, in turn, report each violation as required to assure notification to the State of California (if applicable), Federal Emergency Management Agency (DOE), and the appropriate Environmental Protection Agency Regional Office.

12.2.3 Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by DOE.

13. TERMINATION FOR CONVENIENCE OF SCP (all contracts in excess of $10,000)

For construction contracts, see "Document 00 72 13 - General Conditions."

For services contracts, see Article 8 of the "Agreement for Professional Services."

14. TERMINATION FOR CAUSE/DEFAULT (all contracts in excess of $10,000)

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

For construction contracts, see "Document 00 72 13 - General Conditions."

For services contracts, see Article 8 of the "Agreement for Professional Services."

15. CHANGES

For construction contracts, see "Document 00 72 13 - General Conditions."

For services contracts, see Article 8 of the "Agreement for Professional Services."

16. LOBBYING (Byrd Anti-Lobbying Amendment, 31 USC 1352 (as amended)) (all contracts and subcontracts, in excess of $100,000)

16.1 Contractor shall comply with and file the applicable disclosures as required under 10 CFR Part 601. Contractor, and each tier to the tier above, certifies that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with the making or obtaining of any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

16.2 Contractor shall file the required certification, Exhibit A-1, *Certification Regarding Lobbying*, attached hereto and incorporated herein, and shall obtain such certifications for all subcontracts in excess of $100,000.

17. SOCIOECONOMIC CONTRACTING (MBE / WBE)

If subcontracts are to be let, Contractor is encouraged to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered when possible.

18. PROCUREMENT OF RECOVERED MATERIALS

18.1 Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

18.2 In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

-Competitively within a timeframe providing for compliance with the contract performance schedule;
-Meeting contract performance requirements; or
-At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at Comprehensive Procurement Guideline (CPG) Program / US EPA (available at https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program).

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Contractor should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products.

19. DOMESTIC PREFERENCES FOR PROCUREMENTS

It is the sense of the federal Congress that, to the greatest extent practicable, all equipment and products purchased with funds under this Agreement should be American-made.

Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

20. BUILD AMERICA BUY AMERICA

-INAPPLICABLE-

21. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Contractor acknowledges that 31 USC Chapter 37 (Civil False Claims Act), 18 USC Sections 287 and 1001 (Criminal False Claims Act), and 31 USC Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement.

22. DAVIS-BACON ACT AND COPELAND ANTI-KICKBACK ACT (prime construction, repair, or alteration contracts in excess of $2,000)

22.1 Compliance with the Davis –Bacon Act:

Funding under this Agreement is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by Contractors or its subcontractors in the performance of construction, alteration, or repair work under this Agreement shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of Title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

Contractor shall provide written assurance acknowledging the DBA requirements for the Federal Award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair work under this Agreement are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). Contractor shall pay wages not less than once a week.

This Agreement is awarded on condition that said prevailing wage determination is accepted.

Contractor shall comply with the Davis-Bacon Act (40 USC 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction), including but not limited to:
(1) Ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.
(2) Being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
(3) Receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
(4) Maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
(5) Conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.
(6) Cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.
(7) Posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.
(8) Notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.
(9) Preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year, in accordance with the reporting instructions in the Federal Assistance Reporting Checklist attachment.

Without limitation to the foregoing, Contractor shall comply with the applicable provisions of 29 CFR 5.5(a) which are incorporated herein by reference and which are also set forth in *Contract Work Hours and Safety Standards*, above.

Contractor must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. Contractor will be notified of any DOE-sponsored Davis-Bacon

Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events.
Contractor must ensure the timely submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act.

DOE has contracted with LCPtracker, a third-party DBA electronic payroll compliance software application. Unless waived by DOE in writing, all required certified payroll records shall be submitted via LCPtracker and the LCPtracker forms and format.

22.2 Compliance with the Copeland "Anti-Kickback" Act:

(1) Contractor. The contractor (and all subcontractors) is expressly bound and shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this contract. Contractor and all subcontractors are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as DOE may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 CFR § 5.12.

23. BONDS (all construction or facility improvement contracts, or any subcontracts thereof, exceeding $250,000)
Unless otherwise excepted in writing by SCP, Contractor shall obtain and maintain bonds as follows:

23.1 A performance bond for 100 percent of the Agreement price, and
23.2 A payment bond for 100 percent of the Agreement price.

Exhibit A-1

APPENDIX A, 44 C.F.R. PART 18 –CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person or organization for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining or awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

By signing below, Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____	_____	_____
Contractor's Authorized Official - Signature	Title	Date

EXHIBIT "A"
CHANGE ORDER FORM

Sonoma Clean Power Authority

431 E St,
Santa Rosa, CA 95404

Contract Change Order #

Project:

Change Order No.:

Orig. Contract Amt.: $ Days

Contractor:

Prev. Appvd. Changes: $ Days

Agency: Sonoma Clean Power Authority

This Change: $ Days

Revised Contract Amt.: $ Days

This Change Order covers changes to the subject contract as described herein. The Contractor shall construct, furnish equipment and materials, and perform all work as necessary or required to complete the Change Order items for a lump sum price agreed upon between the Contractor and Sonoma Clean Power Authority, otherwise referred to as Agency.

Item No.	Reference	Description of Changes	Request By	Increase/ (Decrease) in Contract Amount	Contract Time Extension, Days
1					
2					
	Totals			**$**	

This Contract Change Order consists of **2 pages** and any exhibits attached to this Contract Change Order shall not be part of the Contract Change Order unless specifically initialed by or on behalf of both the Contractor and the Sonoma Clean Power Authority.

Contract Change Order #_____ Page 1 of 2

The amount of the contract will be increased by the sum of $___and the contract time shall be extended by ___ working days. The undersigned Contractor approves the foregoing Change Order # as to the changes, if any, in the contract price specified for each item including any and all supervision costs and other miscellaneous costs relating to the change in work, and as to the extension of time allowed, if any, for completion of the entire work on account of said Change Order #. The Contractor agrees to furnish all labor and materials and perform all other necessary work, inclusive of the directly or indirectly related to the approved time extension, required to complete the Change order items. This document will become a supplement of the Contract and all provisions will apply hereto. It is understood that the Change Order shall be effective when approved by the Agency.

Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising out of or related to the subject of this Change Order and acknowledges that the compensation (time and cost) set forth herein comprises the total compensation due for the work or change defined in the Change Order, including all impact on any unchanged work. By signing this Change Order, the Contractor acknowledges and agrees that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for any acceleration or interruption of schedules, extended overhead costs, delay, and all impact or cumulative impact on all Work under this Contract. The signing of this Change Order acknowledges full mutual accord and satisfaction for the change and that the stated time and/or cost constitute the total equitable adjustment owed the Contractor as a result of the change. The Contractor hereby releases and agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim or request for equitable adjustment of any type, for any reasonably foreseeable cause that shall arise out of, or as a result of, this Change Order and/or its impact on the remainder of the Work under the Contract.

Accepted:

(Signature) Contractor's Authorized Representative _____ Date _____

Recommended:

(Signature) [**INSERT NAME, TITLE**] _____ Date _____

Approved:

(Signature) [**INSERT NAME, TITLE**] _____ Date _____

Item No.	Reference	Description of Changes	Request By	Amount ($)	Calendar days added to Contract
1					
2					

This Contract Change Order consists of **2 pages** and any exhibits attached to this Contract Change Order shall not be part of the Contract Change Order unless specifically initialed by or on behalf of both the Contractor and the Sonoma Clean Power Authority.

01 10 00- SUMMARY

PART 1 GENERAL

1.1 SUMMARY

A. Section includes Summary of Work and Work Restrictions including:
   1. Work Covered by Contract Documents
   2. Bid Items, Allowances, and Alternates
   3. Work Sequence
   4. Shutdown for Discovery of Cultural Resources
   5. Cooperation of Contractor and Coordination with Other Work
   6. Contractor Use of Site
   7. Site Conditions Surveys
   8. Air Quality Standards
   9. Geotechnical Data and Existing Conditions
   10. Protection of Existing Structures and Underground Facilities
   11. Permits
   12. Actual Damages
   13. Compaction Testing
   14. Electronic Communication Protocols

1.2 WORK COVERED BY CONTRACT DOCUMENTS

A. Work comprises the construction and delivery of Agency's project as described in and located as set forth in Section 00 52 13 (Contract). The Contract Documents fully describe the Work.

B. The Work of this Contract comprises construction of all the Work indicated, described in the Specifications, or otherwise required by the Contract Documents. Unless provided otherwise in the Contract Documents, all risk of loss to Work covered by Contract Documents shall rest with Contractor until Final Acceptance of the Work. Cost of maintenance of systems and equipment prior to Final Acceptance will be considered as included in prices Bid and no direct or additional payment will be made therefore.

C. For all Bid items, furnish and install all Work, including connections to existing systems, indicated and described in Specifications and all other Contract Documents. Work and requirements applicable to each individual Bid item, or unit of Work, shall be deemed incorporated into the description of each Bid item (whether Lump Sum or Unit Price). Any Bid item may be deleted from the Work and Contract Sum, in total or in part, prior to or after award of Contract without compensation in any form or adjustment of other Bid items or prices therefore.

D. Allowance Work shall follow Force-Account procedures as specified in Section 01 26 00 (Contract Modification Procedures). Identify Allowance Items (See Section 00 41 43 [Bid Form]) Work on the Progress Schedules and on Applications for Payment. The Amount given on Section 00 41 43 (Bid Form) under each Allowance Item is the sum of money set aside for each Allowance Item. These amounts shall be included in the Contract Sum on the Bid Form. If the cost of Work done under any Allowance Item is less than the amount given on the Bid Form under that Allowance Item, the Contract Sum shall be reduced by the difference between the amount given in the Bid Form and the cost of Work actually done.

1.3 BID ITEMS, ALLOWANCES, AND ALTERNATES

A. The lump sum price paid under this item shall be full payment for providing the construction and delivery of Agency's project as described in and located as set forth in Section 00 52 13 (Contract).

1.4 WORK SEQUENCE

A. Construct Work in stages and at times to accommodate Agency and site operation requirements during the construction period; coordinate construction schedule and operations with Agency.

1.5 SHUTDOWN FOR DISCOVERY OF CULTURAL RESOURCES

A. If discovery is made of items of historical archaeological or paleontological interest, immediately cease all Work in the area of discovery. Archaeological indicators may include, but are not limited to, dwelling sites, locally darkened soils, stone implements or other artifacts, fragments of glass or ceramics, animal bones, human bones, and fossils. After cessation of excavation, immediately contact Agency. Do not resume Work until authorization is received from Agency. When resumed, excavation or other activities shall be as directed by Agency.

1.6 COOPERATION OF CONTRACTOR AND COORDINATION WITH OTHER WORK

A. Coordinate with Agency and any Agency forces, or other contractors and forces, as required by Section 00 72 13 (General Conditions).

1.7 CONTRACTOR USE OF SITE

A. Access is available to the Site from 4528 Langner Ave, Rohnert Park, CA.

B. Ensure that the entrance is locked at the end of each Work Day and at other times as may be necessary to control unauthorized entry.

C. Contractor shall contact Agency at least two Business Days prior to entering the building and performing Work to allow Agency to arrange access into the building.

D. Confine operations at Site to areas permitted by Contract Documents, permits, ordinances, and laws. Do not unreasonably encumber Site with materials or equipment.

E. Assume full responsibility for protection and safekeeping of products stored on premises. Move any stored products that interfere with operations of Agency or other contractor.

F. Coordinate parking, storage, staging, and Work areas with Agency. Staging shall occur on work areas, access roads, surface streets, designated stockpile areas, or other disturbed areas that are already compacted and only support ruderal vegetation and avoid potentially jurisdictional wetland features. Equipment and materials shall be contained within the existing service roads, paved roads, or other pre-determined staging and stockpile areas. Do not store construction materials in the dripline of any tree.

G. Prior to commencement of Work or excavation, Contractor and Agency shall jointly survey the area adjacent to the Project area making permanent note and record of such existing damage such as cracks, sags, or other similar damage. This record shall serve as a basis for determination of subsequent damage to structures, conditions, or other existing improvements due to Contractor's operations. All

parties making the survey shall sign the official record of existing damage. Cracks, sags, or damage of any nature to the adjacent Project area, not noted in the original survey but subsequently noted, shall be reported immediately to Agency.

H. It is essential that Contractor perform the Work with as little interference and disturbance as possible to the surrounding neighborhood.

I. When suspect materials, outside the scope of Work, are encountered during the Work or restoration process, Contractor shall immediately contact Agency for evaluation and approval of the methods for dealing with the material.

1.8 SITE CONDITIONS SURVEYS

A. Work Included.

Contractor shall conduct thorough pre-construction and post-construction site condition surveys of the entire project area. Site conditions surveys shall include written documentation of the conditions found, as well as photographs and video recordings of the area within at least 80 feet of any construction area and staging area. The written notes, photographs, and video shall be suitable for forensic purposes to resolve any damage claims that may arise as a result of construction.

B. Submittals.

1. Written documentation of site condition survey at pre-construction and post-construction.

2. Photographs as described herein of pre-construction and post-construction conditions.

3. Video recordings as described herein of pre-construction and post-construction conditions.

4. Submittals shall be made within three days of the surveys. All post-construction data shall be submitted prior to the final project inspection.

C. Site Condition Written Documentation.

Written documentation shall include the time, date, and conditions under which the site survey was made. The documentation shall note the condition of structures, pavement, sidewalks, utilities, fences, and etc. within the work areas.

D. Photographs.

1. General – Contractor shall take enough photographs during each site survey to provide a record of conditions existing prior to construction and conditions after construction. Pre-construction photographs shall be taken prior to any construction or mobilization of equipment, but not more than one week prior to actual start of work. The pre-construction photographs may be staged at different times to match the progression of the Work.

2. The photographs shall document existing damage to public and private facilities, both prior to and after construction. Conditions to be documented

include, but are not limited to: sidewalk cracks, broken curbs, separated property walls, improvements within public right-of-ways, access roads used, utility covers and markings, signs, pavement striping, pavement, unique or unusual conditions, adjacent driveways, landscaping, survey markers, and any feature directed by the Engineer.

3. Photographs shall include items to indicate scale, as needed. In particular, scales or other items shall be laid next to close ups of structural cracks and other damaged areas being recorded. Scaling shall also be used to document elevation differences, as needed.

4. One set of color prints shall be submitted. Additional sets shall be available for reviewing in settling any construction disputes. A set of photos shall also be furnished in electronic format. The resolution shall be at least equal to 7 mega-pixels. All photos shall be documented as to time and date taken, photographer, project number, location, and orientation. Documentation shall include a brief description of objects photographed.

E. Video Recording.

1. Video recordings shall document the conditions of the entire area affected by construction, as well as nearby structures and facilities. The general documentation requirements for videos are the same as for photographs. Video recorders shall accurately and continuously record the time and date.

2. Video recordings shall include an audio portion made simultaneously during the videoing. The audio recording shall describe the location, time, orientation, and objects being recorded. Special commentary shall be provided for unusual conditions or damage noted.

3. Video equipment shall be capable of producing high resolution images and shall have zoom capabilities.

4. Video recordings shall provide an overall picture of the sites and shall provide detailed images of damaged areas. Video shall extend to the maximum height of structures.

5. The Engineer shall have the right to reject any audio video recordings submitted with unintelligible audio, uncontrolled pan or zoom, or of poor quality. Video recordings shall be repeated when rejected.

6. Video recordings shall be submitted with labels indicating the project, date, recorder, and other pertinent information. Recordings shall be submitted on standard DVDs in a standard format.

F. Timing.

Contractor shall provide written notice of the time scheduled for the site conditions survey and the place it is to begin. Contractor shall obtain the Engineer's concurrence prior to beginning the condition survey. The Engineer reserves the right to cancel the survey due to weather conditions or other problems. Videoing shall be done during

times of good visibility and no videoing or photography shall be done during periods of visible precipitation or when standing water obscures site conditions. Contractor shall provide the Engineer with an opportunity to have a representative present when taking the photos and provide guidance during photographing.

G. Site Surveyor.

The site condition surveyor(s) shall be experienced in construction and potential damage concerns. The site condition surveyor(s) shall be familiar with the photography and video equipment being used.

H. Field Quality Control.

Prior to submitting videos and photographs, the Contractor shall spot check the photos and videos in the field to insure they accurately reflect the actual conditions and to insure they are correctly labeled.

1.9 AIR QUALITY STANDARDS

A. Ensure that idling time for heavy equipment is minimized to reduce on-Site emissions.
B. Maintain equipment in good mechanical condition.
C. Cover trucks hauling dirt.
D. Limit dust emissions during periods of high winds (greater than 15 miles per hour).
E. Replace ground cover in disturbed areas as soon as possible.
F. Enclose, cover, water, or apply soil binders to exposed stockpiles.
G. Remove earth tracked onto neighboring paved roads at least once daily.
H. Limit equipment speed to 10 miles per hour in unpaved areas.

1.10 GEOTECHNICAL DATA AND EXISTING CONDITIONS

A. Available Documentation: In accordance with, and subject to, the provisions of Section 00 30 00 (Geotechnical Data and Existing Conditions), the following documentation is available for review at Agency's office and on Agency's website. This information is not part of the Contract Documents.

    a. Roof mounted PV System Drawings

1.11 PROTECTION OF EXISTING STRUCTURES AND UNDERGROUND FACILITIES

A. The Drawings may indicate existing above- and below-grade structures, drainage lines, storm drains, sewers, water lines, gas lines, electrical lines, hot water lines, and other similar items and Underground Facilities that are known to Agency. At least three Business Days prior to commencement of excavation, contact USA North at 811.
B. Where overhead service to a structure, known to receive service, does not exist, then underground service shall be assumed to exist.
C. Attention is also directed to the existence of overhead power and telephone lines.
D. Perform pot-holing by hand within 24 inches (in any direction) of the Underground Facilities. This may be done on an area-by-area basis, but shall be accomplished

at least seven Days in advance of the date of construction within such area.

E. In addition to reporting if a utility is damaged, Contractor must take appropriate action as provided in Section 00 72 13 (General Conditions).

F. Additional compensation or extension of time on account of utilities not indicated or otherwise brought to Contractor's attention including reasonable action taken to protect or repair damage shall be determined as provided in Section 00 72 13 (General Conditions).

G. Existing Utilities. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of Contractor to determine the actual locations of, and make accommodates to maintain, all utilities.

H. Permission, Notice and Liability. Before any utility is taken out of service, permission shall be obtained by Contractor from the Agency. Should Contractor require interruption of any utility service, Contractor shall notify Agency at least ten (10) Days prior to the scheduled outage. The Agency, any impacted resident or business owner and the Agency Representative will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the Agency. Contractor shall be responsible for providing, at its cost, any temporary utility or facilities necessitated by the utility outage. Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and Contractor shall indemnify Agency as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.

1.12 PERMITS

A. Contractor shall be responsible for obtaining all permits and regulatory approvals necessary for the Work, including but not limited to permits as follows:

B. Permits, agreements, or written authorizations that are known by Agency to apply to this Project, and that have been or will be obtained by Agency, are listed below:
   1. None.

C. Permits, agreements, or written authorizations that are known by Agency to apply to this Project, and that shall be obtained by Contractor are listed below:
   1. *None*
   2. Other permits as may be discovered necessary, at Agency's discretion.
   3. All other permits that may be required, but that are not listed immediately above shall be obtained by Contractor at Contractor's sole cost and expense, and include, but are not limited to: Cal/OSHA Permit. Obtain, as applicable, permit(s) as required by Cal/OSHA for the following:
      a. Construction of trenches or excavations that are five feet or more in depth and into which a person is required to descend.
      b. Construction or demolition of any building, structure, or scaffolding for falsework more than three stories high, or the equivalent height (36 feet).

c. Erection or dismantling of vertical shoring systems more than three stories high, or the equivalent height (36 feet).

d. The local Cal/OSHA district office is located at: 3419 Broadway Street, Suite H8
American Canyon, California 94503

Phone: (707) 649-3700

D. Furnish copies of Contractor-obtained permits to Agency.

1.13 ACTUAL DAMAGES

A. In addition to damages which are impracticable or extremely difficult to determine, for which liquidated damages will be assessed as described in Section 00 52 13 (Agreement) and Section 00 72 13 (General Conditions), Agency may incur actual damages resulting from or arising out of Contractor's activities or omissions, including, but not limited to: fines imposed by any regulatory agency; loss of use of Agency facilities; or violations of legal or regulatory requirements.

B. Contractor shall be liable for and shall pay Agency the amount of any actual damages in addition to liquidated damages or other remedies provided by the Contract Documents.

C. The amount of liquidated damages, and service reduction damages, if any, provided in Section 00 52 13 (Agreement) and Section 00 72 13 (General Conditions) is not intended to include, nor does the amount include, any damages incurred by Agency for reasons other than those listed in those Sections. Any money due or to become due to Contractor may be retained by Agency to cover any liquidated damages, service reduction damages, or actual damages described above, and, should such money not be sufficient to cover such damages, Agency shall have the right to recover the balance from Contractor or its sureties.

1.14 COMPACTION TESTING

A. Agency may conduct or Agency may select an independent testing and inspection agency or agencies to conduct tests and inspections as indicated, as listed in Specifications, or as required by governing authorities having jurisdiction.

B. Agency may perform tests at any time at its discretion.

C. California Test Method No. 216 (Relative Compaction of Untreated and Treated Soils and Aggregates) will be modified by Agency as follows:

A. In lieu of the specified 10-pound hammer, a Test Lab Model No. F-590 Mechanical Compactor (or equal) with a 10-pound hammer will be used.

B. In lieu of the specified split cylindrical mold, a non-split cylindrical mold of the same diameter and wall thickness will be used.

C. Any of the provisions of Test Method No. 216 which conflict with the use of such equipment described in (1) and (2) are considered void to the extent they preclude the use of such equipment.

D. In lieu of the specified test form, an Agency standard form will be used.

E. Correction for oversize material may be obtained from a table based upon the given equations and the coefficient for +3/4-inch aggregate will be computed from the following formulae:

$$Y = 1.0 \text{ for } P = 10 \text{ to } 20$$

Y = 1.0 - .002 (P - 20) for P = 20 to 50

where:

Y = coefficient for ¾ inch aggregate

P = percent retained on ¾ inch screen

D. In-place density and relative compaction will be determined in accordance with California Test 231.
   1. In addition to determination of in-place density using the area concept, each individual test site shall be considered representative of the portion of the area nearest to that individual test site.
   2. For tests performed by Agency, Agency may choose fewer test sites than otherwise required by California Test 231.

1.15 ELECTRONIC COMMUNICATION PROTOCOLS

A. Contractor shall provide all formal correspondence and project documentation in electronic form and in format approved by Agency, including Contracts, Cost Proposals, Change Orders (proposed and approved), Meeting Minutes, Schedules and Reports, Payment Applications, certificates of insurance, Safety Reports, Requests for Information, Requests for Substitutions, correspondence, communications, notices, Submittals, transmittals, and logs.

B. If file size prohibits electronic transmittal, submit to Agency on compact disk (CD) or other electronic media format as accepted by Agency.

C. Provide electronic format documents in searchable portable document format (PDF), unless otherwise required by the Contract Documents or directed in writing by Agency.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION - NOT USED

END OF SECTION

01 20 00- PRICE AND PAYMENT PROCEDURES

PART 1 GENERAL

1.1 SUMMARY

A. Section includes:

1. Description of requirements and procedures for determining amount of Work performed and for obtaining payment for Work performed.
2. Contingency Reserve.

1.2 REFERENCES

A. California Public Contract Code

B. Code of Civil Procedure

C. California Government Code

1.3 COMPOSITION AND SCOPE OF CONTRACT SUM

A. Scope of Contract Sum:

1. The Contract Sum for performance of the Work under Contract Documents, or under any Bid item, allowance, or Alternate, shall include full compensation for all Work required under the Contract Documents, including without limitation, all labor, materials, taxes, transport, handling, storage, supervision, administration, submittals, and all other items necessary for the satisfactory completion of the Work, whether or not expressly specified or indicated, incidental Work and unexpected expenses, and all terms, conditions, requirements, and limitations set forth in the Contract Documents.
2. Contract Sum may be expressed as lump sum, unit price, GMP, allowance, or combination thereof.

B. Unit price items:

1. Quantity of Work to be paid for under any item for which a unit price is fixed in Contract Documents shall be determined by Agency based on, so far as practicable, actual number of units satisfactorily completed, as determined by Agency and certified by Contractor, within prescribed or ordered limits, and no payment will be made for Work unsatisfactorily performed or done outside of limits.
2. Unit prices shall apply to Work covered by unit prices so long as actual quantities performed on the Project are not less than 75 percent or greater than 125 percent of the estimated Bid quantities or otherwise stated in the Contract Documents. If actual quantities exceed these parameters, then the unit price shall be adjusted by an amount to reflect Contractor's incremental cost differential resulting from increased or decreased economies of scale. For quantities reduced to less than 75 percent of the estimated Bid quantity, the

payment for the total pay quantity of such item of Work will in no case exceed the payment that would have been made for the performance of 75 percent of the estimated Bid quantity for such item at the original Contract unit price.

C. Lump Sum Items:
   1. When estimated quantity for specific portion of Work is not indicated or Work is designated as lump sum, payment will be on a lump sum basis for Work satisfactorily completed in accordance with Contract Documents.
   2. Payment for lump sum Work, or items of Work subject to a lump sum (e.g. without limitation, Change Order Work), shall be made on the basis of satisfactory completion of such Work or Work item, earned in progressive stages in accordance with the Contract Documents, up to but not exceeding Contractor's percentage completion of the Work or item.
   3. Lump sum items shall be paid based upon the approved Schedule of Values, which shall be used to measure progressive payments based upon satisfactory progress towards completion of the item.

D. Allowance Items:
   1. Allowances: Allowance Work will be authorized by Agency in writing, following Force-Account procedures specified in Section 01 26 00 (Contract Modification Procedures). Unused allowance amounts at Contract completion shall reduce the Contract price accordingly.

1.4 PAYMENT PROCEDURES

A. Schedule of Values:
   1. Within 21 Days from issuance of Notice to Proceed and prior to Contractor's first Application for Payment, Contractor shall submit a detailed breakdown of its Bid by Bid item. Where more than one Subcontractor comprises the work of a Work item or activity, the Schedule of Values shall show a separate line item for each subcontract. Contractor shall furnish such breakdown of the total Contract Sum by assigning dollar values (cost estimates) to each applicable Work activity, which cumulative sum equals the total Contract Sum. The format and detail of the breakdown shall be as directed by Agency to facilitate and clarify future progress payments to Contractor for Work under Contract Documents. This breakdown shall be referred to as the Schedule of Values.
   2. Contractor's overhead, profit, insurance, cost of bonds and/or other financing, scheduling, record documents, quality assurance control, and "general conditions costs," (e.g., Site cleanup and maintenance, temporary roads and access, off-Site access roads, temporary power and lighting, security, and the like), unless specifically provided for under a Bid item, shall be prorated through all activities so that the sum of all the Schedule of Values line items equals Contractor's total Contract Sum, less any allowances designated by Agency.
   3. Agency will review the breakdown in conjunction with the Progress Schedule to ensure that the dollar amounts of this Schedule of Values are, in fact, reasonable cost allocations for the Work items listed. Upon favorable review by Agency, Agency will accept this Schedule of Values for use. Agency shall be the sole judge of fair market cost allocations.
   4. Agency will reject any attempt to increase the cost of early activities, i.e. "front loading," resulting in a complete reallocation of monies until such "front loading" is corrected. Repeated attempts at "front loading" may result in suspension or termination of the Work for default, or refusal to process progress payments

until such time as the Schedule of Values is acceptable to Agency.

B. Contractor's Requests for Progress Payments:

1. If requested by Contractor, progress payments will be made monthly, under the following conditions:
   a. On a mutually agreed upon Day of each month, Contractor shall submit to Agency one electronic copy of an Application for Payment for the cost of the Work put in place during the period from the last Day of the previous month to the end of the current month, along with one electronic copy and one hard copy of an updated Progress Schedule. Such Applications for Payment shall be for the expected total value of activities completed or partially completed, based upon Schedule of Values prices (or Bid item prices if unit price) of all labor and materials incorporated in the Work up until midnight of the last Day of that one month period, less the aggregate of previous payments. Accumulated retainage shall be shown as separate item in payment summary. Agency and Contractor will reconcile any differences in the field, based on the reconciled monthly report sheets. If Contractor is late submitting its Application for Payment, that Application may be processed at any time during the succeeding one-month period, resulting in processing of Contractor's Application for Payment being delayed for more than a Day for Day basis.
   b. No progress payment will be processed prior to Agency receiving all requested, acceptable schedule update information and certified payrolls, and in Agency's sole and absolute discretion, Agency may deny the entire Application for Payment for noncompliance.
   c. Each Application for Payment shall list each Change Order and Field Directive executed prior to date of submission, including the Change Order/Field Directive Number, and a description of the Work activities, consistent with the descriptions of original Work activities.
   d. If Agency requires substantiating data, Contractor shall submit information requested by Agency, with cover letter identifying Project, Application for Payment number and date, and detailed list of enclosures. Contractor shall submit one copy of substantiating data and cover letter for each copy of Application for Payment submitted.
   e. If Contractor fails or refuses to participate in monthly Work reconciliations or other construction progress evaluation with Agency, Contractor shall not receive current payment until Contractor has participated fully in providing construction progress information and schedule update information to Agency.

C. Agency's Review of Progress Payment Applications:

1. Agency will review Contractor's Application for Payment following receipt and during the Progress Schedule and Billing Meeting. If adjustments need to be made to percent of completion of each activity, Agency will make appropriate notations and return to Contractor. Contractor shall revise and resubmit. All parties shall update percentage of completion values in the same manner, i.e., express value of an accumulated percentage of completion to date.
2. If Agency determines that portions of the Application for Payment are not proper or not due under the Contract Documents, then Agency may approve the other portions of the Application for Payment, and in the case of disputed items or Defective Work not remedied, may withhold up to 150 percent of the disputed amount from the progress payment.

3. Once Agency accepts the Application for Payment, Contractor shall sign and return with notarized signature for Agency signature.
4. Pursuant to California Public Contract Code section 20104.50, if Agency fails to make any progress payment within 30 Days after receipt of an undisputed and properly submitted Application for Payment from Contractor, Agency shall pay interest to Contractor equivalent to the legal rates set forth in California Code of Civil Procedure section 685.010(a). The 30-Day period shall be reduced by the number of Days by which Agency exceeds the seven-Day return requirement set forth herein.
5. As soon as practicable after approval of each Application for Payment for progress payments, Agency will pay to Contractor in a manner provided by law, an amount equal to 95 percent of the amounts otherwise due as provided in the Contract Documents, or a lesser amount if so provided in Contract Documents or Bidding Documents, provided that payments may at any time be withheld if, in judgment of Agency, Work is not proceeding in accordance with Contract, or Contractor is not complying with requirements of Contract, or to comply with stop notices or to offset liquidated damages accruing or expected. In Agency's sole discretion, if Contractor has failed to comply with either its Progress Schedule update or Project Record Documents requirements, Agency may retain an additional 5 percent of any earned amounts until such requirements are satisfied.
6. Before any progress payment or final payment is due or made, Contractor shall submit satisfactory evidence that Contractor is not delinquent in payments to employees, Subcontractors, suppliers, or creditors for labor and materials incorporated into Work. This specifically includes, without limitation, conditional lien release forms for the current progress payment and unconditional release forms for past progress payments. This also includes copies of certified payroll from contractor and subcontractors for the current payment period.
7. Agency reserves and shall have the right to withhold payment if, in the sole judgment of Agency, Contractor has not adequately and properly performed obligations associated with project funding requirements, including but not limited to requirements set forth in Section 00 73 31 (Special Conditions - Funding Contract Requirements).

D. Payment for Material and Equipment Not Yet Incorporated Into the Work:
   1. No payment shall be made for materials or equipment not yet incorporated into the Work, except as specified in Section 01 10 00 (Summary) or elsewhere in the Contract Documents or as may be agreed to by Agency in its sole discretion. Where Contractor requests payment on the basis of materials and equipment not incorporated in the Work, Contractor must satisfy the following conditions:
      a. The materials and/or equipment shall be delivered and suitably stored at the Site or at another local location agreed to in writing, for example, a mutually acceptable bonded and insured warehouse.
      b. Full title to the materials and/or equipment shall vest in Agency at the time of delivery to the Site, warehouse, or other storage location. Obtain a negotiable warehouse receipt, endorsed over to Agency for materials and/or equipment stored in an off-site warehouse. No payment will be made until such endorsed receipts are delivered to Agency.
      c. Stockpiled materials and/or equipment shall be available for Agency inspection, but Agency shall have no obligation to inspect them and its

inspection or failure to inspect shall not relieve Contractor of any obligations under the Contract Documents. Materials and/or equipment shall be segregated and labeled or tagged to identify these specific Contract Documents.

d. After delivery of materials and/or equipment, if any inherent or acquired defects are discovered, defective materials and/or equipment shall be removed and replaced with suitable materials and/or equipment at Contractor's expense.
e. Contractor's Application for Payment shall be accompanied by a bill of sale, invoice or other documentation warranting that Agency has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Agency interest therein, all of which must be satisfactory to Agency. This documentation shall include, but not be limited to, conditional releases of mechanics' liens and stop notices from all those providing materials and equipment as to which the Application for Payment relates, as well as unconditional releases of the same from the same as to the previous Application for Payment for which they have not already been provided. Amounts previously paid for materials and equipment prior to incorporation into the Work shall be deducted from amounts otherwise due Contractor as they are incorporated.

1.5 FINAL PAYMENT

A. Final Progress Payment:
   1. As soon as practicable after all required Work is completed in accordance with Contract Documents, including punchlist, testing, Project Record Documents and Contractor maintenance after Final Acceptance, Contractor shall submit its Application for Final Payment.
   2. Provided Contractor has met all conditions required for Final payment, Agency will pay to Contractor, in manner provided by law, unpaid balance of Contract Sum of Work (including, without limitation, retentions), or whole Contract Sum of Work if no progress payment has been made, determined in accordance with terms of Contract Documents, less sums as may be lawfully retained under any provisions of Contract Documents or by law.

B. Final Accounting:
   1. Prior progress payments and change orders shall be subject to audit and correction in the final payment.
   2. Contractor and each assignee under an assignment in effect at time of final payment shall execute and deliver at time of final payment, and as a condition precedent to final payment, Section 00 65 23 (Agreement and Release of Any and All Claims).

C. Release of retention shall be made as may be required by Public Contract Code section 7107.

1.6 SUBSTITUTION OF SECURITIES

A. Public Contract Code section 22300. In accordance with the provisions of Public Contract Code section 22300, substitution of securities for any monies withheld under Contract Documents to ensure performance is permitted under following conditions:

1. At request and expense of Contractor, securities listed in section 16430 of the California Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and Agency which are equivalent to the amount withheld under retention provisions of Contract shall be deposited with Controller or with a state or federally chartered bank in California, as the escrow agent, who shall then pay such monies to Contractor. Upon satisfactory completion of Contract, securities shall be returned to Contractor.
2. Alternatively, Contractor may request and Agency shall make payment of retentions earned directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities and receive the interest earned on the investments upon the same terms provided for securities deposited by Contractor. Upon satisfactory completion of the Work of the Contract Documents, Contractor shall receive from escrow agent all securities, interest, and payments received by the escrow agent from Agency. Contractor shall then pay to each Subcontractor, not later than 20 Days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to insure the performance of Contractor.
3. Contractor shall be beneficial Agency of securities substituted for monies withheld and shall receive any interest thereon.
4. Contractor may enter into an escrow agreement, form as specified in Contract Documents, as authorized under Public Contract Code section 22300, specifying amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Contractor, and termination of escrow upon completion of Contract Documents.
5. Public Contract Code section 22300 is hereby incorporated in full by this reference and shall supersede anything inconsistent therewith.

1.7 CONTINGENCY RESERVE

A. Agency will authorize and direct Contractor regarding provisions in this Paragraph 1.7.

B. Contingency Reserve Amount: as listed in Section 00 52 13 (Agreement), if any.

C. Cost shall be determined for Field Directive Work as provided in Section 01 26 00 (Contract Modification Procedures) or on a Force Account basis if agreed by Contractor and Agency.

D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor on account of Work covered by this Contingency Reserve, and the Contract Sum will be correspondingly adjusted.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION - NOT USED

END OF SECTION

01 26 00- CONTRACT MODIFICATION PROCEDURES

PART 1 GENERAL

1.1 SUMMARY

A. Section includes requirements that supplement the paragraphs of Section 00 72 13 (General Conditions).

B. Description of procedures for modifying the Contract Documents and determining costs for changes in contract amounts.

1.2 PROCEDURES FOR CONTRACTOR INITIATED CHANGES

A. Contractor-Initiated Request for Information (RFI) Procedures, Requirements, and Limitations:

1. Contractor may submit RFI's for clarifications in Agency-prepared Contract Documents or to initiate changes to the Work.
2. Whenever Contractor requires information regarding the Project or Agency-prepared Contract Documents, or receives a request for such information from a Subcontractor, or desires to initiate changes to the Work, Contractor may prepare and deliver an RFI to Agency. Contractor shall not issue an RFI to Agency solely to clarify Contractor-prepared Construction Documents. Contractor must submit time-critical RFIs at least 30 Days before scheduled start date of the affected Work activity. Contractor shall reference each RFI to an activity on the Progress Schedule and shall note time criticality of the RFI, indicating the time within which a response is required. **Contractor's failure to include reference to an activity on the Progress Schedule and note time criticality on the RFI shall constitute Contractor's waiver of any claim for time delay or interruption to the Work resulting from any delay in responding to the RFI.**
3. Contractor shall be responsible for its costs to implement and administer RFIs throughout the Contract duration. Regardless of the number of RFIs submitted, Contractor shall not be entitled to additional compensation for the effort required to submit the RFIs. Contractor shall be responsible for Agency's administrative costs for answering RFIs where the answer could reasonably be found by reviewing the Contract Documents, as determined by Agency; at Agency discretion, such costs may be deducted from progress payments or final payment.
4. Agency will respond within 14 Days from receipt of an RFI with a written response to Contractor. Contractor shall distribute response to all appropriate Subcontractors.
5. If Contractor is satisfied with the response and does not request a change in Contract Sum or Contract Time, then the response shall be executed without a change.
6. If Contractor believes the Agency's response is incomplete, Contractor shall request clarification from Agency.
7. If Agency's response to an RFI is a request for Contractor to submit a Cost Proposal (CP), Contractor shall prepare and submit to Agency, within 7 Days of Agency's request, a CP using the form attached to this Section 01 26 00. All

CPs required by this Section 01 26 00 must contain a complete breakdown of costs of credits, deducts and extras; itemizing materials, labor, taxes, Markup, and any requested changes to Contract Time. All Subcontractor Work shall be so indicated. Individual entries on the CP form shall include the applicable Schedule of Values (SOV) code, with all amounts determined as provided herein. After receipt of a CP with a detailed breakdown, Agency will consider the CP and respond as soon as practicable.

8. If Agency accepts the CP, Agency will include in a Change Order. Change Orders may include multiple accepted Cost Proposals.
9. If the CP is not acceptable to Agency because Agency does not agree with Contractor's proposed cost and/or time, Agency will provide comments regarding the same. Contractor must then, within seven Days (except as otherwise provided herein), submit a revised CP.
10. When necessity to proceed with a change does not allow Agency sufficient time to conduct a proper check of a CP (or revised CP), Agency may issue a Field Directive as provided below.

B. Time Requirements:

1. If Contractor believes that an Agency response to an RFI, submittal, or other Agency direction, results in change in the Contract Sum or Contract Time, Contractor shall notify Agency via a follow-up RFI within seven Days after receiving Agency's response or direction, always prior to starting the disputed Work, and no later than the time allowed under Section 00 72 13 (General Conditions). If Contractor also requests a time extension, or has issued a notice of delay or otherwise requests a time extension with a CP, then Contractor shall submit the TIE (as defined in Section 01 32 16 [Construction Progress Schedule]) required herein concurrently with the CP and in no event later than 14 Days after providing the notice of delay. If Agency disagrees with Contractor, then Contractor may give notice of a potential claim as provided in Section 00 72 13 (General Conditions) and proceed thereunder.
2. If Agency agrees with Contractor's CP and/or TIE, then Agency will initiate a Change Order. If Agency disagrees with Contractor, then Contractor may give notice of potential claim as provided in Section 00 72 13 (General Conditions) and proceed thereunder.
3. Contractor must submit CPs, TIEs, notices of potential claim, or Claims within the required time periods. Failure to do so is a waiver of Contractor's right to submit a CP, TIE, or file a Claim.

C. Cost Estimate Information:

1. Contractor and Subcontractors shall, upon Agency's request, permit inspection of the original unaltered cost estimates, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with CPs or Claims arising from changes in the Work.

1.3 PROCEDURES FOR AGENCY INITIATED CHANGES

A. Agency Initiated Field Directives or Supplemental Instructions:

1. Agency may, by Field Directive or Supplemental Instruction or by following the procedures for disputed Work herein, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with or without adjustment to Contract Sum or Contract Time.
2. If at any time Agency believes in good faith that a timely Change Order will not

be agreed upon using the foregoing procedures, or at any other time, Agency may issue a Field Directive or Supplemental Instruction with its recommended cost and/or time adjustment (if any). Upon receipt of Field Directive or Supplemental Instruction, Contractor shall promptly proceed with the change of Work involved and respond to Agency as required by Subparagraph 1.3A(3), below, within seven Days.

3. Contractor's response must be any one of following:
   a. Accept Field Directive or Supplemental Instruction, thereby accepting Agency's direction, including the Agency's proposed adjustment to time and cost (if any), by conveying a notice of acceptance through Agency's contract management system.
   b. If Contractor does not accept Agency's direction, submit a (revised if applicable) CP with supporting documentation.
   c. Give notice of a potential claim as described in Section 00 72 13 (General Conditions).
4. If the Field Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
   a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
   b. Unit prices stated in the Contract Documents or subsequently agreed upon.
   c. Contractor shall proceed on cost reimbursable (Force Account) basis while negotiating towards a firm price, per Paragraph 1.7 of this Section 01 26 00.
5. Contractor's acceptance of a Field Directive is Contractor's agreement as to all of its terms and conditions, including any adjustment in the Contract Sum and Contract Time and the method for determining such adjustments. This agreement will be memorialized as a Change Order.
6. If Contractor submitted a CP in response to Agency's direction, and the parties cannot agree on the proper adjustment, Contractor may file a Claim per Section 00 72 13 (General Conditions) and/or Agency may direct the changed Work through a unilateral Change Order. Contractor shall keep and present an itemized accounting in a manner consistent with the SOV, together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Paragraph shall be limited to those provided herein.

B. Agency Initiated Change Order or Request for Proposal (RFP):
   1. Agency may initiate changes in the Work or Contract Time by issuing a Request for Proposal (RFP) or Change Order to Contractor.
   2. Any RFP issued to Contractor will detail all proposed changes in the Work and request a quotation of changes in Contract Sum and Contract Time from Contractor.
   3. In response to an RFP, Contractor shall furnish a CP within 14 Days of Agency's RFP. Upon approval of the CP, Agency may direct Contractor to proceed with extra Work by issuing a Change Order.
   4. If the parties agree on price and time for the Work, the Agency will issue a Change Order. If the parties do not agree on the price or time for the Work, Agency may direct Contractor to proceed with the Work under Force Account, per Paragraph 1.7 of this Section 01 26 00. Contractor shall perform the changed Work notwithstanding the existence of any unresolved claims or disagreements of any kind.

1.4 PROCEDURES THAT APPLY TO CONTRACTOR- AND AGENCY-INITIATED CHANGE ORDERS

A. Adjustment of Schedules to Reflect Change Orders or Field Directives or Supplemental Instructions:
   1. Contractor shall revise the SOV and Application for Payment forms to record each authorized Change Order, Field Directive, or Supplemental Instruction as a separate line item and adjust the Contract Sum as shown thereon prior to the next monthly pay period.
   2. Contractor shall revise the Progress Schedules prior to the next monthly pay period, to reflect Change Orders, Field Directives, and Supplemental Instructions.
   3. Contractor shall enter changes in Project Record Documents prior to the next monthly pay period.

B. Required Documentation for Adjustments to Contract Amounts:
   1. For all changes and cost adjustments requested by Contractor, Contractor shall provide documentation of changes in Contract Amounts asserted, with sufficient data to allow Agency's evaluation of the proposal.
   2. In all requests for compensation, CPs, estimates, claims and any other calculation of costs made under the Contract Documents, Contractor shall break out and quantify costs of labor, equipment, and materials identified herein, for Contractor and Subcontractors of any tier.
   3. Contractor shall, upon request, provide additional data to support computations for:
      a. Quantities of products, materials, labor, and equipment.
      b. Taxes, insurance, and bonds.
      c. Justification for any change in Contract Time and new Progress Schedule showing revision due, if any.
      d. Credit for deletions from Contract, similarly documented.
   4. Contractor shall support each claim or computation for additional cost, with additional information including:
      a. Origin and date of claim or request for additional compensation.
      b. Dates and times Work was performed and by whom.
      c. Time records and wage rates paid.
      d. Invoices and receipts for products, materials, equipment, and subcontracts, similarly documented.
      e. Credit for deletions from Contract, similarly documented.

C. Responses and Disputes:
   1. For all responses for which the Contract Documents do not provide a specific time period, recipients shall respond within a reasonable time.
   2. For all disputes arising from the procedures herein, Contractor shall comply with the procedures set forth in Section 00 72 13 (General Conditions).

1.5 COST DETERMINATION

A. Total cost of extra Work or of Work omitted shall be the sum of labor costs, material costs, equipment rental costs, and specialist costs as defined herein plus overhead and profit as allowed herein. This limit applies in all cases of claims for extra Work, whether calculating CPs, Change Orders, or Field Directives, or calculating claims of all types, and applies even in the event of fault, negligence, strict liability, or tort

claims of all kinds, including strict liability or negligence. Contractor may recover no other costs arising out of or connected with the performance of extra Work, of any nature. No special, incidental or consequential damages may be claimed or recovered against Agency, its representatives or agents, whether arising from breach of Contract, negligence, or strict liability, unless specifically authorized in the Contract Documents.

B. Markup for Overhead and Profit: (Overhead shall be as defined in Paragraph 1.8 of this Section 01 26 00).
   1. Markup for overhead and profit on labor for extra Work shall not exceed 15 percent.
   2. Markup for overhead and profit on materials for extra Work shall not exceed 15 percent.
   3. Markup for overhead and profit on equipment for extra Work shall not exceed 15 percent.
   4. When extra Work is performed by a first tier Subcontractor, Contractor shall receive a 5 percent markup on Subcontractors' total costs of extra Work. First tier Subcontractor's markup on its Work shall not exceed percentages listed in Paragraphs 1.5B.1, 1.5B.2, and 1.5B.3 immediately above.
   5. When extra Work is performed by a lower tier Subcontractor, Contractor, first tier Subcontractors, and lower tier Subcontractors shall divide (as mutually agreed) a total of 5 percent markup on the lower tier Subcontractors' total costs of extra Work.
   6. Notwithstanding the foregoing, in no case shall the total markup on any extra Work exceed 20 percent of the direct cost, notwithstanding the actual number of Contract tiers.
   7. On proposals covering both increases and decreases in Contract Sum, markup for overhead and profit shall be included on the net amount as determined in this Paragraph 1.5.
   8. The markup shall include profit, small tools, cleanup, engineering, supervision, warranties, cost of preparing the cost proposal, jobsite overhead, and home office overhead.

C. Taxes:
   1. All State sales tax, use tax, and Sonoma County and applicable City sales taxes shall be included.
   2. Federal and Excise tax shall not be included.

D. Owner-Operated Equipment: When owner-operated equipment is used to perform extra Work, Contractor will be paid as follows:
   1. Payment for cost of equipment will be made at no more than rates of such equipment established in Paragraph 1.6C of this Section 01 26 00.
   2. Payment for cost of labor will be made at no more than rates of such labor established by collective bargaining agreements for type of worker and location of Work, whether or not owner-operator is actually covered by such an agreement.
   3. Invoices for owner-operated equipment need not itemize labor and equipment costs, unless specifically requested by Agency. In any event, the total rate for owner-operated equipment shall not exceed the combined rates for labor and equipment listed in Paragraphs 1.5D.1 and 1.5D.2 above.

E. Accord and Satisfaction: Every Change Order and accepted Field Directive shall constitute a full accord and satisfaction, and release, of all Contractor (and if applicable, Subcontractor) claims for additional time, money, or other relief arising

from or relating to the subject matter of the change including, without limitation, impacts of all types, cumulative impacts, inefficiency, overtime, delay, and any other type of claim. Contractor may elect to reserve its rights to dispute claims arising from or relating to the changed Work at the time it signs a Change Order or accepts a Field Directive, but must do so expressly in a writing delivered concurrently with the executed Change Order or approved Field Directive, and Contractor must also submit a Claim for these disputed matters pursuant to Section 00 72 13 (General Conditions) no later than 30 Days after Contractor's first written notice of its intent to reserve its rights pursuant to this Paragraph. Execution of any Change Order or Field Directive shall constitute Contractor's representation of its agreement with this provision.

1.6 COST BREAKDOWN

A. Labor: Contractor will be paid the cost of labor for workers (including forepersons when authorized by Agency) used in actual and direct performance of extra Work. Labor rate, whether employer is a Contractor, Subcontractor or other forces, will be the sum of following:
   1. Actual Wages: Actual wages paid shall include any employer payments to or on behalf of workers for health and welfare, pension, vacation, and similar purposes.
   2. Labor surcharge: Payments imposed by local, county, state, and federal laws and ordinances, and other payments made to, or on behalf of, workers, other than actual wages as defined in Paragraph 1.6A.1 of this Section 01 26 00 immediately above, such as taxes and insurance. Labor surcharge shall not exceed 25% of actual wages as defined in Paragraph 1.6A.1 of this Section 01 26 00 immediately above.

B. Material: Only materials furnished by Contractor and necessarily used in performance of extra Work will be paid for. Cost of such materials will be cost, including sales tax, to purchaser (Contractor, Subcontractor or other forces) from supplier thereof, except as the following are applicable:
   1. If cash or trade discount by actual supplier is offered or available to purchaser, it shall be credited to Agency notwithstanding fact that such discount may not have been taken.
   2. For materials salvaged upon completion of extra Work, salvage value of materials shall be deducted from cost, less discounts, of materials.
   3. If cost of a material is, in opinion of Agency, excessive, then cost of material shall be deemed to be lowest current wholesale price at which material is available in quantities concerned delivered to Site, less any discounts as provided in Paragraph 1.6B.1 of this Section 01 26 00.

C. Equipment: For Contractor- or Subcontractor-owned equipment, payment will be made at rental rates listed for equipment in Caltrans official equipment rental rate schedule which is in effect on the date upon which extra Work is accomplished and which schedule is incorporated herein by reference as though fully set forth herein. For rented equipment from an independent rental company not owned by or affiliated with Contractor, payment will be made based on actual rental invoices. Equipment used on extra Work shall be of proper size and type. If, however, equipment of unwarranted size or type and cost is used, cost of use of equipment shall be calculated at rental rate for equipment of proper size and type, as determined by Agency. Rates paid shall be deemed to cover cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance

of any kind, depreciation, storage, insurance, and all incidentals. Unless otherwise specified, manufacturer's ratings, and manufacturer-approved modifications, shall be used to classify equipment for determination of applicable rates. Individual pieces of equipment or tools not listed in said publication and having a replacement value of $1,000 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor as payment is included in payment for labor. Payment will not be made for time in which equipment is inoperative due to breakdowns.

1. For Contractor- or Subcontractor–owned equipment on Site, payment for equipment use will be for time equipment is in operation on extra Work being performed or on standby as approved by Agency.
2. For rented equipment on Site, the following shall be used in computing rental time of equipment:
   a. When hourly rates are listed, less than 30 minutes of operation shall be considered to be ½ hour of operation.
   b. When daily rates are listed, less than four hours of operation shall be considered to be ½ Day of operation.
3. For equipment that must be brought to Site to be used exclusively on extra Work, cost of transporting equipment to Site and its return to its original location shall be determined as follows:
   a. Agency will pay for costs of loading and unloading equipment.
   b. Cost of transporting equipment in low bed trailers shall not exceed hourly rates charged by established haulers.
   c. Cost of transporting equipment shall not exceed applicable minimum established rates of California Public Utilities Commission.
   d. Agency will not make any payment for transporting and loading and unloading equipment if equipment is used on Work in any other way than upon extra Work.
4. For rented equipment, rental period may begin at the time equipment is unloaded at Site of extra Work and terminate at the end of the performance of the extra Work or Day on which Agency directs Contractor to discontinue use of equipment, whichever first occurs. Excluding Saturdays, Sundays, and Agency's legal holidays, unless equipment is used to perform extra Work on such Days, rental time to be paid per Day shall be four hours for zero hours of operation, six hours for four hours of operation and eight hours for eight hours of operation, time being prorated between these parameters. Hours to be paid for equipment that is operated less than eight hours due to breakdowns, shall not exceed eight less the number of hours equipment is inoperative due to breakdowns.

D. Work Performed by Special Forces or Other Special Services: When Agency and Contractor, by agreement, determine that a special service or item of extra Work cannot be performed by forces of Contractor or those of any Subcontractors, the service or extra Work item may be performed by a specialty contractor. Invoices for the service or item of extra Work on basis of current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with established practice of the special service industry to provide complete itemization. In those instances when Contractor is required to perform extra Work necessitating a fabrication or machining process in a fabrication or machine shop facility away from Site, charges for that portion of extra Work performed in such facility may, by

agreement, be accepted as a specialist billing. Agency must be notified in advance of all off-Site Work. In lieu of overhead and profit provided in Paragraph 1.5B of this Section 01 26 00, up to 15 percent will be added to specialist invoice price, after deduction of any cash or trade discount offered or available, whether or not such discount may have been taken.

1.7 FORCE-ACCOUNT WORK

A. If it is impracticable because of nature of Work, or for any other reason, to fix an increase or decrease in price definitely in advance, the Contractor may be directed to proceed at a not-to-exceed (NTE) maximum price which shall not under any circumstances be exceeded. Subject to such limitation, such extra Work shall be paid for at the actual necessary cost for Force-Account Work or at the negotiated cost, as determined by Agency. The cost for Force-Account Work shall be determined pursuant to Paragraphs 1.5 and 1.6 of this Section 01 26 00.

B. Force-Account Work shall be used when it is not possible or practical to price out the changed Work prior to the start of that Work. In these cases, Force-Account Work will be utilized during the pricing and negotiation phase of the change. Once negotiations have been concluded and a bilateral agreement has been reached, the tracking of the Work under Force-Account is no longer necessary. Force-Account Work shall also be used when negotiations between Agency and Contractor have broken apart and a bilateral agreement on the value of the changed Work cannot be reached. Agency may approve other uses of Force-Account Work. Force-Account Work shall also be used for Allowance Work described in Section 01 20 00 (Price and Payment Procedures), if any.

C. Whenever any Force-Account Work is in progress, definite price for which has not been agreed on in advance, Contractor shall report to Agency each Business Day in writing in detail amount and cost of labor and material used, and any other expense incurred in Force-Account Work on preceding Day, by using the Cost Proposal form attached hereto. No claim for compensation for Force-Account Work will be allowed unless report shall have been made.

D. Whenever Force-Account Work is in progress, definite price for which has not been agreed on in advance, Contractor shall report to Agency when 75 percent of the NTE amount has been expended.

E. Force-Account Work shall be paid as extra Work under this Section 01 26 00. Methods of determining payment for Work and materials provided in this Paragraph 1.7 shall not apply to performance of Work or furnishings of material that, in judgment of Agency, may properly be classified under items for which prices are otherwise established in Contract Documents.

1.8 OVERHEAD DEFINED FOR MODIFICATIONS

A. The following constitutes charges that are deemed included in overhead for all Contract Modifications, including Force-Account Work or Field Directive Work, whether incurred by Contractor, Subcontractors, or suppliers, and Contractor shall not invoice or receive payment for these costs separately:
   1. Drawings: field drawings, Shop Drawings, as-builts, etc., including submissions of drawings
   2. Routine field inspection of Work proposed
   3. General superintendence
   4. General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation as

necessary
5. Computer services
6. Reproduction services
7. Salaries of Project engineer, superintendent, timekeeper, storekeeper, and secretaries
8. Janitorial services
9. Temporary on-Site facilities:
   a. Offices
   b. Telephones, modems, and wireless routers
   c. Plumbing
   d. Electrical: Power, lighting
   e. Platforms
   f. Fencing, etc.
   g. Water
   h. Sanitation
10. Home office expenses
11. Insurance and bond premiums
12. Procurement and use of vehicles and fuel used coincidentally in Work otherwise included in the Contract Documents
13. Surveying
14. Estimating
15. Protection of Work
16. Handling and disposal fees
17. Permit fees
18. Final cleanup
19. Other incidental Work

1.9 EFFECT OF PAYMENT

A. Change Order Compensation is All Inclusive.
   1. Except as provided expressly below regarding changes that extend the Contract Time, payment of calculated cost of extra Work constitutes full and complete compensation for costs or expense arising from the extra Work, and is intended to be all inclusive.
   2. Payment for Direct Cost of Construction is intended to be all-inclusive. Any costs or risks not delineated within cost of labor, equipment or materials herein, shall be deemed to be within the costs and risks encompassed by the applicable Markups and unallowable in any separate amount.
   3. Payment of Markup is intended to be all-inclusive. Contractor waives claims for any further or different payment of cost and risk items delineated herein, other than the allowable percentage Markup on costs set forth in the Contract Documents; such separate, further or different cost or risk items shall be unallowable, waived, and liquidated within the allowable percentage Markup.
   4. Contractor shall recover no other costs or markups on extra Work of any type, nature, or description.

B. Exception for Changes Extending the Contract Time.
   1. Where a change in the Work extends the Contract Time, Contractor may request and recover additional, actual direct costs, provided Contractor can demonstrate such additional costs are (i.) actually incurred performing the Work, (ii.) not compensated by the Markup allowed, (iii) directly result from the

extended Contract Time; and (iv) are otherwise compensable pursuant to Section 00 72 13 (General Conditions). Contractor shall make such request and provide such documentation following all required procedures, documentation and time requirements in the Contract Documents, and subject to all contract limitations of liability. Contractor may not seek or recover such costs using formulas (e.g., Eichleay).

C. Limits of Liability.

1. The foregoing limits of compensation apply in all cases of claims for changed Work, whether calculating CPs, Change Orders, or Field Directives, or calculating claims and/or damages of all types, and applies even in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. Contractor may recover no other costs arising out of or connected with the performance of extra Work, of any nature.
2. Under no circumstances may Contractor claim or recover special, incidental, or consequential damages against Agency, its representatives or agents, whether arising from breach of Contract, negligence, strict liability or other tort or legal theory, unless specifically and expressly authorized in the Contract Documents.
3. No change in Work shall be considered a waiver of any other condition of Contract Documents. No claim shall be made for anticipated profit, for loss of profit, for damages, or for extra payment whatever, except as expressly provided for in Contract Documents.

1.10 MISCELLANEOUS REQUIREMENTS

A. Agency-Furnished Materials.

1. Agency reserves the right to furnish materials as it deems advisable, and Contractor shall have no claims for costs and Markup on such materials.

B. Records and Certification.

1. All charges shall be recorded daily and summarized in a form acceptable to Agency. Contractor or authorized representative shall complete and sign this form each Day. Contractor shall also provide with the form: the names and classifications of workers and hours worked by each; an itemization of all materials used; and a list by size type and identification number of equipment and hours operated.
2. Agency has the right to audit, inspect, or copy all records maintained or in possession of Contractor relating to or pertaining to this Contract, including financial records and Escrow Bid Documents, if any, and any transaction or activity occurring or arising out of, or by virtue of, the Contract. If Contractor is a joint venture, right of Agency shall apply collaterally to same extent to the records of the joint venture, and of each individual joint venture member. This right shall be specifically enforceable, and any failure of Contractor to voluntarily comply shall be deemed an irrevocable waiver and release of all claims then pending that were or could have been subject to Section 00 72 13 (General Conditions).

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION

3.1 ATTACHMENTS

A. Forms:

1. Cost Proposal.

END OF SECTION

[Full Project Name]

CP Number: _____
Date: _____
In Response To _____
RFP #,

To: Sonoma Clean Power Authority
Attention: ___
431 E St, Santa Rosa, CA 95404

Phone: (707) 890-8487

Subject Ref. No: _____
(for Agency's Project Manager use)

From: [Insert Contractor's Name/Address]

_____
_____

This Cost Proposal is in response to the above-referenced _____ [insert RFP, etc. as applicable].

Brief description of change(s): _____

_____

ITEM DESCRIPTION	PRIME CONTR.	SUB 1	SUB 2	SUB 3	SUB 4	TOTAL
MATERIAL						
DIRECT LABOR COST						
EQUIPMENT						
Other (Specify)						
Total Cost						
Subcontractor's Markup for Overhead and Profit 15 percent	X					
Contractor's Markup for Overhead and Profit 15 percent (Labor and Materials)		X	X	X	X	
Contractor's Markup for Overhead and Profit 15 percent (Equipment)		X	X	X	X	
Markup for Overhead and Profit to Contractor for Subcontractor's Work 5 percent	X					
GRAND TOTAL						

(percent of Total Cost above not including any Markup for Overhead and Profit) [Grand Total divided by Total Cost]						
REQUESTED CHANGE IN CONTRACT TIME (DAYS)						

By Contractor: Signature: Date:

01 31 19- PROJECT MEETINGS

PART 1 GENERAL

1.1 PRECONSTRUCTION CONFERENCE

A. Preconstruction Conference. Agency will call for and administer Preconstruction Conference at time and place to be announced (prior to issuing Notice to Proceed). Contractor, all major Subcontractors, and major suppliers shall attend Preconstruction Conference. Agenda may include, but not be limited to, the following items:

1. Insurance.
2. Bonds.
3. Notice to Proceed.
4. Contractor's baseline Progress Schedule.
5. Contractor's Schedule of Values.
6. Contractor's schedule of submittals.
7. Submittal and RFI procedures.
8. SWPPP, if applicable.
9. Permits.
10. Location of the Contractor's on-Site facilities.
11. Security.
12. Housekeeping.
13. Inspection and testing procedures.
14. Utility shutdown procedures.
15. Survey procedures.
16. Safety Program.
17. Name(s) of Agency Representative(s).
18. Jurisdictional agency requirements.
19. Project labor agreement (if applicable).

B. Agency will record and distribute meeting minutes to attendees. Attendees shall have seven Days to submit comments or additions to minutes. Minutes will constitute final memorialization of results of Preconstruction Conference.

1.2 CONSTRUCTION CONFERENCES

A. As needed as determined by Agency, Agency reserves the right to call for meetings with Contractor to address concerns or questions related to Project schedule, administration, or other Project matters.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION - NOT USED

END OF SECTION

01 32 16- CONSTRUCTION PROGRESS SCHEDULE

PART 1 GENERAL

1.1 CONTRACTOR TO SUBMIT PROGRESS SCHEDULES

A. Contractor shall provide its baseline Progress Schedule at the Preconstruction Conference.

1. Baseline Progress Schedule shall show Contractor's construction and procurement activities including, but not limited to, commencement of Contract Time, completion of any applicable Milestones, Substantial Completion, Final Completion, permit-related dates, equipment procurement and delivery (Contractor and Agency supplied), activities with Subcontractors and suppliers, major submittal reviews, commissioning of systems, use of major equipment on Site, and necessary interface with Agency and third parties required to complete the Work in a timely manner and in accordance with Contract Time.

B. Contractor shall submit and obtain favorable review of its baseline Progress Schedule prior to starting any Work at the Site.

C. Use Agency-accepted baseline Progress Schedule for updates.

1.2 SCHEDULE REQUIREMENTS

A. Contractor shall prepare and supply to Agency, with all datapoint entries completed for start dates, necessary Work activities, durations (not longer than 21 Days) and logic ties. The schedule shall indicate the beginning and completion dates of all phases of construction. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the time specified for completion. The overall Project Schedule duration shall be within the Contract time.

B. Contractor's Progress Schedule may be in the form of a critical path method (CPM) (arrow) diagram or, if Agency agrees in writing, a bar chart. The hard copies of the schedule supplied to Agency shall indicate the critical path of the Work (in red) and shall show a logical progression of the Work through completion within Contract Time.

C. Unless Agency agrees in writing otherwise, Progress Schedule shall also show early and late start and finish dates and total available float (float to the successor activity's later start date) for each activity. Agency has no obligation to accept an early completion schedule.

D. The receipt or approval of any schedules by the Engineer or the Agency shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract time period.

1.3 UPDATES

A. Contractor shall submit schedules showing a two week detailed look-ahead at bi-weekly meetings conducted with the Agency. The Engineer may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.

B. Contractor's Progress Schedule shall be updated monthly to reflect actual progress and, after Agency acceptance, submitted with monthly payment applications. Provide Agency with a written narrative with a full description and reasons for each Work activity revised. The schedule shall be subject to Agency's review and acceptance for use in monitoring Contractor's Work and evaluating Applications for Payment.

1.4 RECOVERY SCHEDULE

A. Agency may request a recovery schedule should Contractor fall twenty one (21) or more Days behind any schedule Milestone, which schedule shall show Contractor's plan and resources committed to retain Contract completion dates.

B. The recovery schedule shall show the intended critical path. If Agency requests, Contractor shall also:

1. Secure and demonstrate appropriate Subcontractor and supplier consent to the recovery Schedule.
2. Submit a narrative explaining trade flow and construction flow changes and man-hour loading assumptions for major Work activities and/or Subcontractors.

1.5 TIME IMPACT EVALUATION FOR CHANGE ORDERS, TIME EXTENSIONS, AND DELAYS

A. When Contractor requests a time extension for any reason, Contractor shall submit a time impact evaluation (TIE) that includes both a written narrative and a schedule diagram depicting how the changed Work or other impact affects other schedule activities. The schedule diagram shall show how Contractor proposes to incorporate the changed Work or other impact in the schedule and how it impacts the current Schedule update critical path or otherwise. Contractor is also responsible for requesting time extensions based on the TIE's impact on the critical path. The diagram shall be tied to the main sequence of scheduled activities to enable Agency to evaluate the impact of changed Work to the scheduled critical path. Use Agency's construction management system to submit TIEs.

B. Contractor is responsible for all costs associated with the preparation of TIEs and the process of incorporating TIEs into the current schedule update.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION - NOT USED

END OF SECTION

01 33 00- SUBMITTAL PROCEDURES

PART 1 GENERAL

1.1 SCHEDULE OF SUBMITTALS

A. Within the time period indicated by Agency at the Preconstruction Conference or as otherwise stated in the NTP, Contractor shall prepare for Agency's review and acceptance prior to commencement of Work on the Site, for purposes of Contract administration, a schedule of submittals required to complete the Work, prepared by Contractor and accepted by Agency for Contract administration. Schedule of submittals shall include, for each submittal: the specification or drawing reference requiring the submittal, if applicable; the material, item, or process for which the submittal is required; the submittal number and identifying title of the submittal; the Contractor's anticipated submission date and the approval need date.

B. Contractor shall update monthly the schedule of submittals to reflect actual submission and acceptance dates for submittals. Review by Agency of schedule of submittals does not excuse Contractor of obligation to supply, schedule, and coordinate all submittals required by the Contract Documents.

1.2 PROJECT RECORD DOCUMENTS

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Field Directives, Supplemental Instructions, Force Account orders, and written interpretations and clarifications in good order and annotated to show all as-built changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to Agency for reference. Upon completion of the Work, Contractor shall deliver to Agency, the Project Record Documents, Samples, and Shop Drawings, and as-built drawings (full-size).

B. Throughout Contractor's performance of the Work of the Project, Contractor shall maintain construction records to include: shop drawings; product data/material data sheets; samples; submittals; purchases; materials; equipment; inspections; applicable handbooks; applicable codes and standards; maintenance and operating manuals and instructions; RFI Log; Submittal Log; other related documents and revisions which arise out of the Contract and the Work. Contractor shall maintain records of principal building layout lines, elevations for the bottom of footings, floor levels, and key site elevations (certified by a qualified surveyor or professional engineer). Contractor shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Contract Drawings. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These master record drawings of the as-built conditions, including all revisions made necessary by Addenda and Change

Orders shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date.

C. Contractor shall make all records available to Agency. At the completion of the Project, Contractor shall finalize and deliver all such records to Agency to have a complete set of Project Record Documents. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to Agency, for the accuracy of such information, and for any errors or omissions which may or may not appear in any of the Project Record Documents.

1.3 CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA, AND SUBMITTALS

A. Transmit each item with the Submittal transmittal form (attached to this Section 01 33 00).

B. Within ten Days after Contract Time commences to run, submit complete list of major products proposed for use (attached to this Section 01 33 00, if required), with name of manufacturer, telephone number, trade name, and model number of each product. Tabulate data by Specification Section.

C. Contractor shall review for compliance with Contract Documents, approve and submit to Agency Shop Drawings, Product Data, Samples, and similar submittals required by Contract Documents.

D. Contractor shall schedule and submit concurrently submittals covering component items forming a system or items that are interrelated. Contractor shall include certifications to be submitted with the pertinent drawings at the same time.

E. Contractor shall coordinate scheduling, sequencing, preparing, and processing of all submittals with performance of Work so that work will not be delayed by submittal processing.

F. Submittals shall specifically identify any Work depicted that does not conform to the Contract Documents.

G. Submit one electronic copy of Submittals required by Contract Documents.

H. Submit one hard copy, after Agency's favorable review, of Submittals that require a wet signature.

1.4 AGENCY REVIEW OF SHOP DRAWINGS, PRODUCT DATA, AND SUBMITTALS

A. After review by Agency of each Submittal, material will be returned to Contractor with actions defined as follows:

1. NO EXCEPTIONS TAKEN - Accepted subject to its compatibility with general design concept of the Work, future Submittals and additional partial Submittals for any portions of the Work not covered in this Submittal. Does not constitute acceptance or deletion of specified or required items not shown on the Submittal.
2. MAKE CORRECTIONS NOTED (NO RESUBMISSIONS REQUIRED) - Same as item 1 above, except that minor corrections as noted shall be made by Contractor.
3. REVISE AS NOTED AND RESUBMIT - Rejected because of major inconsistencies or errors that shall be resolved or corrected by Contractor prior to subsequent review by Agency.

4. REJECTED - RESUBMIT - Submitted material does not conform to Drawings and/or Specifications in major respect, i.e.: wrong size, model, capacity, or material.

B. Favorable review will not constitute acceptance by Agency of any responsibility for the accuracy, coordination, or completeness of the Submittals. Accuracy, coordination, and completeness of Submittals shall be sole responsibility of Contractor, including responsibility to back-check comments, corrections, and modifications from Agency's review before fabrication. Contractor, Subcontractors, or suppliers may prepare Submittals, but Contractor shall ascertain that Submittals meet requirements of Contract Documents, while conforming to structural space and access conditions at point of installation. Agency's review will be only to assess if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as indicated by the Contract Documents. Favorable review of Submittal, method of Work, or information regarding materials and equipment Contractor proposes to furnish shall not relieve Contractor of responsibility for errors therein and shall not be regarded as assumption of risks or liability by Agency, or any officer or employee thereof, and Contractor shall have no claim under Contract Documents on account of failure or partial failure or inefficiency or insufficiency of any plan or method of Work or material and equipment so accepted. Favorable review shall be considered to mean merely that Agency has no objection to Contractor using, upon Contractor's own full responsibility, plan or method of Work proposed, or furnishing materials and equipment proposed.

C. Unless otherwise specified, Agency's review will not extend to the means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

D. Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been favorably reviewed by the Agency; otherwise, any such Work is at Contractor's sole risk.

E. Normally, Submittals will be processed and returned to Contractor within 30 Days of receipt.

1.5 PRODUCT DATA

A. Product or Catalog Data:
   1. Manufacturers' standard drawings shall be modified to delete non-applicable data or include applicable data.
   2. Manufacturers' catalog sheets, brochures, diagrams, schedules, charts, illustrations, and other standard descriptive data:
      a. Mark each copy to identify pertinent materials, products, or models.
      b. Show dimensions and clearances required, performance characteristics and capacities, wiring diagrams and controls.
   3. For products specified only by reference standards, give manufacturer, trade name, model or catalog designation, and reference standards.
   4. Safety Data Sheets:
      a. In addition to safety data sheets (SDSs) otherwise required by the Contract Documents, submit SDSs for any products containing a hazardous substance such as paints, solvents, thinners, varnish, lacquer, glues and

adhesives, mastics, sealants, equipment fuel, equipment lubricant, or other materials needed for the Project as required by the individual Specification Sections or as otherwise specified in the Contract Documents.

b. SDSs must be submitted with Product Data Submittal in order for the Submittal to be reviewed.

B. Supplemental Data:

1. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturer's standard data to provide information unique to Project.

1.6 SHOP DRAWINGS

A. Minimum Sheet Size: 8½ inches by 11 inches. All others: multiples of 8½ inches by 11 inches, 34 inches by 44 inches maximum.

B. The electronic copy will be marked with Agency's review comments and returned to Contractor.

C. Mark each copy to identify applicable products, models, options, and other data; supplement manufacturers' standard data to provide information unique to Work.

D. Include manufacturers' installation instructions when required by Specification Section.

E. If Contractor submits Shop Drawings for items that Shop Drawings are not specified, Agency will not be obliged to review them.

F. Contractor is responsible for procuring copies of Shop Drawings for its own use as it may require for the progress of the Work.

G. Shop Drawings shall be drawn to scale and completely dimensioned, showing plan view together with such sectional views as are necessary to clearly show construction detail, materials, and methods.

1.7 SAMPLES

A. Submit full range of manufacturers' standard colors, textures, and patterns for Agency's selection.

B. Submit Samples to illustrate functional and aesthetic characteristics of product, with integral parts and attachment devices. Coordinate Submittal of different categories for interfacing Work.

C. Include identification on each Sample, giving full information.

D. Sizes: Unless otherwise specified, provide the following:

1. Paint Chips: Manufacturers' standard.
2. Flat or Sheet Products: Minimum 6 inches square, maximum 12 inches square.
3. Linear Products: Minimum 6 inches, maximum 12 inches long.
4. Bulk Products: Minimum 1 pint, maximum 1 gallon.

E. Full size Samples may be used in Work upon approval by Agency.

F. Quantity: two.

G. Field Samples and Mock-ups (if applicable):

1. Erect field Samples and mock-ups at Site in accordance with requirements of Specification Sections. If testing is conducted, record and certify results and full Contract compliance.
2. Modify or make additional field Samples and mock-ups as required to provide appearance and finishes approved by Agency.
3. Approved field Samples and mock-ups may be used in Work upon approval by Agency.
4. Construct or prepare as many additional Samples as may be required, as directed by the Agency, until desired textures, finishes, and/or colors are

obtained.

5. Accepted Samples and mock-up shall serve as the standard of quality for the various units of Work.

H. No review of a Sample shall be taken in itself to change or modify the requirements in the Contract Documents.

I. Finishes, materials, and workmanship in the completed Work shall match accepted Samples.

J. Samples will not be returned to Contractor.

1.8 LAYOUT DRAWINGS

A. If requested by Agency, Contractor shall prepare and submit layout drawings of all equipment and piping at not less than ¼ inch scale. The layout drawings shall show the location of all equipment as well as locations of all valves, piping, fittings, and other pertinent items. The layout drawings shall also show beams, ceiling heights, walls, floor-to-floor dimensions, columns, doors, and other major architectural and structural features.

1.9 OTHER SUBMITTALS

A. Design Data:
   1. Indicate that material or product conforms to or exceeds specified requirements.

B. Test Reports:
   1. Indicate that material or product conforms to or exceeds specified requirements.
   2. Reports may be from recent or previous tests on material or product, but shall be acceptable to Agency. Comply with requirements of each individual Specification Section.

C. Certificates:
   1. Indicate that material or product conforms to or exceeds specified requirements.
   2. Submit supporting reference data, affidavits, and certifications as appropriate.
   3. Certificates may be recent or from previous test results on material or product, but shall be acceptable to Agency.

D. Manufacturers' Instructions:
   1. Include manufacturers' printed instructions for delivery, storage, assembly, installation, startup, adjusting, and finishing.
   2. Identify conflicts between manufacturers' instructions and Contract Documents.

E. Special Procedure Submittals:
   1. Submit sufficient detail to clearly indicate compliance with Specification requirements and to clearly describe by what means and methods Contractor intends to execute the subject Work.

F. Installation, Operation, and Maintenance Manual:
   1. Sheet Size: 8½ x 11 inches.
   2. Drawing Size: Reduce drawings or diagrams to an 8½ x 11 inch or 11 x 17 inch size. However, where reduction is not practical to ensure readability, fold larger drawings separately and place in vinyl envelopes bound into the binder. Identify vinyl envelopes with drawing numbers.
   3. Binding: Bind in heavy-duty white vinyl D-ring binders (locking rings), not more than 3" thick, with standard three-hole punch, two inside pockets, and a clear overlay (front pocket). Binder shall be no more than 80 percent full.

4. Multiple Items: Multiple items may be combined into one binder; tab each section with plastic-coated dividers.
5. Volumes: create volumes, numbered sequentially, as appropriate.
6. Page Protectors: Provide plastic sheet lifters prior to first page and following last page.
7. Binder title: Include the following title on front and spine of binder(s):

[FULL PROJECT NAME]

INSTALLATION, OPERATION, AND MAINTENANCE MANUAL, [YEAR]

VOLUME [__(number) of __(total number of volumes)]

8. The Contractor shall submit information for each item in an organized manner. It shall be written so that it can be used and understood by Agency's operation and maintenance staff.

9. Contents:
   a. Introductory Information:
      1) Title page providing the same information as Paragraph 7 above.
      2) Contractor's name, address, email address, website address, and telephone number.
      3) Table of Contents: include a complete table of contents in each volume, if applicable.
   b. The Manual shall be subdivided first by specification section number; second, by equipment item; and last, by "Category." "Categories" shall conform to the following (as applicable):
   c.
      1) Bill of materials: include manufacturer, complete model number, quantity, and equipment location.
      2) Operational information:
         (a) Equipment function, normal operating characteristics, limiting operations.
         (b) Operating instructions for startup, routine and normal operation, regulation and control, shutdown, and emergency conditions.
         (c) A list of recommended spare parts with a price list, predicted life of parts subject to wear, and a list of spare parts provided under this Contract.
         (d) Instrumentation or tag numbers relating the equipment back to the Contract Documents.
      3) Maintenance information:
         (a) Assembly, disassembly, installation, alignment, adjustment, and checking instructions.
         (b) Lubrication and maintenance instructions including specific type and amount of lubricant and recommended lubrication interval.
         (c) Outline, cross-section, and assembly drawings; engineering data; and electrical diagrams, including elementary diagrams, labeled wiring diagrams, connection diagrams, word description of wiring diagrams, and interconnection diagrams.
         (d) Test data and performance curves.
         (e) Parts lists or other documents packed with equipment when

delivered.

(f) Instrumentation or tag numbers relating the equipment back to the Contract Documents.

(g) Include a filled-out Maintenance Summary form (attached to this Section 01 33 00) as the first page(s) of each manual. Complete maintenance requirements in detail. Reference to the manual will not be accepted. For equipment items involving components or sub-units, a Maintenance Summary for each operating component or sub-unit is required.

4) Troubleshooting guide.
5) Delete information that is not pertinent to the Project.
6) All equipment warranties, affidavits, and certifications required by the Technical Specifications.

10. Final Submittal: Upon favorable review of Installation, Operation, and Maintenance Manual(s) by Agency, deliver one electronic copy and one hard copies of the final approved Installation, Operation, and Maintenance Manual(s). Electronic media format copy shall be searchable and include all tables, charts, drawings, codes and all other matters reflected in hard copies.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION

3.1 ATTACHMENTS

A. Forms:

1. Submittal Transmittal.
2. Maintenance Summary.

SUBMITTAL TRANSMITTAL NO. _____

Project Name: [Full Project Name]		Date Received:	
Agency: Sonoma Clean Power Authority Attention: 431 E St, Santa Rosa, CA 95404		Checked By:	
Contractor: Address: Attention:		Log Page:	
		Specification Section Number:	
		1st Submittal ☐	Resubmittal ☐

By Date

Contractor's signature above shall constitute Contractor's representation that it has satisfied its obligations under the Contract Documents with respect to Contractor's review and approval of Submittals

Date Transmitted:	Previous Transmittal Date:

No. Copies	Description	Manufacturer	Dwg. or Data No.	Action Taken*

Remarks:

* The action designated above is in accordance with the following legend:

A – No Exceptions Taken
B – Make Corrections Noted (No Resubmission Required)
C – Revise as Noted and Resubmit
D – Rejected - Resubmit

Comments:

By Date

MAINTENANCE SUMMARY

1. EQUIPMENT ITEM:_____
2. MANUFACTURER:_____
3. MODEL NUMBER:_____
4. SERIAL NO. (IF APPLICABLE):_____
5. NAMEPLATE DATE (HP, VOLTAGE, SPEED, ETC.):_____
6. MANUFACTURER'S LOCAL REPRESENTATIVE
   NAME:_____
   ADDRESS: _____
   TELEPHONE NUMBER: _____ FAX NUMBER: _____ EMAIL: _____
7. MAINTENANCE REQUIREMENTS:

MAINTENANCE OPERATION

List briefly each maintenance operation required and refer to specific information in manufacturer's standard maintenance manual, if applicable. _____

FREQUENCY

List required frequency of each maintenance operation. _____

LUBRICANT (IF APPLICABLE)

Refer by symbol to lubricant list as required. _____

COMMENTS

8. LUBRICANT LIST: REFERENCE SYMBOL

(A-) (B-) (C-) (D-)

List symbols used. List equivalent lubricants as distributed and recommended by manufacturer's representative listed in item 6 above.

9. SPARE PARTS:

Include your recommendations regarding what spare parts, if any, should be kept on the job.

01 35 20- SAFETY REQUIREMENTS

PART 1 GENERAL

1.1 SUBMITTALS

A. Safety Program.

1.2 PROTECTION

A. Continuously maintain protection as necessary to protect the Work, as a whole and in part, and adjacent property and improvements from accidents, injuries or damage. Protective measures will apply continuously and not be limited to normal working hours. Full compensation for the Work involved in the preservation of life, safety and property shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefore.

B. Properly protect the Work and existing facilities:

1. With lights, guard rails, temporary covers and barricades.
2. Enclose excavations with proper barricades.
3. Cover and enclose Work to protect against damage from weather conditions.
4. Brace and secure all parts of the Work against storm and accident.
5. Provide such additional forms of protection that may be necessary under existing circumstances.

C. Provide and maintain in good condition all protective measures required to adequately protect the public from hazards resulting from the Work and to exclude unauthorized persons from the Work. When regulated by Building Code, Cal OSHA, or other authority, such legal requirements for protection shall be considered as minimum requirements. Be responsible for the protection in excess of such minimum requirements as required.

D. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the premises. At the completion of work each day, leave the Project site in a clean, safe condition.

1.3 CONTROL OF SITE

A. Ensure that no alcohol, firearms, weapons, or controlled substance enters or is used at the Site. Immediately remove from the Site and terminate the employment of any employee found in violation of this provision.

1.4 SAFETY PROGRAM

A. Prior to starting any Work at the Site, submit a Safety Program that has been reviewed and approved by an Industrial Hygienist certified by the American Board of Industrial Hygiene or by a Certified Safety Professional. The Safety Program shall include the name, certification number, and certification seal of the Industrial Hygienist or Certified Safety Professional. Comply with the Safety Program and all applicable federal, state, and local regulation codes, rules, law and ordinances.

B. Receipt and/or review of the Safety Program by Agency or Agency's

Representative shall not relieve Contractor of any responsibility for complying with all applicable safety regulations.

C. It is essential that Contractor and each Subcontractor implement an effective and vigorous Safety and Health Program to cover their respective portions of the Work. Subject to Contractor's overall responsibility for Project safety, it shall be understood that the full responsibility for providing a safe place to work with respect to their respective portions of the Work rests with each individual Contractor and Subcontractor.

D. Safety Program components:

1. Injury and Illness Prevention Program (IIPP): Conforming to the General Industrial Safety Orders (CCR Title 8, Division 1, Chapter 4, Subchapter 7, § 3203), and the California Labor Code (§ 6401.7).
2. Site-Specific Safety and Health Plan (SSHP): Describing health and safety procedures that shall be implemented during the Work in order to ensure safety of the public and those performing the Work. Follow the guidelines for a SSHP listed in CCR Title 8, Division 1, Chapter 4, Subchapter 7, section 5192, Item (b)(4).
3. Fire protection plan that has been reviewed and acknowledged by the Rohnert Park Department of Public Safey- Fire Prevention Division. It is recommended that the plan include, but not be limited to, a discussion of the following items:
   a. Equipment spark arresters.
   b. Fire-extinguishing equipment on hand.
   c. Method of operation in case of fire.
   d. Notification to authorities of any fire.
   e. Access available during performance of Work.
   f. Educating workers of fire protection plan.

E. The wearing of hard hats shall be mandatory at all times for personnel on Site. Supply sufficient hard hats to equip properly all employees and visitors.

F. Whenever an exposure exists, appropriate personal protective equipment (PPE) shall be used by all affected personnel. Supply PPE to all personnel under Contractor's direction.

1.5 SAFETY REQUIREMENTS

A. Standards: Maintain the Project in accordance with state and local safety and insurance standards.

B. Hazards Control:

1. Store volatile wastes in covered metal containers and remove from premises daily.
2. Prevent accumulation of wastes that create hazardous conditions.
3. Provide adequate ventilation during use of volatile or noxious substances.

C. Conduct cleaning and disposal operations to comply with local ordinances and anti-pollution laws.

1. Do not burn or bury rubbish or waste material on Site.
2. Do not dispose of volatile wastes such as mineral spirits, oil, or paint thinner in storm or sanitary drains.
3. Do not dispose of wastes into streams or waterways.

D. Provide accident information on the forms provided by Contractor. This information shall be provided on the same Day as the occurrence of said incident.

1.6 SITE SAFETY OFFICER

A. Designate one of Contractor's staff as "Site Safety Officer" whose duties shall include the responsibility for enforcing the environmental protection provisions of the Contract Documents including safety and health, the requirements of the Occupational Safety and Health Act, and other applicable federal, state and local standards. Submit a resume for Site Safety Officer describing experience, education, professional registrations, and experience directly related to similar projects. Submit for review by Agency Contractor's intended traffic flow plan, security plan, program for temporary structures, housecleaning plan, demolition program, and environmental safety and health plan. After review by Agency, the implementation and enforcement of these plans shall become the responsibility of the Site Safety Officer. Any changes in the plans shall be requested by Contractor through the Site Safety Officer for written concurrence by Agency.

B. Agency's risk management representative(s) shall be allowed access to accident/injury and illness reports, inspection reports, scheduling and construction meetings, and safety meetings.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION - NOT USED

END OF SECTION

01 41 00- REGULATORY REQUIREMENTS

PART 1 GENERAL

1.1 SUMMARY

A. Section Includes:

1. Regulatory requirements applicable to Contract Documents.
2. Required provisions under Local Agency Disputes Act.
3. Required references under federal law.

1.2 GENERAL

A. Compliance with Laws:

1. Conform to all applicable codes, laws, ordinances, rules, and regulations, which shall have full force and effect as though printed in full in these Specifications. Codes, laws, ordinances, rules, regulations, and ordinances (Regulatory Requirements) are not furnished to Contractor, because Contractor is assumed to be familiar with these requirements.
2. Any listing of Regulatory Requirements for hazardous waste abatement Work in the Contract Documents is supplied to Contractor as a courtesy and shall not limit Contractor's responsibility for complying with all applicable Regulatory Requirements having application to the Work. Where conflict among the Regulatory Requirements or with these Specifications occurs, the most stringent requirements shall be used.
3. Specific reference in the Specifications to codes and regulations or requirements of regulatory agencies shall mean the latest printed edition of each adopted by the regulatory agency in effect at the time of the opening of Bids, except as may be otherwise specifically stated in the Contract Documents.

B. Precedence:

1. Where specified requirements differ from Regulatory Requirements, the more stringent requirements shall take precedence. Where Drawings or Specifications require or describe products or execution of better quality, higher standard, or greater size than required by Regulatory Requirements, then Drawings and Specifications shall take precedence so long as such increase is legal. Where no requirements are identified on Drawings or in Specifications, comply with all Regulatory Requirements of governing authorities having jurisdiction.
2. Should any conditions develop not covered by the Contract Documents wherein the finished Work will not comply with current codes, a Change Order detailing and specifying the required Work shall be submitted to and approved by Agency before proceeding with the Work.

1.3 REGULATORY REQUIREMENTS

A. Applicable Codes:

1. Codes that apply to Contract Documents include all Codes applicable to construction including, but not limited to, the following:
   a. California Building Code as amended by applicable local ordinances for all

construction Work.

b. California Electrical Code as amended by applicable local ordinances for all construction Work.
c. California Plumbing Code as amended by applicable local ordinances for plumbing, sewage disposal and health requirements.
d. California Mechanical Code as amended by applicable local ordinances for all construction Work.
e. California Fire Code as amended by applicable local ordinances for all construction Work.
f. California Administrative Code Titles 15, 19, and 24 (with California amendments), and Americans with Disabilities Act (ADA) accessibility guidelines, whichever is more stringent.
g. All State laws and City and County Ordinances, rules of the State or City or County Health Departments, rules of the National Board of Fire Underwriters and National Fire Protection Associations, and local power company regulations for mechanical and electrical Work.

B. Applicable Laws, Statutes, Ordinances, Rules, And Regulations:
   1. During prosecution of Work to be done under Contract Documents, Contractor shall comply with applicable laws, ordinances, rules, and regulations including, but not limited to, the following:
      a. Federal:
         1) Americans With Disabilities Act of 1990.
         2) 29 CFR, section 1910.1001, Asbestos.
         3) 40 CFR, Subpart M, National Emission Standards for Asbestos.
         4) Executive Order 11246.
         5) Federal Endangered Species Act.
         6) Clean Water Act.
      b. State of California:
         1) California Code of Regulations, Titles 5, 8, 17, 19, 21, 22, 24 and 25.
         2) California Public Contract Code.
         3) California Health and Safety Code.
         4) California Government Code.
         5) California Labor Code.
         6) California Civil Code.
         7) California Code of Civil Procedure.
         8) CPUC General Order 95, Rules for Overhead Electric Line Construction.
         9) CPUC General Order 128, Rules for Construction of Underground Electric Supply and Communications Systems.
         10) Cal/OSHA.
         11) OSHA: Hazard Communications Standards.
         12) California Endangered Species Act.
         13) Water Code.
         14) Fish and Game Code.
      c. State of California Agencies:
         1) State and Consumer Services Agency.
         2) Office of the State Fire Marshall.
         3) Office of Statewide Health Planning and Development.
         4) Department of Fish and Wildlife.
         5) All Air Quality Management Districts with jurisdiction.

6) All Regional Water Quality Control Boards with jurisdiction.
7) Division of the State Architect (if having jurisdiction).

d. All Local Agencies with jurisdiction (cities, counties, fire departments).

C. Change Orders and Claims:

1. The California Public Contract Code including, but not limited to, section 7105(d)(2), and the California Government Code section 930.2 et seq., apply to all Contract procedures for changes, time extensions, Change Orders (time or compensation), and claims. Federal law (*U.S. v. Holpuch* 326 U.S. 234) shall supplement California law on the enforceability of these requirements.
2. Any change, waiver, or omission to implement contract change order and claim procedures shall have no legal effect unless expressly permitted in a fully executed change order approved by Contractor and Agency and approved as to form by their respective legal counsel.

D. Required Provisions On Contract Claim Resolution:

1. The California Public Contract Code specifies required provisions on resolving contract claims less than $375,000, which are set forth below, and constitute a part of this Contract.
2. For the purposes of this section, “Claim” means a separate demand by Contractor of $375,000 or less for (1) a time extension, (2) payment or money or damages arising from Work done by or on behalf of Contractor arising under the Contract Documents and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (3) an amount the payment of which is disputed by Agency. In order to qualify as a Claim, the written demand must state that it is a Claim submitted under Section 00 72 13 (General Conditions) and be submitted in compliance with all requirements of Section 00 72 13 (General Conditions). Separate Claims which total more than $375,000 do not qualify as a “separate demand of $375,000 or less,” as referenced above, and are not subject to this section.
3. A voucher, invoice, payment application, or other routine or authorized form of request for payment is not a Claim for purposes of this section. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a Claim under this section by submitting a separate claim in compliance with Contract Documents claim submission requirements.
4. Caution. This section does not apply to tort claims and nothing in this section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 and Chapter 2 of Part 3 of Division 3.6 of Title 1 of the California Government Code.
5. Procedure:
   a. The Claim must be in writing, submitted in compliance with all requirements of Section 00 72 13 (General Conditions), including, but not limited to, the time prescribed by and including the documents necessary to substantiate the Claim, pursuant to Section 00 72 13 (General Conditions). Claims must be filed on or before the day of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements for the filing of claims as set forth in Section 00 72 13 (General Conditions), or elsewhere in the Contract Documents.
   b. For Claims of fifty thousand dollars ($50,000) or less, Agency shall respond in writing within 45 Days of receipt of the Claim, or Agency may request in writing within 30 Days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims Agency may

have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section upon mutual agreement of Agency and Claimant. Agency's written response to the Claim, as further documented, shall be submitted to Claimant within 15 Days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.

c. For Claims over Fifty Thousand Dollars ($50,000) and less than or equal to $375,000: Agency shall respond in writing within 60 Days of receipt of the Claim, or Agency may request in writing within 30 Days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims Agency may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section, upon mutual agreement of Agency and Claimant; Agency's written response to the Claim, as further documented, shall be submitted to Claimant within 30 Days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.

d. Meet and Confer: If Claimant disputes Agency's written response, or Agency fails to respond within the time prescribed above, Claimant shall notify Agency, in writing, either within 15 Days of receipt of Agency's response or within 15 Days of Agency's failure to timely respond, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand Agency will schedule a meet and confer conference within 30 Days for settlement of the dispute.

e. Following the meet and confer conference, if the Claim or any portion remains in dispute, Claimant may file a claim as provided in Chapter 1 (commencing with §900) and Chapter 2 (commencing with §910) of Part 3 of Division 3.6 of Title 1 of the California Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time Claimant submits its written claim as set forth herein, until the time that Claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

E. Compliance With Americans With Disabilities Act:

1. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Contractor, must be accessible to the disabled public. Contractor shall provide the services specified in the Contract Documents in a manner that complies with the ADA and any and all other applicable federal, state, and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under the Contract Documents and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents, or assigns shall constitute a material breach of the Contract Documents.

F. Compliance With IRCA:

1. Contractor acknowledges that Contractor, and all Subcontractors hired by Contractor to perform services under this Contract, are aware of and understand the Immigration Reform and Control Act (IRCA). Contractor is and

shall remain in compliance with the IRCA and shall ensure that any Subcontractors hired by Contractor to perform services under this Contract are in compliance with the IRCA. In addition, Contractor agrees to indemnify, defend and hold harmless Agency, its agents, officers, and employees, from any liability, damages, or causes of action arising out of or relating to any claims that Contractor's employees, or employees of any Subcontractor hired by Contractor, are not authorized to work in the United States for Contractor or its Subcontractor and/or any other claims based upon alleged IRCA violations committed by Contractor or Contractor's Subcontractors.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION - NOT USED

END OF SECTION

01 42 00- REFERENCES

PART 1 GENERAL

1.1 SUMMARY

A. Section Includes:

1. Reference standards, abbreviations, symbols, and definitions used in Contract Documents.
2. Full titles are given in this Section 01 42 00 for standards cited in other Sections of Specifications.

1.2 REFERENCE TO STANDARDS AND SPECIFICATIONS OF TECHNICAL SOCIETIES; REPORTING AND RESOLVING DISCREPANCIES

A. References:

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code, or laws or regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated in the Contract Documents.
2. If during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual, or code or of any instruction of any supplier, Contractor shall report it in writing at once to Agency, and Contractor shall not proceed with the Work affected thereby until consent to do so is given by Agency.

B. Precedence:

1. Except as otherwise specifically stated in the Contract Documents or as may be provided by Change Order, Field Directive, or Supplemental Instruction, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
   a. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
   b. The provisions of any such laws or regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such law or regulation).
2. No provision of any such standard, specification, manual, code, or instruction shall be effective to change the duties and responsibilities of Agency, Project Manager, Agency's Representative(s), Consulting Engineer, or Contractor, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents, nor shall it be effective to assign to Agency, Consulting Engineer, or any of their consultants, agents, representatives or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility

inconsistent with the provisions of the Contract Documents.

C. Referenced Grades, Classes, and Types:
   1. Where an alternative or optional grade, class, or type of product or execution is included in a reference but is not identified in Drawings or in Specifications, provide the highest, best, and greatest of the alternatives or options for the intended use and prevailing conditions.

D. Edition Date of References:
   1. When an edition or effective date of a reference is not given, it shall be understood to be the current edition or latest revision published as of the date of opening Bids.
   2. All amendments, changes, errata, and supplements as of the effective date shall be included.

E. ASTM and ANSI References:
   1. Specifications and Standards of the American Society for Testing and Materials (ASTM) and the American National Standards Institute (ANSI) are identified in the Drawings and Specifications by abbreviation and number only and may not be further identified by title, date, revision, or amendment. It is presumed that Contractor is familiar with and has access to these nationally- and industry-recognized specifications and standards.

1.3 ACRONYMS

A. Listed below are various organizations or references which may appear in the Contract Documents, along with their respective acronyms:

1.	AISC	American Institute of Steel Construction
2.	AMPP	Association for Materials Protection and Performance
3.	ANSI	American National Standards Institute
4.	ASCE	American Society of Civil Engineers
5.	ASHRAE	American Society of Heating, Refrigeration, and Air-Conditioning Engineers
6.	ASME	American Society of Mechanical Engineers
7.	ASTM	American Society for Testing and Materials International
8.	AWS	American Welding Society
9.	AWWA	American Water Works Association
10.	Cal/OSHA	California Occupational Safety and Health Administration
11.	Caltrans	State of California, Department of Transportation
12.	Greenbook	Standard Specifications for Public Works Construction
13.	IEEE	Institute of Electrical and Electronic Engineers
14.	NEC	National Electric Code
15.	NEMA	National Electric Manufacturers Association
16.	OSHA	Occupational Safety and Health Administration
17.	PRMD	Permits and Resource Management Department, County of Sonoma
18.	UL	Underwriters' Laboratories, Inc.
19.	USACE	United States Army Corp of Engineers

1.4 DEFINITIONS

A. Meaning of Words and Phrases: Wherever any of the words or phrases defined below, or a pronoun used in place thereof, is used in any part of the Contract Documents, it shall have the meaning here set forth. Where abbreviations and symbols are used, such abbreviations and symbols shall be given their common meaning in the construction industry. In the Contract Documents, the neuter gender includes the feminine and masculine, and the singular number includes the plural. While Agency has made an effort to identify all defined terms with initial caps, the following definitions shall apply regardless of case unless the context otherwise requires:

1. Act of God – Includes an earthquake of magnitude of 3.5 or higher on the Richter scale or a tidal wave.
2. Addenda: Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the bidding requirements or the Contract Documents.
3. Agreement (Section 00 52 13): Agreement is the basic Contract Document that binds the parties to construction Work. Agreement defines relationships and obligations between Agency and Contractor and by reference incorporates Conditions of Contract, Drawings, and Specifications and contains Addenda and all Modifications subsequent to execution of Contract Documents.
4. Alternate: Work added to or deducted from the base Bid, if accepted by Agency.
5. Application for Payment: Written application for monthly or periodic progress or final payment made by Contractor complying with the Contract Documents.
6. Approved Equal: Approved in writing by Agency as being of equivalent quality, utility, and appearance.
7. Asbestos: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by OSHA or Cal/OSHA.
8. Bid: The offer or proposal of the Bidder submitted on the prescribed form(s) setting forth the prices for the Work to be performed.
9. Bidder: One who submits a Bid to Agency.
10. Bidding Documents: All documents comprising the Project Manual (including all documents and Specification Sections listed in Section 00 01 10 [Table of Contents]), including documents supplied for bidding purposes only and Contract Documents.
11. Board: The governing body of Agency.
12. Business Day: Any Day other than Saturday, Sunday, and the following days that have been designated as holidays by Agency. If a holiday falls on a Saturday, the preceding Friday will be the holiday. If a holiday falls on a Sunday, the following Monday will be the holiday.
    a. New Year's Day, January 1;
    b. Martin Luther King Jr.'s Birthday, third Monday in January;
    c. Lincoln's Birthday, February 12;
    d. Presidents' Day, third Monday in February;
    e. Farmworkers Day, March 31;
    f. Memorial Day, last Monday in May;
    g. Juneteenth, June 19;
    h. Independence Day, July 4;
    i. Labor Day, first Monday in September;
    j. California Indian Day; last Friday of September;
    k. Veterans' Day, November 11;

l. Thanksgiving Day, as designated by the President;
m. The Day following Thanksgiving Day;
n. Christmas Day, December 25; and
o. Each day appointed by the Governor of California and formally recognized by the Governing Board as a day of mourning, thanksgiving, or special observance.

13. By Agency: Work that will be performed by Agency or its agents at Agency's expense.
14. By Others: Work that is outside scope of Work to be performed by Contractor under this Contract, which will be performed by Agency, other contractors, or other means.
15. Change Order: A written instrument prepared by Agency and signed by Agency and Contractor, stating their agreement upon all of the following:
    a. a change in the Work;
    b. the amount of the adjustment in the Contract Sum, if any; and
    c. the amount of the adjustment in the Contract Time, if any.
16. Code Inspector: A local or state agency responsible for the enforcement of applicable codes and regulations.
17. Concealed: Work not exposed to view in the finished Work, including within or behind various construction elements.
18. Consulting Engineer: If used elsewhere in the Contract Documents, "Consulting Engineer" shall refer to that person (or that person's firm) identified in Section 00 52 13 (Agreement), if any. When Consulting Engineer is referred to within the Contract Documents, Consulting Engineer shall be construed to include employees of Consulting Engineer and/or employees that Consulting Engineer supervises.
19. Contract Amount: a Change Order price, line item price, Contract Sum, or other price assigned to a scope of work.
20. Contract Conditions or Conditions of the Contract: Consists of two parts: General Conditions and Special Conditions.
    a. General Conditions are general clauses that are common to Agency Contracts, including Section 00 72 13 (General Conditions).
    b. Special Conditions modify or supplement General Conditions to meet specific requirements for Contract Documents.
21. Contract Documents and Contract: Contract Documents and Contract shall consist exclusively of the documents identified as the Contract Documents in Section 00 52 13 (Agreement), plus all changes, Addenda, and modifications thereto.
22. Contract Modification: Either:
    a. a written amendment to Contract signed by Contractor and Agency; or
    b. a Change Order; or
    c. a written directive for a minor change in the Work issued by Agency.
23. Contract Sum: The sum stated in the Agreement and, including authorized adjustments, the total amount payable by Agency to Contractor for performance of the Work and the Contract Documents. The Contract Sum is also sometimes referred to as the Contract Price or the Contract Amount.
24. Contract Time: The number or numbers of Days or the dates stated in the Agreement to achieve Substantial Completion of the Work or designated Milestones; and/or to achieve Final Completion of the Work so that it is ready for final payment and is accepted.

25. Contractor: The person or entity identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number and neutral in gender. The term “Contractor” means the Contractor or its authorized representative.
26. Contractor’s Employees: Persons engaged in execution of Work under Contract as direct employees of Contractor, as Subcontractors, or as employees of Subcontractors.
27. Day: One calendar day of 24 hours measured from midnight to the next midnight, unless the word “day” is specifically modified to the contrary.
28. Defective: An adjective which, when modifying the word “Work,” refers to Work that is unsatisfactory or unsuited for the use intended, faulty, or deficient, that does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents (including, but not limited to, approval of Samples and “or equal” items), or has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by Agency). Unapproved substitutions are Defective. Agency is the judge of whether Work is Defective.
29. Drawings: The graphic and pictorial portions of Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
30. Engineer of Record**:** The individual, partnership, corporation, joint venture, or other legal entity identified in the Special Conditions as the Engineer of Record, or any succeeding entity designated by the Agency. May also be referred to as “Consulting Engineer.”
31. Equal: Equal in opinion of Agency. Burden of proof of equality is responsibility of Contractor.
32. Exposed: Work exposed to view in the finished Work, including behind louvers, grilles, registers, and various other construction elements.
33. Field Directive: A written order prepared and signed by Agency, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.
34. Final Acceptance or Final Completion: Agency’s acceptance of the Work as satisfactorily completed in accordance with Contract Documents. Requirements for Final Acceptance/Final Completion include, but are not limited to:
    a. Final cleaning is completed.
    b. All systems having been tested and accepted as having met requirements of Contract Documents.
    c. All required instructions and training sessions having been given by Contractor.
    d. All Project Record Documents having been submitted by Contractor, reviewed by Agency, and accepted by Agency.
    e. All punch list Work, as directed by Agency, having been completed by Contractor.
    f. Generally all Work, except Contractor maintenance after Final Acceptance/Final Completion, having been completed to satisfaction of Agency.
35. Force Account: Work directed to be performed without prior agreement as to lump sum or unit price cost thereof, and which is to be billed at cost for labor,

materials, equipment, taxes, and other costs, plus a specified percentage for overhead and profit.

36. Furnish: Supply only, do not install.
37. Green Book: The current edition of the Standard Specifications for Public Works Construction published under the oversight of Public Works Standards, Inc. (PWSI).
38. Indicated: Shown or noted on the Drawings.
39. Install: Install or apply only, do not furnish.
40. Latent: Not apparent by reasonable inspection including, but not limited to, the inspections and research required as a condition to Bidding under Section 00 72 13 (General Conditions).
41. Law: Unless otherwise limited, all applicable laws including without limitation all federal, state, and local laws, statutes, standards, rules, regulations, ordinances, and judicial and administrative decisions.
42. Material: This word shall be construed to embrace machinery, manufactured articles, materials of construction (fabricated or otherwise), and any other classes of material to be furnished in connection with Contract, except where a more limited meaning is indicated by context.
43. Milestone: A principal event specified in Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all Work.
44. Modification: Same as Contract Modification.
45. Not in Contract or "NIC:" Work that is outside the scope of Work to be performed by Contractor under Contract Documents.
46. Notice of Completion: Shall have the meaning provided in California Civil Code section 9204, and any successor statute.
47. Off Site: Outside geographical location of the Project.
48. Agency: See Section 00 52 13 (Agreement). May also be referred to as "SCP."
49. Agency-Furnished, Contractor Installed: Items furnished by Agency at its cost for installation by Contractor at its cost under Contract Documents.
50. Agency's Project Manager: If used elsewhere in the Contract Documents, "Agency's Project Manager" shall mean a person representing Agency in the administration of the Contract Documents. May also be referred to as "Engineer." When Agency's Project Manager is referred to within the Contract Documents and no Agency's Project Manager has in fact been designated, then the matter shall be referred to Agency. If Agency's Project Manager is an employee of Agency, Agency's Project Manager is the beneficiary of all Contractor obligations to Agency, including without limitation, all releases and indemnities.
51. Agency's Representative(s): Agency's Representative(s) includes Agency's Project Manager as defined in Section 00 52 13 (Agreement) and includes those individuals defined in Section 01 31 19 (Project Meetings).
52. Partial Utilization: Use by Agency of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all of the Work.
53. PCBs: Polychlorinated biphenyls.
54. Phase: A specified portion of the Work (if any) specifically identified as a Phase in Section 00 52 13 (Agreement) or Section 01 10 00 (Summary).
55. Product Data: That information (brochures, catalog sheets, manufacturer's cut sheets, etc.) supplied by vendors having technical and commercial

characteristics of the supplied equipment or materials and accompanying commercial terms such as warranties, instructions, and manuals.

56. Progress Report: A periodic report submitted by Contractor to Agency with progress payment invoices accompanying progress schedule. See Section 00 72 13 (General Conditions).
57. Project: Total construction of which Work performed under Contract Documents may be whole or part.
58. Project Manual: Project Manual consists of Bidding Requirements, Agreement, Bonds, Certificates, Contract Conditions, Drawings, and Specifications.
59. Project Record Documents: All Project deliverables required under the Contract Documents, including without limitation, as-built drawings and Installation, Operation, and Maintenance Manuals.
60. Provide: Furnish and install.
61. Request for Information ("RFI"): A document prepared by Contractor requesting information regarding the Project or Contract Documents. The RFI system is also a means for Agency to submit Contract Document clarifications or supplements to Contractor.
62. Request for Proposals ("RFP"): A document issued by Agency to Contractor whereby Agency may initiate changes in the Work or Contract Time as provided in Contract Documents. See Section 01 26 00 (Contract Modification Procedures).
63. Request for Substitution ("RFS"): A document prepared by Contractor requesting substitution of materials as permitted and to the extent permitted in Contract Documents. See Section 01 60 00 (Product Requirements).
64. RFI-Reply: A document consisting of Special details, instructions, or information issued by Agency that clarifies or supplements Contract Documents, and with which Contractor shall comply. RFI-Replies do not constitute changes in Contract Sum or Contract Time except as otherwise agreed in writing by Agency. RFI-Replies will be issued through a contract management system.
65. Samples: Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
66. Sanitation Standards: The Sonoma County Water Agency Design and Construction Standards for Sanitation Facilities.
67. Shop Drawings: All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
68. Shown: As indicated on Drawings.
69. Site: The particular geographical location of Work performed pursuant to the Contract Documents.
70. Specifications: The written portion of the Contract Documents consisting of requirements for materials, equipment, construction systems, standards, and workmanship for the Work; performance of related services.
71. Specified: As written in Specifications.
72. Subcontractor: A person or entity that has a direct contract with Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neutral in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

73. Substantial Completion: The Work (or a specified part thereof) has progressed to the point where, in the opinion of Agency as evidenced by a notice or certificate of Substantial Completion, the Work is sufficiently complete, in accordance with Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended, and unperformed or incomplete Work elements are minor in nature; or if no such certificate is issued, when the Work (or specified part) is complete and ready for final payment as evidenced by written recommendation of Agency for final payment. The terms “Substantially Complete” and “Substantially Completed” as applied to all or part of the Work refer to Substantial Completion thereof.
74. Supplemental Instruction: A written directive from Agency to Contractor ordering alterations or Modifications that do not result in change in Contract Sum or Contract Time, and do not substantially change Drawings or Specifications.
75. Testing and Special Inspection Agency: An independent entity engaged to inspect and/or test the workmanship, materials, or manner of construction of buildings or portions of buildings, to determine if such construction complies with the Contract Documents and applicable codes.
76. Underground Facilities: All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities that have been installed underground to furnish any of the following services or materials: Electricity, gases, chemicals, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.
77. Unit Price Work: Shall be the portions of the Work for which a unit price is provided in Section 00 52 13 (Agreement) or Section 01 10 00 (Summary).
78. Work: The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents within the Contract Time. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents including everything shown in the Drawings and set forth in the Specifications. Wherever the word “work” is used, rather than the word “Work,” it shall be understood to have its ordinary and customary meaning.
79. Work Day: See Section 01 10 00 (Summary).

B. Other Defined Terms: The following terms are not necessarily identified with initial caps; however they shall have the meaning set forth below:
    1. Wherever words “as directed,” “as required,” “as permitted,” or words of like effect are used, it shall be understood that direction, requirements, or permission of Agency is intended. Words “sufficient,” “necessary,” “proper,” and the like shall mean sufficient, necessary, or proper in judgment of Agency. Words “approved,” “acceptable,” “satisfactory,” “favorably reviewed,” or words of like import, shall mean approved by, or acceptable to, or satisfactory to, or favorably reviewed by Agency.
    2. Wherever the word “may” or “ought” is used, the action to which it refers is discretionary. Wherever the word “shall” or “will” is used, the action to which it refers is mandatory.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION - NOT USED

END OF SECTION

01 50 00- TEMPORARY FACILITIES AND CONTROLS

PART 1 GENERAL

1.1 SUMMARY

A. Section Includes:

1. Summary
2. Definitions
3. Temporary Electricity
4. Temporary Water
5. Temporary Sanitary Facilities
6. Temporary Barriers and Enclosures
7. Tree and Plant Protection
8. Water Control
9. Noise Control
10. Removal of Temporary Facilities and Controls

1.2 DEFINITIONS

A. Dripline: The area on the ground from the trunk of any tree to the point directly below the outermost tips of the foliage of that tree.

B. Tree damage: Tree damage shall include, but not be limited to, the following: significant injury to the root system or other parts of a tree including burning, application of toxic substances, damaging through contact with equipment or machinery, changing the natural grade within the, compacting the soil within the Dripline, interfering with the normal water requirements of the tree, unauthorized trenching or excavating within the Dripline, or unauthorized removal of more than 1/3 of the live wood, foliage, or roots.

1.3 TEMPORARY ELECTRICITY

A. Contractor shall provide at its own expense all necessary power required for operations under the contract. Contractor may make arrangements with Agency to use the 120-VAC convenience power receptacles at the Project Site, if needed. If voltages other than 120-VAC (or higher loads than the existing circuits can provide) are required, make separate arrangements for such service with Pacific Gas and Electric Company.

1.4 TEMPORARY WATER

A. Provide, maintain, and pay for suitable quality water service required for construction operations.

B. Contractor may use Project Site-provided water for use on this Project. Contact Agency three Days prior to commencement of Work to coordinate using Project Site's water. Agency will provide and install a backflow prevention device and water meter if Agency determines it to be necessary. Should Agency determine, in its sole discretion, that Contractor's use of Project Site's water is excessive, Agency may terminate water delivery. No other Agency-provided water will be made available to Contractor for this Project.

1.5 TEMPORARY SANITARY FACILITIES

A. Provide and maintain required temporary buildings with sanitary toilets for worker use.

B. Comply with minimum requirements of the Health Department or other public agency having jurisdiction; maintain in a sanitary condition at all times.

1.6 TEMPORARY BARRIERS AND ENCLOSURES

A. Provide barriers to prevent unauthorized entry to construction areas, to allow for owner's use of Site, and to protect existing facilities and adjacent properties from damage from construction operations.

B. Provide barricades required by governing authorities to control public access to existing buildings.

C. Protect vehicular traffic, stored materials, Site, and structures from damage.

1.7 TREE AND PLANT PROTECTION

A. Exposure to harmful substances: No storage or dumping of any substances that may cause minimum Tree Damage shall occur at any location on the Site.

B. Where construction is to be performed in the vicinity of trees and shrubbery, the Work shall be carried on in a manner that will cause minimum Tree Damage. Agency will designate trees that are to be removed. Under no circumstances are additional trees to be removed without written permission from Agency. Trees and shrubbery that are not to be removed shall be protected from injury or damage resulting from Contractor's operations.

C. Limb Protection: Use small construction equipment as necessary to minimize removal of or avoid damage to overhanging tree branches. Remove limbs only when directed by Agency. Prune or remove limbs, if authorized, in accordance with ANSI A300. "Heading" of any tree will not be permitted.

D. Damage shall be immediately reported to Agency, who will file a report so that remedies may be determined.

E. For any tree that is removed without Agency's permission or is irreparably damaged, in the opinion of Agency, Agency may elect to pursue any of the following remedies in its sole discretion:

1. Require Contractor to repair by pruning, if possible, or replace trees not intended for removal. Whether or not a tree can be repaired by pruning will be determined by Agency. Subsequent pruning, if appropriate, shall be conducted by a Certified Arborist at Contractor's expense.
2. Require Contractor to remove trees that cannot be repaired by pruning, and replace with new trees of minimum 4 inch caliper.
3. Assess money damages in the amount of $27.00 per square inch of cross section, measured at 4 ½ feet above ground, but not less than $250.00, which damages shall be deducted from monies due or to become due under the Contract. If tree protection is not performed or is not performed adequately, and Agency determines that a tree has been irreparably damaged, Agency may assess the same damages as for unauthorized removal of a tree.

1.8 WATER CONTROL

A. Protect Site from puddling or running water.

B. Provide water barriers as required to protect Site from soil erosion.

1.9 NOISE CONTROL

A. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements.

B. When required by OSHA Standards, construction workers shall be provided with ear protection to operate equipment.

C. Contractor shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

1.10 REMOVAL OF TEMPORARY FACILITIES AND CONTROLS

A. Remove temporary utilities, equipment, facilities, signs, and materials prior to final inspection.

B. Clean and repair damage caused by installation or use of temporary Work.

C. Restore existing facilities used during construction to original condition. Restore permanent facilities used during construction to specified condition.

PART 2 PRODUCTS – NOT USED

PART 3 EXECUTION – NOT USED

END OF SECTION

01 60 00- PRODUCT REQUIREMENTS

PART 1 GENERAL

1.1 SUMMARY

A. Section includes:

1. Products
2. Product Options and Substitutions
3. Product Delivery Requirements
4. Product Storage and Handling

1.2 PRODUCTS

A. Products: New material, machinery, components, equipment, fixtures, and systems forming the Work. Does not include machinery and equipment used for preparation, fabrication, conveying, and erection of the Work. Products may also include existing materials or components required for reuse.

B. Do not use materials and equipment removed from existing premises, except as specifically permitted by the Contract Documents.

C. For similar components, provide interchangeable components of the same manufacturer.

D. Inspection of Materials. Materials furnished by the Contractor which will become a part of the Project shall be subject to inspection at any one or more of the following locations, as determined by Agency's Representative: at the place of production or manufacture, at the shipping point, or at the site of the Work. To allow sufficient time to provide for inspection, the Contractor shall submit to Agency's Representative, at the time of issuance, copies of purchase orders or other written instrument confirming procurement of the materials, including drawings and other pertinent information, covering materials on which inspection will be made.

E. No later than fourteen (14) Days prior to manufacture of material, Contractor shall inform Agency's Representative, in writing, the date the material is to be manufactured.

F. Contractors Obligations. The inspection of materials at any of the locations specified above or the waiving of the inspection thereof shall not impact whether the materials and equipment conform to the Contract Documents. Contractor will not be relieved from furnishing materials meeting the requirements of the Contract Documents due to Agency's inspection or lack of inspection of the equipment or materials. Acceptance of any materials will be made only after materials are installed in the Project.

G. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to accommodate Agency's testing efforts, including any travel required by Contractor's forces, shall be included in Contractor's bid and distributed in the Schedule of Pay Items related to the materials requiring testing. No additional compensation shall be made to the Contractor for this Work.

1.3 PRODUCT OPTIONS AND SUBSTITUTIONS

A. Summary:

1. For selecting products and requesting substitutions of unlisted materials in lieu of materials named in the Specifications or approved for use in Addenda that were not already the subject of an approved Section 00 26 00 (Substitution Request Form [During Procurement]) , the following provisions apply.

B. Contractor's Options:

1. For products specified only by reference standard: Select any product meeting that standard.
2. For products specified by naming one or more products or manufacturers:
   a. Select products of any named manufacturer meeting Specifications.
   b. If product becomes unavailable due to no fault of Contractor or if the product specified no longer complies with local regulations or laws, submit Request for Substitution (RFS), including all information contained in this Section 01 60 00 and a fully executed Section 00 63 25 (Substitution Request Form [During Construction]).

C. Substitutions:

1. Except as provided in Section 00 11 16 (Notice Inviting Bids) with respect to "or Approved Equal" items, Agency will consider Contractor's substitution requests only when product becomes unavailable due to no fault of Contractor or if the product specified no longer complies with local regulations or laws. Requests for review of proposed substitute items will not be accepted from anyone other than Contractor. The RFS shall state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice Contractor's achievement of Substantial Completion on time, and whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Agency for work on the Project).
2. Submit separate RFS for each product and support each request with:
   a. Product identification.
   b. Manufacturer's literature.
   c. Samples, as applicable.
   d. Name and address of similar projects on which product has been used, and dates of installation.
   e. Name, address, and telephone number of manufacturer's representative or sales engineer.
   f. For construction methods: Detailed description of proposed method; drawings illustrating methods.
3. Where required, itemize a comparison of the proposed substitution with product specified and list significant variations including, but not limited to, dimensions, weights, service requirements, and functional differences. If variation from product specified is not pointed out in submittal, variation will be rejected even though submittal was favorably reviewed. Identify all variations of the proposed substitute from that specified in the RFS and indicate available maintenance, repair, and replacement service.
4. State whether the substitute will require a change in any of the Contract Documents (or provisions of any other direct contract with Agency for work on the Project) to adapt the design of the proposed substitute, and whether or not incorporation or use of the substitute in connection with Work is subject to

payment of any license fee or royalty. Submit data relating to changes in construction schedule.

5. Include accurate cost data comparing proposed substitution with product and amount of net change in Contract Sum including, but not limited to, an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by Agency in evaluating the proposed substitute. Agency may require Contractor to furnish additional data about the proposed substitute.
6. Agency will not consider substitutions for acceptance (or, in Agency's sole discretion, Agency may make Contractor solely responsible for all resulting costs, expenses, and other consequences) when a substitution:
   a. Results in delay meeting construction Milestones or completion dates.
   b. Is indicated or implied on submittals without formal request from Contractor.
   c. Is requested directly by Subcontractor or supplier.
   d. Acceptance will require substantial revision of Contract Documents.
   e. Disrupts Contractor's job rhythm or ability to perform efficiently.
7. Substitute products shall not be ordered without written acceptance of Agency.
8. Agency will determine acceptability of proposed substitutions and reserve right to reject proposals due to insufficient information.
9. Accepted substitutions will be evidenced by an Agency-approved substitution request, Section 00 63 25 (Substitution Request Form [During Construction]), or a Change Order. All Contract Document requirements apply to Work involving substitutions.

D. Contractor's Representation and Warranty:
   1. Contractor's RFS constitutes a representation and warranty that Contractor:
      a. Has investigated proposed product and determined that it meets or exceeds, in all respects, specified product.
      b. Will provide the same warranty for substitution as for specified product.
      c. Will coordinate installation and make other changes that may be required for Work to be complete in all respects.
      d. Waives claims for additional costs which may subsequently become apparent.
      e. Will compensate Agency for additional redesign costs associated with substitution.
      f. Will be responsible for Construction Schedule slippage due to substitution.
      g. Will be responsible for Construction Schedule delay due to late ordering of available specified products caused by requests for substitution that are subsequently rejected by Agency.
      h. Will compensate Agency for all costs; including extra costs of performing Work under Contract Documents, extra cost to other contractors, and any claims brought against Agency, caused by late requests for substitutions or late ordering of products.

E. Agency's Duties:
   1. Review Contractor's RFS with reasonable promptness.
   2. Notify Contractor in writing of decision to accept or reject requested substitution.

F. Administrative Requirements:
   1. Specified products, materials, or systems for Project may include engineering or on-file standards required by the regulatory agency. Contractor's

substitution of products, materials or systems may require additional engineering, testing, reviews, approvals, assurances, or other information for compliance with regulatory agency requirements or both. Provide all agency approvals or other additional information required and pay additional costs for required Agency services made necessary by the substitution at no increase in Contract Sum or Contract Time, and as a part of substitution proposal.

1.4 PRODUCT DELIVERY REQUIREMENTS

A. Deliver products in accordance with manufacturer's instructions.

B. Promptly inspect shipments to assure that products comply with requirements, quantities are correct, and products are undamaged.

1.5 PRODUCT STORAGE AND HANDLING

A. Store products only in staging area per provisions of Section 01 10 00 (Summary).

B. Handle, store, and protect products in accordance with manufacturer's instructions, with seals and labels intact and legible. Store sensitive products in weather-tight, climate-controlled enclosures.

C. For exterior storage of fabricated products, place on appropriate supports, above ground.

D. Cover products subject to deterioration with impervious sheet covering. Provide ventilation to avoid condensation.

E. Store loose granular materials on solid flat surfaces in a well-drained area.

F. Provide equipment and personnel to store products by methods to prevent soiling, disfigurement, or damage.

G. Arrange storage of products to permit access for inspection. Periodically inspect to assure products are undamaged and are maintained under specified conditions.

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION - NOT USED

END OF SECTION

01 74 00- CLEANING

PART 1 GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Progress Cleaning
   2. Final Cleaning

1.2 PROGRESS CLEANING

A. Perform periodic cleaning to ensure that Work site is maintained free from accumulation of waste materials, dust, mud, and debris related to the Work.

B. Where required, wet down surfaces to lay dust and prevent the blowing of dust to nearby residences or public properties.

C. Keep paved roads clean and free of dust, mud, and debris resulting from Contractor's operations. Daily cleanup throughout the job will be required as Contractor progresses with its Work, but extra attention to cleanup shall be made prior to weekends and holidays. Without limiting the foregoing, remove trench spoil along traveled ways daily; grade and vacuum broom surfaces initially where applicable and later water flush with high-pressure sprays, being careful to avoid downstream contamination.

D. Dust, mud, spoils, and construction debris shall be removed daily (fills or spoils placed on private property at private property owner's written request excepted).

E. Disposal of Materials:
   1. Waste materials, debris, rubbish, spoils, and other off-hauled materials shall be disposed of at sites to be chosen by Contractor in accordance with applicable local, state, and federal regulations.

F. If Contractor does not properly clean the Site, in the opinion of Agency, then Agency shall have the option of using outside resources to perform the cleanup and such cost will be withheld from the Contract Sum.

1.3 FINAL CLEANING

A. Execute final cleaning prior to final inspection, using only properly skilled workers.

B. Remove grease, dust, dirt, stains, labels, fingerprints, and other foreign materials from exposed interior and exterior finished surfaces.

C. Repair, patch, and touch up marred surfaces to match adjacent finishes.

D. Clean interior and exterior surfaces exposed to view: remove temporary labels, stains and foreign substances, polish transparent and glossy surfaces, vacuum carpeted and soft surfaces.

E. Clean equipment and fixtures to a sanitary condition, clean or replace filters of mechanical equipment operated during construction, clean ducts, blowers and coils of units operated without filters during construction.

F. Clean Site.

G. Mechanically sweep paved areas.

H. Remove waste and surplus materials, rubbish, and construction facilities from Site.

PART 2 PRODUCTS – NOT USED

PART 3 EXECUTION – NOT USED

END OF SECTION

01 75 00- STARTING AND ADJUSTING

PART 1 GENERAL - NOT USED

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION

3.1 CHECKOUT PROCEDURES

A. Upon completion of installation, conduct an initial inspection and checkout of all mechanical and electrical equipment and devices.
   1. Check incoming electric power for voltage amplitude and voltage balance.
   2. Check all safety guards to insure they are in place.

B. Conduct field tests including visual and mechanical inspection of the following:
   1. Proper grounding.
   2. Electrical noise in excess of specified levels.
   3. Operation of meters and instruments.
   4. Compare nameplate rating and connection with one-line diagram.
   5. Verify alarms for failure.

END OF SECTION

01 77 00- CLOSEOUT PROCEDURES

PART 1 GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Requirements and procedures for:
      a. Project cleaning.
      b. Testing of equipment and systems.
      c. Substantial Completion.
      d. Final Completion.
      e. Close Out.
      f. Warranties.

1.2 SUBSTANTIAL COMPLETION

A. Removal of Temporary Construction Facilities and Project Cleaning:
   1. Prior to Substantial Completion inspection: remove temporary materials, equipment, services, and construction; clean all areas affected by the Work; clean and repair damage caused by installation or use of temporary facilities; restore permanent facilities used during construction to specified condition.

B. Equipment and Systems:
   1. Prior to Substantial Completion, Contractor shall start up, run for periods prescribed by Agency, operate, adjust and balance all manufactured equipment and Project systems including, but not limited to, mechanical, electrical, safety, fire, and controls.
   2. Demonstrate that such equipment and systems conform to Contract standards and manufacturer's guarantees. Where applicable, use testing protocols specified, and if the Contract is silent, then consistent with manufacturer's recommendations and industry standards.

C. Procedure for Substantial Completion:
   1. When Contractor considers Work or designated portion of the Work as Substantially Complete, and Installation, Operation, and Maintenance Manuals have been assembled and submitted to Agency, submit written notice to Agency, with list of items remaining to be completed or corrected and explanation of why such items do not prevent Agency's beneficial use and occupancy of the Work for its intended purposes. Within reasonable time, Agency will inspect to determine status of completion.
   2. Should Agency determine that Work is not Substantially Complete, Agency will promptly notify Contractor in writing, listing all defects and omissions. Contractor shall remedy deficiencies and send a second written notice of Substantial Completion. Agency will reinspect the Work. If deficiencies previously noted are not corrected on reinspection, then Contractor shall pay the cost of the reinspection.
   3. When Agency concurs that Work is Substantially Complete, Agency will issue a written notice or certificate of Substantial Completion, accompanied by Contractor's list of items to be completed or corrected as verified by Agency.

4. Before a notice or certificate of Substantial Completion will be issued:
   a. Start-up manufactured units, equipment, and systems that require startup.
   b. Submit warranty forms to Agency for approval prior to execution. Forms shall not detract from or confuse requirements or interpretations of Contract Documents. Warranty shall be countersigned by manufacturers. Where specified, warranty shall be countersigned by Subcontractors and installers.
5. A punch list examination will be performed upon Substantial Completion. One follow-up review of punch list items for each discipline will be provided. If further Site visits are required to review punch list items due to incompleteness of the Work by Contractor, Contractor shall reimburse Agency for costs associated with these visits.

1.3 FINAL COMPLETION

A. Requirements:
   1. Final Completion occurs when Work meets requirements for Agency's Final Acceptance.

B. Procedure:
   1. When Contractor considers Work is Finally Complete, submit written certification that:
      a. Contractor has inspected Work for compliance with Contract Documents, and all requirements for Final Acceptance have been met.
      b. Except for Contractor maintenance after Final Acceptance, Work has been completed in accordance with Contract Documents and deficiencies listed with Certificate of Substantial Completion have been corrected. Equipment and systems have been tested in the presence of Agency and are operative.
      c. Project Record Documents are completed and turned over to Agency and Work is complete and ready for final inspection. Project Record Documents shall include, at a minimum, a clean full-size set of Contract Drawings with record marks, dated, and "wet signed" by Contractor.
         1) Record marks shall use the following coloring scheme:
            (a) Additions: red.
            (b) Deletions: green.
            (c) Comments: blue.
            (d) Dimensions: black.
         2) Submit a full-sized PDF (scan) to Agency. Agency shall be the sole judge of the acceptability of the Project Record Documents.
   2. In addition to submittals required by Contract Documents, provide submittals required by governing authorities and submit final statement of accounting giving total adjusted Contract Sum, previous payments, and sum remaining due.
   3. Should Agency determine that Work is incomplete or Defective, Agency promptly will so notify Contractor, in writing, listing the incomplete or Defective items. Contractor shall promptly remedy the deficiencies and notify Agency when it is ready for reinspection.

C. Final Adjustments of Accounts:
   1. Submit a final statement of accounting to Agency, showing all adjustments to the Contract Sum and complete and execute Section 00 65 23 (Agreement and

Release of Any and All Claims).

2. If so required, Agency shall prepare a final Change Order for submittal to Contractor, showing adjustments to the Contract Sum that were not previously made into a Contract Modification.

D. Warranties:

1. Execute Contractor's Submittals and assemble warranty documents, executed or supplied by Subcontractors, suppliers, and manufacturers. Provide table of contents and assemble in 8½ inches by 11 inches three-ring binder with durable plastic cover, appropriately separated and organized. Assemble in Specification Section order.
2. Submit material prior to final Application for Payment. For equipment put into use with Agency's permission during construction, submit within 14 Days after first operation. For items of Work delayed materially beyond Date of Substantial Completion, provide updated Submittal within 14 Days after acceptance, listing date of acceptance as start of warranty period.
3. Rejection of Warranties: Agency reserves right to reject unsolicited and coincidental product warranties that detract from or confuse requirements or interpretations of Contract Documents.
4. Term of Warranties: For materials, equipment, systems, and workmanship, warranty period shall be one year minimum from date of Final Completion of entire Work except where:
   a. Detailed Specifications for certain materials, equipment, or systems require longer warranty periods.
   b. Materials, equipment, or systems are put into beneficial use of Agency prior to Final Completion as agreed to in writing by Agency.

E. Warranty of Title:

1. No material, supplies, or equipment for Work under Contract shall be purchased subject to any chattel mortgage, security agreement, or under a conditional sale or other agreement by which an interest therein or any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver premises, together with improvements and appurtenances constructed or placed thereon by Contractor, to Agency free from any claim, liens, security interest, or charges, and further agrees that neither Contractor nor any person, firm, or corporation furnishing any materials or labor for any Work covered by Contract shall have right to lien upon premises or improvement or appurtenances thereon. Nothing contained in this paragraph, however, shall defeat or impair right of persons furnishing materials or labor under bond given by Contractor for their protection or any rights under law permitting persons to look to funds due Contractor in hands of Agency.

F. Turn-In. Contract Documents will not be closed out and final payment will not be made until all keys issued to Contractor during prosecution of Work and letters from property owners, pursuant to Contract Documents, are turned in to Agency.

G. Release of Claims. Contract Documents will not be closed out and final payment will not be due or made until Section 00 65 23 (Agreement and Release of Any and All Claims) is completed and executed by Contractor and Agency.

H. Fire Inspection Coordination. Coordinate fire inspection and secure sufficient notice to Agency to permit convenient scheduling (if applicable).

I. Building Inspection Coordination. Coordinate with Agency a final inspection for the

purpose of obtaining an occupancy certificate (if applicable).

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION - NOT USED

END OF SECTION