

STANDARD SPECIFICATIONS

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

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DEPARTMENT OF TRANSPORTATION



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STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
STANDARD SPECIFICATIONS

GENERAL PROVISIONS

SECTION 1: DEFINITIONS AND TERMS

1-1.01 GENERAL

- Unless the context otherwise requires, wherever in the specifications and other contract documents the following abbreviations and terms, or pronouns in place of them, are used, the intent and meaning shall be interpreted as provided in this Section One.
- Working titles having a masculine gender, such as "workman" and "journeyman" and the pronoun "he", are utilized in the specifications for the sake of brevity, and are intended to refer to persons of either gender.

1-1.02 ABBREVIATIONS

AAN	American Association of Nurserymen.
AASHTO	American Association of State Highway and Transportation Officials.
AISC	American Institute of Steel Construction.
AISI	American Iron and Steel Institute.
ANSI	American National Standards Institute.
APHA	American Public Health Association.
API	American Petroleum Institute.
AREA	American Railway Engineering Association.
ASME	American Society of Mechanical Engineers.
ASTM	American Society for Testing and Materials.
AWG	American Wire Gage.
AWPA	American Wood-Preservers' Association.
AWS	American Welding Society.
AWWA	American Water Works Association.
EIA	Electronic Industries Association.
IEEE	Institute of Electrical and Electronics Engineers.
NEMA	National Electrical Manufacturers Association.
UL	Underwriters' Laboratories Inc.

UNITS OF MEASUREMENT

- Some of the symbols for units of measurement used in the specifications and in the Engineer's Estimate are defined as follows. The symbols for other units of measurement used in the specifications are as defined in ASTM Designation: E-380, or in the various specifications and test referenced in the specifications.

SECTION 1**DEFINITIONS AND TERMS**

Symbols as used in the Specifications	Symbols as used in the Engineer's Estimate	Definitions
A	—	amperes
—	EA	each
g	G	gram
kg	KG	kilogram
ha	HA	hectare (10 000 m ²)
h	H	hour
J	—	joule
—	LNKM	lane kilometer
L	L	liter
—	LS	lump sum
m	M	meter
km	KM	kilometer
mm	MM	millimeter
µm	—	micrometer
nm	—	nanometer
m ²	M2	square meter
m ³	M3	cubic meter
N	—	newton
N·m	—	newton meter
Ω	—	ohm
Pa	—	pascal
kPa	—	kilopascal
MPa	—	megapascal
s	—	second
—	STA	station (100 m)
—	TAB	tablet
tonne	TONN	metric ton (1000 kg)
W	—	watt
V	—	volt

1-1.03 ACCEPTANCE

• The formal written acceptance by the Engineer of an entire project which has been completed in all respects in accordance with the SIR/SOW, Work Plan, Work Order, project drawings, specifications and any modifications thereof previously approved.

1-1.04 (BLANK)**1-1.05 BASE**

• A layer of specified material of planned thickness placed immediately below the pavement or surfacing.

1-1.06 BASEMENT MATERIAL

• The material in excavation or embankments underlying the lowest layer of subbase, base, pavement, surfacing or other specified layer which is to be placed.

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1-1.07 BIDDER

- Any individual, firm, partnership, corporation, or combination thereof, submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

1-1.08 BRIDGE

- Any structure, with a bridge number, which carries a utility facility, or railroad, highway, pedestrian or other traffic, over a water course or over or under or around any obstruction.

1-1.085 CONDUIT

- A pipe or tube in which smaller pipes, tubes or electrical conductors are inserted or are to be inserted.

1-1.09 CONTRACT

- The written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment in the construction of the work. The contract shall include the notice to contractors, proposal, plans, specifications, special provisions and contract bonds; also any and all supplemental agreements amending or extending the work contemplated and which may be required to complete the work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations, amendments or extensions to the contract and include contract change orders. The SIR/SOW, Work Plans, Work Orders, project drawings and specifications, and modifications thereto shall be considered part of the Contract. Contract is also referred to as “Agreement(s).”

1-1.10 CONTRACTOR

- The person or persons, firm, partnership, corporation, or combination thereof, private or municipal, who have entered into a contract with the Department of Transportation, as party or parties of the second part or their legal representatives. Contractor is the recipient of funds pursuant to this Agreement.

1-1.11 CULVERT

- Any structure, other than a bridge, which provides an opening under a roadway for drainage or other purposes.

1-1.12 DAYS

- Unless otherwise designated, days as used in the specifications will be understood to mean calendar days.

1-1.13 DEPARTMENT

- The California Integrated Waste Management Board (CIWMB).

1-1.14 DETOUR

- A temporary route for traffic around a closed portion of a road.

1-1.15 DIRECTOR

- The executive officer of the Department of Transportation, as created by law.

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DEFINITIONS AND TERMS

1-1.16 DIVIDED HIGHWAY

- A highway with separated traveled ways for traffic, generally in opposite directions.

1-1.17 (BLANK)

1-1.18 ENGINEER

- SWCP Staff person designated as Project Engineer for a specific site, acting directly or through properly designated Consultant, such Consultant acting within the scope of the particular duties delegated to them.

1-1.19 ENGINEER'S ESTIMATE

- The list of estimated quantities of work to be performed as contained in the "Proposal Form."

1-1.20 FEDERAL AGENCIES

- Whenever, in the specifications, reference is made to any Federal agency or officer, the reference shall be deemed made to any agency or officer succeeding in accordance with law to the powers, duties, jurisdiction and authority of the agency or officer mentioned.

1-1.21 FIXED COSTS

- Any necessary labor, material and equipment costs directly expended on the item or items under consideration which remain constant regardless of the quantity of the work done.

1-1.22 FRONTAGE ROAD

- A local street or road auxiliary to and located generally on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

1-1.23 GRADING PLANE

- The surface of the basement material upon which the lowest layer of subbase, base, pavement, surfacing or other specified layer is placed.

1-1.24 HIGHWAY

- The whole right of way or area which is reserved for and secured for use in constructing the roadway and its appurtenances.

1-1.25 LABORATORY

- The laboratory/laboratories used by the California Integrated Waste Management Board for determination of material characteristics.

1-1.255 LEGAL HOLIDAYS

- Those days designated as State holidays in the Government Code.

1-1.26 LIQUIDATED DAMAGES

- The amount prescribed in the specifications, pursuant to the authority of Public Contract Code Section 10226, to be paid to the State or to be deducted from any payments due or to become due the Contractor for each day's delay in completing the whole or any specified portion of the work beyond the time allowed in the specifications.

1-1.265 MANUAL OF TRAFFIC CONTROLS

- The Department of Transportation publication entitled "MANUAL OF TRAFFIC CONTROLS for Construction and Maintenance Work Zones."

1-1.27 MEDIAN

- That portion of a divided highway separating the traveled ways for traffic in opposite directions including inside shoulders.

1-1.275 OFFICE OF STRUCTURE DESIGN

- The Office of Structure Design of the Department of Transportation. When the specifications require working drawings to be submitted to the Office of Structure Design, the drawings shall be submitted to: Office of Structure Design, Documents Unit, Mail Station 9, 1801 30th Street, Sacramento, CA 95816, Telephone (916) 227-8252.

1-1.28 PAVEMENT

- The uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.

1-1.29 PLANS

- The official project plans and Standard Plans, profiles, typical cross sections, working drawings and supplemental drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions and details of the work to be performed. These documents are to be considered as a part of the plans.
- In the above definition, the following terms are defined as follows:

Standard Plans

- The Standard Plans of the Department of Transportation.

Project Plans

- The project plans are specific details and dimensions peculiar to the work and are supplemented by the Standard Plans insofar as the same may apply.

1-1.30 PROCESSING

- Any operation or operations of whatever nature and extent required to produce a specified material.

1-1.31 PROPOSAL

- The offer of the bidder for the work when made out and submitted on the prescribed proposal form, properly signed and guaranteed.

1-1.32 PROPOSAL FORM

- The approved form upon which the Department of Transportation requires formal bids be prepared and submitted for the work.

1-1.33 PROPOSAL GUARANTY

- The cash, cashier's check, certified check or bidder's bond accompanying the proposal submitted by the bidder, as a guaranty that the bidder will enter into a contract with the Department of Transportation for the performance of the work if the contract is awarded to the bidder.

1-1.34 ROADBED

• The roadbed is that area between the intersection of the upper surface of the roadway and the side slopes or curb lines. The roadbed rises in elevation as each increment or layer of subbase, base, surfacing or pavement is placed. Where the medians are so wide as to include areas of undisturbed land, a divided highway is considered as including 2 separate roadbeds.

1-1.35 ROADWAY

• That portion of the highway included between the outside lines of sidewalks, or curbs, slopes, ditches, channels, waterways, and including all the appertaining structures, and other features necessary to proper drainage and protection.

1-1.36 SHOULDERS

• The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

1-1.37 SPECIAL PROVISIONS

• The special provisions are specific clauses setting forth conditions or requirements peculiar to the work and supplementary to these Standard Specifications. The Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates is to be considered as a part of the special provisions.

1-1.38 SPECIFICATIONS

• The directions, provisions and requirements contained in these Standard Specifications as supplemented by the special provisions. Whenever the term "these specifications" or "these Standard Specifications" is used in this book, it means the provisions set forth in this book. Specifications shall also include those prepared by the California Integrated Waste Management Board for site remediation and are included as part of the Work Order.

1-1.39 STATE

• The State of California.

1-1.40 STATE CONTRACT ACT

• Chapter 1, Part 2, Division 2 of the Public Contract Code. The provisions of this act and other applicable laws form and constitute a part of the provisions of this contract to the same extent as if set forth herein in full.

1-1.41 SUBBASE

• A layer of specified material of planned thickness between a base and the basement material.

1-1.42 SUBGRADE

• That portion of the roadbed on which pavement, surfacing, base, subbase, or a layer of any other material is placed.

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1-1.43 SUBSTRUCTURE

• All that part of the bridge below the bridge seats, tops of piers, haunches of rigid frames, or below the spring lines of arches. Backwalls and parapets of abutments and wingwalls of bridges shall be considered as parts of the substructure.

1-1.44 SUPERSTRUCTURE

• All that part of the bridge except the bridge substructure.

1-1.45 SURFACING

• The uppermost layer of material placed on the traveled way, or shoulders. This term is used interchangeably with pavement.

1-1.46 TRAFFIC LANE

• That portion of a traveled way for the movement of a single line of vehicles.

1-1.47 TRAVELED WAY

• That portion of the roadway for the movement of vehicles, exclusive of shoulders.

1-1.48 WORK

• All the work specified, indicated, shown or contemplated in the contract to construct the improvement, including all alterations, amendments or extensions thereto made by contract change order or other written orders of the Engineer.

1-1.49 BOARD

The California Integrated Waste Management Board.

1-1.50 FINAL COMPLETION

The date when Board Staff determines that the work for each site cleanup is fully completed in accordance with the requirements of the Work Order.

1-1.51 SITE INVESTIGATION REPORT/SCOPE OF WORK (SIR/SOW)

Site details, history, background, sampling report, and the anticipated scope of work for a proposed site cleanup. The SIR/SOW provides the Contractor with site location, a description or work to be performed, and the site investigation report. The SIR/SOW may include environmental sampling, project drawings and specifications for remediation of a site.

1-1.52 SWCP STAFF

Staff of the California Integrated Waste Management Board involved in the implementation of the Solid Waste Cleanup Program or representatives of Consultants to the California Integrated Waste Management Board as designated in the Work Orders.

1-1.53 WORK PLAN

A plan developed by the Contractor outlining the estimated cost, schedule, and construction procedures required for implementing the Work Order and supporting documents.

1-1.54 WORK ORDER

SWCP Staff authorization to proceed with planning or construction which has been properly signed by SWCP Contract Manager and the Contractor.

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DEFINITIONS AND TERMS

SECTION 2: PROPOSAL REQUIREMENTS AND CONDITIONS

2-1.01 CONTENTS OF PROPOSAL FORMS

- Proposal requirements are detailed in Section IV, "Evaluation and Selection."

2-1.02 APPROXIMATE ESTIMATE

- The quantities given in the proposal and contract are approximate only, being given as a basis for the comparison of bids. The Department does not, expressly or by implication, agree that the actual amount of work will correspond therewith, and reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by the Engineer.

2-1.03 EXAMINATION OF PLANS, SPECIFICATIONS, CONTRACT, AND SITE OF WORK

- The bidder shall examine carefully the site of the work contemplated, the plans and specifications, and the proposal and contract forms therefor. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality and scope of work to be performed, the quantities of materials to be furnished and as to the requirements of the proposal, plans, specifications and the contract.
- Where the Department has made investigations of site conditions, including subsurface conditions in areas where work is to be performed under the contract, or in other areas, some of which may constitute possible local material sources, bidders or Contractors may, upon written request, inspect the records of the Department as to those investigations subject to and upon the conditions hereinafter set forth. The investigations are made only for the purpose of study and design.
- Where there has been prior construction by the Department or other public agencies within the project limits, records of the prior construction that are currently in the possession of the Department and which have been used by, or are known to, the designers and administrators of the project will be made available for inspection by bidders or Contractors, upon written request, subject to the conditions hereinafter set forth. The records may include, but are not limited to, as-built drawings, design calculations, foundation and site studies, project reports and other data assembled in connection with the investigation, design, construction and maintenance of the prior projects.
- Inspection of the records of investigations and project records may be made at the office of the district in which the work is situated, or in the case of records of investigations related to structure work, at the Transportation Laboratory, Sacramento, California. The records of investigations and project records are not a part of the contract and are available solely for the convenience of the bidder or Contractor. It is expressly understood and agreed that the Department assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the investigations thus made, the records thereof, or of project records, or of the interpretations set forth therein or made by the Department in its use thereof and there is no warranty or guaranty, either express or implied, that the conditions indicated by the investigations or records are representative of those existing in or

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throughout those areas, or any part thereof, or that unlooked-for developments may not occur, or that materials other than, or in proportions different from those indicated, may not be encountered.

- When a log of test borings or other record of geotechnical data obtained by the Department's investigation of subsurface conditions is included with the contract plans, it is expressly understood and agreed that the record does not constitute a part of the contract, represents only the opinion of the Department as to the character of the materials or the conditions encountered by it in its investigations, is included in the plans only for the convenience of bidders and its use is subject to all of the conditions and limitations set forth in this Section 2-1.03.

- In some instances, information considered by the Department to be of possible interest to bidders or Contractors has been compiled as "Materials Information." The "Materials Information" is not a part of the contract and is furnished solely for the convenience of bidders or Contractors. It is understood and agreed that the fact that the Department has compiled information as "Materials Information" and has exhibited or furnished to the bidders or Contractors the "Materials Information" shall not be construed as a warranty or guaranty, express or implied, as to the completeness or accuracy of the compilations and the use of the "Materials Information" shall be subject to all of the conditions and limitations set forth in this Section 2-1.03 and Section 6-2, "Local Materials."

- When cross sections are not included with the plans, but are available, bidders or Contractors may inspect the cross sections and obtain copies for their use, at their expense.

- When cross sections are included with the contract plans, it is expressly understood and agreed that the cross sections do not constitute part of the contract, do not necessarily represent actual site conditions or show location, character, dimensions and details of work to be performed, and are included in the plans only for the convenience of bidders and their use is subject to all the conditions and limitations set forth in this Section 2-1.03.

- When contour maps were used in the design of the project, the bidders may inspect those maps, and if available, they may obtain copies for their use.

- The availability or use of information described in this Section 2-1.03 is not to be construed in any way as a waiver of the provisions of the first paragraph in this Section 2-1.03 and a bidder or Contractor is cautioned to make any independent investigation and examination as they deem necessary to be satisfied as to conditions to be encountered in the performance of the work and, with respect to possible local material sources, the quality and quantity of material available from the property and the type and extent of processing that may be required in order to produce material conforming to the requirements of the specifications.

- No information derived from the inspection of investigations or compilation thereof made by the Department or from the Engineer, or the Engineer's assistants, will in any way relieve the bidder or Contractor from any risk or from properly fulfilling the terms of the contract.

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2-1.04 (BLANK)

2-1.05 PROPOSAL FORMS

- All proposals and forms shall comply with the requirements set forth in the RFQ. SOQ forms are included as Section VIII of this RFQ.

2-1.054 REQUIRED LISTING OF PROPOSED SUBCONTRACTORS

- Each proposal shall have listed therein the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent of the total bid or \$10 000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. The bidder's attention is invited to other provisions of the Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

- A sheet for listing the subcontractors, as required herein, is included in the "Proposal and Contract" book.

2-1.056 STATE EMPLOYEES AND DESIGN ENGINEERS MAY NOT BID ON CONSTRUCTION CONTRACT

- No employee of the State shall be eligible to submit a proposal for, nor to subcontract for any portion of, nor to supply any materials for any contract administered by the Department.

- No engineering or architectural firm which has provided design services for a project shall be eligible to submit a proposal for the contract to construct the project nor to subcontract for any portion of the work. The ineligible firms include the prime contractor for design, subcontractors of portions of the design and affiliates of either. An affiliate is a firm which is subject to the control of the same persons, through joint ownership or otherwise.

2-1.06 REJECTION OF PROPOSALS

- Proposals may be rejected if they have been transferred to another bidder, or if they show any alteration of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind.

- When proposals are signed by an agent, other than the officer or officers of a corporation authorized to sign contracts on its behalf or a member of a partnership, a "Power of Attorney" must be on file with the Department prior to opening bids or shall be submitted with the proposal; otherwise, the proposal may be rejected as irregular and unauthorized.

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2-1.08 WITHDRAWAL OF PROPOSALS

- Any bid may be withdrawn at any time prior to the date and time fixed for the opening of bids only by written request for the withdrawal of the bid filed at the location at which the bid was received by the Department. The request shall be executed by the bidder or the bidder's duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to file a new bid. Whether or not bids are opened exactly at the time fixed for opening bids, a bid will

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not be received after that time, nor may any bid be withdrawn after the time fixed for the opening of bids.

2-1.09 PUBLIC OPENING OF PROPOSALS

- Proposals will be opened and read publicly at the time and place indicated in the "Notice to Contractors." Bidders or their authorized agents are invited to be present.

2-1.095 RELIEF OF BIDDERS

- Attention is directed to the provisions of Public Contract Code Sections 5100 to 5107, inclusive, concerning relief of bidders and in particular to the requirement therein, that if the bidder claims a mistake was made in the bid presented, the bidder shall give the Department written notice within 5 days after the opening of the bids of the alleged mistake, specifying in the notice in detail how the mistake occurred.

2-1.10 DISQUALIFICATION OF BIDDERS

- More than one proposal from an individual, firm, partnership, corporation, or combination thereof under the same or different names will not be considered. Reasonable grounds for believing that any individual, firm, partnership, corporation or combination thereof is interested in more than one proposal for the work contemplated may cause the rejection of all proposals in which that individual, firm, partnership, corporation or combination thereof is interested. If there is reason for believing that collusion exists among the bidders any or all proposals may be rejected. Proposals in which the prices obviously are unbalanced may be rejected.

2-1.105 PREVIOUS DISQUALIFICATION, REMOVAL OR OTHER PREVENTION OF BIDDING

- Pursuant to Section 10162 of the Public Contract Code the bidder shall complete, under penalty of perjury, the questionnaire in the Proposal relating to previous disqualification, removal or other prevention of bidding of the bidder, or officers or employees of the bidder because of violation of law or a safety regulation.

- A bid may be rejected on the basis of a bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, having been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state or local project because of a violation of law or a safety regulation.

- To be eligible for award of this Contract, a Proposer must not have been determined to be unreliable pursuant to the criteria in the policy adopted by the Board through Resolution 97-356. A copy of that Resolution and the adopted Policy is available from the Board's Contracts Unit.

2-1.108 COMPLIANCE WITH ORDERS OF THE NATIONAL LABOR RELATIONS BOARD

- Pursuant to Public Contract Code Section 10232, the Contractor shall swear by a statement, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a Federal court has been issued against the

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Contractor within the immediately preceding 2-year period because of the Contractor's failure to comply with an order of a Federal court which orders the Contractor to comply with an order of the National Labor Relations Board. For purposes of Section 10232, a finding of contempt does not include any finding which has been vacated, dismissed, or otherwise removed by the court because the Contractor has complied with the order which was the basis for the finding. The State may rescind any contract in which the Contractor falsely swears to the truth of the statement required by Section 10232.

- The statement required by Public Contract Code Section 10232 is on the page preceding the signature page of the Proposal.

2-1.11 INELIGIBILITY TO CONTRACT

- Public Contract Code Section 10285.1 provides as follows:

Any state agency may suspend, for a period of up to three years from the date of conviction, any person from bidding upon, or being awarded, a public works or services contract with the agency under this part or from being a subcontractor at any tier upon the contract, if that person, or any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, has been convicted by a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of any public works contract, as defined in Section 1101, with any public entity, as defined in Section 1100, including, for the purposes of this article, the Regents of the University of California or the Trustees of the California State University. A state agency may determine the eligibility of any person to enter into a contract under this article by requiring the person to submit a statement under penalty of perjury declaring that neither the person nor any subcontractor to be engaged by the person has been convicted of any of the offenses referred to in this section within the preceding three years.

- A form for the statement required by Section 10285.1 is included in the Proposal.

2-1.12 MATERIAL GUARANTY

- The successful bidder may be required to furnish a written guaranty covering certain items of work for varying periods of time from the date of acceptance of the contract. The work to be guaranteed, the form and the time limit of the guaranty will be specified in the special provisions. The guaranty shall be signed and delivered to the Engineer before acceptance of the contract. Upon completion of the contract the amounts of the 2 contract bonds required in Section 3-1.02, "Contract Bonds," may be reduced to conform to the total amount of the contract bid prices for the items of work to be guaranteed, and this amount shall continue in full force and effect for the duration of the guaranty period. The payment bond shall not be reduced until the expiration of the time required by Section 3249 of the Civil Code.

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2-1.13 DISABLED VETERAN BUSINESS ENTERPRISE (DVBE)

• Section 10115 of the Public Contract Code requires the Board to implement provisions to establish a goal for Disabled Veterans Business Enterprise (DVBE) in contracts. Compliance with these DVBE requirements may be accomplished by either the Proposer being a DVBE and performing the required percentages of work with his own forces or by subcontracting work to DVBE firms to meet the DVBE goals.

• It is the policy of the CIWMB that DVBEs shall have the maximum opportunity to participate in the performance of contracts financed solely with state funds. The Contractor shall ensure that DVBEs have the maximum opportunity to participate in the performance of this contract and shall take all necessary and reasonable steps for this assurance. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Failure to carry out the requirements of this paragraph shall constitute a breach of contract and may result in termination of this contract or other remedy the Department may deem appropriate.

• Proposer's attention is directed to the following:

- (a) "Disabled Veteran Business Enterprise" (DVBE) means a business concern certified as a DVBE by the Office of Small Business Certification and Resources, Department of General Services.
- (b) A DVBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, or vendor of material or supplies;
- (c) Credit for DVBE prime contractors will be 100 percent.
- (d) A DVBE joint venture partner must be responsible for specific contract items of work, or portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DVBE joint venture partner must share in the ownership, control, management responsibilities, risks and profits of the joint venture;
- (e) A DVBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work;
- (f) Credit for DVBE vendors of materials or supplies is limited to 60 percent of the amount to be paid to the vendor for the material unless the vendor manufactures or substantially alters the goods;
- (g) Credit for trucking by DVBEs will be as follows:
 - (1) One hundred percent of the amount to be paid when a DVBE trucker will perform the trucking with his/her own trucks, tractors and employees;
 - (2) Twenty percent of the amount to be paid to DVBE trucking brokers who do not have a "certified roster";
 - (3) One hundred percent of the amount to be paid to DVBE trucking brokers who have:
 - a. signed agreements that all trucking will be performed by DVBE truckers if credit is toward the DVBE goal;
 - b. a "certified roster" showing that all trucks are owned by DVBEs; and

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- c. a signed statement on the "certified roster" that indicates that 100 percent of revenue paid by the broker will be paid to the DVBEs listed on the "certified roster".
- (4) Twenty percent of the amount to be paid to trucking brokers who are not a DVBE but who have:
 - a. signed agreements with DVBE truckers assuring that at least 20 percent of the trucking will be performed by DVBE truckers if credit is toward the DVBE goal;
 - b. a "certified roster" showing that at least 20 percent of the number of trucks are owned by DVBE truckers; and
 - c. a signed statement on the "certified roster" that indicates that at least 20 percent of the revenue paid by the broker will be paid to the DVBEs listed on the "certified roster".
- (h) DVBEs and DVBE joint venture partners must be certified DVBEs as determined by the Department of General Services, Office of Small Business Certification and Resources (OSBCR), on the date Work Plans are submitted before credit may be allowed toward the DVBE goal. It is the Contractor's responsibility to verify that DVBEs are certified. Verification of DVBE certification can be obtained by contacting the OSBCR at (916) 375-4940;
- (i) Noncompliance by the Contractor with these requirements constitutes a breach of this contract and may result in termination of the contract or other appropriate remedy for a breach of this contract.

2-1.14 SMALL BUSINESS

- California law requires the Board to implement provisions to establish a goal for Small Businesses in contracts. Any business used to meet this goal must be certified by or have certification pending with the Department of General Services, Office of Small Business Certification and Resources. Compliance with these Small Business requirements may be accomplished by either the Proposer being a Small Business and performing the required percentages of work with his own forces or by subcontracting work to Small Business firms to meet the goals.

SECTION 3: AWARD AND EXECUTION OF CONTRACT

3-1.01 AWARD OF CONTRACT

• After successful negotiations and approval by the Board, the Executive Director of the Board or his designee and the firm will complete and sign the Agreement. In instances where the Board effects a necessary change in the Agreement during the course of performance of the services, the firm's compensation may be adjusted by mutual written agreement.

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3-1.02 CONTRACT BONDS

• When individual Work Orders are issued by Board staff for specific projects, the Contractor shall submit the bonds required by the State Contract Act equal in amount to the estimated cost of the work. One bond shall secure the payment of the claims of laborers, mechanics or material men employed on the work under the Agreement and the other bond shall guarantee the faithful performance of the Agreement.

• All alterations, extensions of time, extra and additional work, and other changes authorized by these specifications or any part of the Agreement may be made without securing the consent of the surety or sureties on the Agreement bonds.

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3-1.03 EXECUTION OF CONTRACT

• The Agreement shall be signed by the selected firm and returned within 10 days, not including Saturdays, Sundays and legal holidays, after the selected firm has received the Agreement for execution.

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SECTION 4: SCOPE OF WORK

4-1.01 INTENT OF PLANS AND SPECIFICATIONS

. The intent of the Work Order is to prescribe the details for work planning and construction and completion of the work which the Contractor undertakes to perform in accordance with the terms of the Agreement. Where the plans or specifications describe portions of the work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the work involved in executing the Agreement in a satisfactory and workmanlike manner.

4-1.02 FINAL CLEANING UP

. Before requesting final inspection of the work, the Contractor shall clean the project site, material sites, public and private roads used for site access, and all grounds occupied by him in connection with the work of all rubbish, excess materials, false work, temporary structures, and equipment. All parts of the work shall be left in a neat and presentable condition. The Contractor shall not remove warning, regulatory, or other signs prior to formal acceptance by Board staff.

4-1.03 CHANGES

. The Board reserves the right to make such alterations, deviations, additions to, or deletions from the Work Order, plans and specifications, as deemed necessary or advisable by Board staff. Any such changes will be set forth in a Change Order which will specify, in addition to the work to be done in connection with the change made, adjustment of Work Order time, if any, and the basis of compensation for such work, if at variance with that indicated in the Work Order. A Change Order will not become effective until approved in writing by Board staff.

. Upon receipt of an approved Change Order, the Contractor shall proceed with the ordered work. Compensation for any change shall be as provided for in the approved Work Order. The Contractor will not be compensated for any work that exceeds that indicated in the Work Order, or that has not been authorized in writing by Board staff.

4-1.03A Procedure and Protest

. A contract change order approved by the Engineer may be issued to the Contractor at any time. Should the Contractor disagree with any terms or conditions set forth in an approved contract change order not executed by the Contractor, the Contractor shall submit a written protest to the Engineer within 15 days after the receipt of the approved contract change order. The protest shall state the points of disagreement, and, if possible, the contract specification references, quantities and costs involved. If a written protest is not submitted, payment will be made as set forth in the approved contract change order, and that payment shall

SECTION 4

SCOPE OF WORK

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4-1.05 USE OF MATERIALS FOUND ON THE WORK

• The Contractor may not salvage any material designated for removal and disposal without the written approval of Board staff. The Contractor may use earth, gravel, sand, or other suitable material found in excavations that have not been designated for disposal, if approved by Board staff.

SECTION 5: CONTROL OF WORK

5-1.01 AUTHORITY OF ENGINEER

• The Engineer shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract on the part of the Contractor; and all questions as to compensation. The Engineer's decision shall be final, and the Engineer shall have authority to enforce and make effective those decisions and orders which the Contractor fails to carry out promptly.

5-1.02 PLANS AND WORKING DRAWINGS

• The contract plans furnished consist of general drawings and show such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the contract plans shall be in writing.

• The contract plans shall be supplemented by such working drawings prepared by the Contractor as are necessary to adequately control the work. No change shall be made by the Contractor in any working drawing after it has been approved by the Engineer.

• Working drawings for any part of the permanent work shall include, but not be limited to stress sheets, anchor bolt layouts, shop details, erection plans, equipment lists and any other information specifically required elsewhere in the specifications.

• Working drawings for cribs, cofferdams, falsework, temporary support systems, haul bridges, centering and form work and for other temporary work and methods of construction the Contractor proposes to use, shall be submitted when required by the specifications or ordered by the Engineer. Working drawings shall be subject to approval insofar as the details affect the character of the finished work and for compliance with design requirements applicable to the construction when specified or called for, but details of design will be left to the Contractor who shall be responsible for the successful construction of the work.

• Working drawings shall be approved by the Engineer before any work involving the drawings is performed. It is expressly understood that approval of the Contractor's working drawings shall not relieve the Contractor of any responsibility under the contract for the successful completion of the work in conformity with the requirements of the plans and specifications. Approval of working drawings shall not operate to waive any of the requirements of the plans and specifications or relieve the Contractor of any obligation thereunder, and defective work, materials and equipment may be rejected notwithstanding the approval.

• Full compensation for furnishing all working drawings shall be considered as included in the prices paid for the contract items of work to which the drawings relate and no additional compensation will be allowed therefor.

5-1.02A Trench Excavation Safety Plans

• The Construction Safety Orders of the Division of Occupational Safety and Health shall apply to all excavations. For all excavations 1.5 m or more in depth,

the Contractor shall submit to the Engineer a detailed plan showing the design and details of the protective systems to be provided for worker protection from the hazard of caving ground during excavation. The detailed plan shall include any tabulated data and any design calculations used in the preparation of the plan. Excavation shall not begin until the detailed plan has been reviewed and approved by the Engineer.

- Detailed plans of protective systems for which the Construction Safety Orders require design by a registered professional engineer shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California, and shall include the soil classification, soil properties, soil design calculations that demonstrate adequate stability of the protective system, and any other design calculations used in the preparation of the plan.
- No plan shall allow the use of a protective system less effective than that required by the Construction Safety Orders.
- If the detailed plan includes designs of protective systems developed only from the allowable configurations and slopes, or Appendices, contained in the Construction Safety Orders, the plan shall be submitted at least 5 days before the Contractor intends to begin excavation. If the detailed plan includes designs of protective systems developed from tabulated data, or designs for which design by a registered professional engineer is required, the plan shall be submitted at least 3 weeks before the Contractor intends to begin excavation.
- Attention is directed to Section 7 1.01E, "Trench Safety."

5-1.03 CONFORMITY WITH CONTRACT DOCUMENTS AND ALLOWABLE DEVIATIONS

• Work and materials shall conform to the lines, grades, typical cross sections, dimensions and material requirements, including tolerances, shown on the plans or indicated in the specifications. Although measurement, sampling and testing may be considered evidence as to conformity, the Engineer shall be the sole judge as to whether the work or materials deviate from the plans and specifications, and the Engineer's decision as to any allowable deviations therefrom shall be final.

5-1.04 COORDINATION AND INTERPRETATION OF PLANS, STANDARD SPECIFICATIONS, AND SPECIAL PROVISIONS

- These General Conditions, the plans and specifications, the Work Plan, Work Orders, Special Provisions, Change Orders, and all supplementary documents are essential parts of the Agreement, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for complete work.
- The Contractor shall not perform or undertake any work that is not indicated or addressed in the Work Order. The Contractor shall immediately notify Board staff of any condition or event that may interfere with completion of the work or which may require a modification of the Work Order. Board staff will, in a reasonable time, provide written direction to the Contractor clarifying any required adjustment to the Work Order. Any unauthorized modification of the Work Order, work in excess of that provided for in the Work Order, or changes and additions not authorized in writing by Board staff, will not be considered for compensation.

SECTION 5

CONTROL OF WORK

• Should it appear that the work to be done or any matters relative thereto are not sufficiently detailed or explained in these specifications, the special provisions, or the plans, the Contractor shall request Board staff to provide such further explanations as may be necessary and shall conform to them as part of the Agreement. In the event of any doubt or question arising respecting the true meaning of these specifications, the special provisions or the plans, reference shall be made to Board staff, whose decision thereon shall be final.

• All work and material shall be in accordance with terms of the Work Order, Work Plan, this RFQ and applicable sections of the Standard Specifications. In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct. Detail drawings shall prevail over general drawings. The precedence of contract documents shall be as follows:

1. Permits from other agencies as may be required by law;
2. Conditions of the Work Order;
3. Special provisions;
4. Project plans;
5. Standard plans; and
6. Standard Specifications.

• Change Orders and contract amendments will take precedence over Items 2 through 6 above. If there is a conflict between the contract documents, the document highest in precedence shall control.

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5-1.05 ORDER OF WORK

• When required by the special provisions or plans, the Contractor shall follow the sequence of operations as set forth therein.

• Full compensation for conforming to those requirements will be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

5-1.06 SUPERINTENDENCE

• The Contractor shall designate in writing before starting work, an authorized representative who shall have the authority to represent and act for the Contractor.

• When the Contractor is comprised of 2 or more persons, firms, partnerships or corporations functioning on a joint venture basis, the Contractor shall designate in writing before starting work, the name of one authorized representative who shall have the authority to represent and act for the Contractor.

• The authorized representative shall be present at the site of the work at all times while work is actually in progress on the contract. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work which may be required.

• Whenever the Contractor or the Contractor's authorized representative is not present on any particular part of the work where it may be desired to give direction,

orders will be given by the Engineer, which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given.

- Any order given by the Engineer, not otherwise required by the specifications to be in writing, will on request of the Contractor, be given or confirmed by the Engineer in writing.

5-1.07 LINES AND GRADES

- Such stakes or marks will be set by Board staff as determined necessary to establish the lines and grades required for the completion of the work specified in these specifications, on the plans and in the special provisions.

- When the Contractor requires such stakes or marks, he shall notify Board staff of his requirements in writing a reasonable length of time in advance of starting operations. In no event, shall a notice of less than 2 working days be considered a reasonable length of time.

- Stakes and marks set by Board staff shall be carefully preserved by the Contractor. In case such stakes and marks are destroyed or damaged they will be replaced following the above procedures. The Contractor will be charged for the cost of necessary replacement or restoration of stakes and marks which, in the judgment of Board staff, were carelessly or willfully destroyed or damaged by the Contractor's operations. This charge will be deducted from any moneys due or to become due the Contractor.

- Individual Work Orders may require the Contractor to provide for survey services to establish project line, grade, and control. In these instances, Board staff will provide direction through the Work Plan regarding survey requirements and compensation.

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5-1.08 INSPECTION

- The Engineer shall, at all times, have safe access to the work during its construction, and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of these specifications, the special provisions and the plans. All work done and all materials furnished shall be subject to the Engineer's inspection.

- The inspection of the work or materials shall not relieve the Contractor of any of the Contractor's obligations to fulfill the contract as prescribed. Work and materials not meeting the requirements shall be made good, and unsuitable work or materials may be rejected, notwithstanding that the work or materials have been previously inspected by the Engineer or that payment therefor has been included in a progress estimate.

- Projects financed in whole or in part with Federal funds shall be subject to inspection at all times by the Federal agency involved.

5-1.09 REMOVAL OF REJECTED AND UNAUTHORIZED WORK

- All work which has been rejected shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation will be allowed to the Contractor for the removal, replacement or remedial work.

SECTION 5

CONTROL OF WORK

- Any work done beyond the lines and grades shown on the plans or established by the Engineer, or any extra work done without written authority will be considered as unauthorized work and will not be paid for. Upon order of the Engineer unauthorized work shall be remedied, removed or replaced at the Contractor's expense.
- Upon failure of the Contractor to comply promptly with any order of the Engineer made under this Section 5-1.09, the Department may cause rejected or unauthorized work to be remedied, removed or replaced, and to deduct the costs from any moneys due or to become due the Contractor.

5-1.10 EQUIPMENT AND PLANTS

- Only equipment and plants suitable to produce the quality of work and materials required will be permitted to operate on the project.
- Plants shall be designed and constructed in accordance with general practice for the equipment and shall be of sufficient capacity to ensure the production of sufficient material to carry the work to completion within the time limit.
- The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Engineer shall remove unsuitable equipment from the work and discontinue the operation of unsatisfactory plants.
- The Contractor shall identify each piece of equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location, and shall furnish to the Engineer a list giving the description of each piece of equipment and its identifying number. In addition, the make, model number and empty gross mass of each unit of compacting equipment shall be plainly stamped or stenciled in a conspicuous place on the unit. The gross mass shall be either the manufacturer's rated mass or the scale weight, expressed in metric units.
- The make, model, serial number and manufacturer's rated capacity in metric units for each scale shall be clearly stamped or stenciled on the load receiving element and its indicator or indicators. All meters shall be similarly identified, rated and marked. Upon request of the Engineer, the Contractor shall furnish a statement by the manufacturer, designating sectional and weighbridge capacities of portable vehicle scales.

5-1.11 ALTERNATIVE EQUIPMENT

- While certain of these specifications may provide that equipment of a particular size and type is to be used to perform portions of the work, it is to be understood that the development and use of new or improved equipment is to be encouraged.
- The Contractor may request, in writing, permission from the Engineer to use equipment of a different size or type in place of the equipment specified.
- The Engineer, before considering or granting the request, may require the Contractor to furnish, at the Contractor's expense, evidence satisfactory to the Engineer that the equipment proposed for use by the Contractor is capable of producing work equal to, or better than, that which can be produced by the equipment specified.

- If permission is granted by the Engineer, it shall be understood that the permission is granted for the purpose of testing the quality of work actually produced by the equipment and is subject to continuous attainment of results which, in the opinion of the Engineer, are equal to, or better than, that which can be obtained with the equipment specified. The Engineer shall have the right to withdraw permission at any time that the Engineer determines that the alternative equipment is not producing work that is equal, in all respects, to that which can be produced by the equipment specified. Upon withdrawal of permission by the Engineer, the Contractor will be required to use the equipment originally specified and shall, in accordance with the directions of the Engineer, remove and dispose of or otherwise remedy, at the Contractor's expense, any defective or unsatisfactory work produced with the alternative equipment.
- Neither the State nor the Contractor shall have any claim against the other for either the withholding or the granting of permission to use alternative equipment, or for the withdrawal of the permission.
- Permission to use alternative equipment in place of equipment specified will only be granted where the equipment is new or improved and its use is deemed by the Engineer to be in furtherance of the purposes of this Section 5-1.11. The approval for use of particular equipment on any project shall in no way be considered as an approval of the use of the equipment on any other project.
- Nothing in this Section 5-1.11 shall relieve the Contractor of the responsibility for furnishing materials or producing finished work of the quality specified in these specifications or in the special provisions.

5-1.115 ALTERNATIVE METHODS OF CONSTRUCTION

- Whenever the plans or specifications provide that more than one specified method of construction or more than one specified type of material or construction equipment may be used to perform portions of the work and leave the selection of the method of construction or the type of material or equipment to be used up to the Contractor, it is understood that the State does not guarantee that every specified method of construction or type of material or equipment can be used successfully throughout all or any part of any project. It shall be the Contractor's responsibility to select and use the alternative or alternatives which will satisfactorily perform the work under the conditions encountered. In the event some of the alternatives are not feasible or it is necessary to use more than one of the alternatives on any project, full compensation for any additional cost involved shall be considered as included in the contract price paid for the item of work involved and no additional compensation will be allowed therefor.

5-1.116 DIFFERING SITE CONDITIONS

- During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering those conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

- Upon written notification, the Engineer will investigate the conditions, and if the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Contractor of the Engineer's determination whether or not an adjustment of the contract is warranted.
- No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.
- No contract adjustment will be allowed under the provisions specified in this section for any effects caused on unchanged work.
- Any contract adjustment warranted due to differing site conditions will be made in conformance with the provisions in Section 4-1.03, "Changes," except as otherwise provided.

5-1.12 CHARACTER OF WORKERS

- If any subcontractor or person employed by the Contractor shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, they shall be discharged immediately on the request of the Engineer, and that person shall not again be employed on the work.

5-1.13 FINAL INSPECTION

- When the work has been completed, the Engineer will make the final inspection.

5-1.14 COST REDUCTION INCENTIVE

- The Contractor shall review the SIR/SOW and prepare a Work Plan that will provide site remediation at the lowest cost to the Board. During remediation, the Contractor is encouraged to use all possible means to reduce the overall cost of site remediation. The final cost of site remediation will be based on actual time and material costs for the actual remediation as defined in this RFQ..

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SECTION 6: CONTROL OF MATERIALS

6-1 GENERAL

6-1.01 SOURCE OF SUPPLY AND QUALITY OF MATERIALS

- The Contractor shall furnish all materials required to complete the work, except materials that are designated in the specifications to be furnished by the State and materials furnished by the State in conformance with the provisions in Section 9-1.03, "Force Account Payment."
- Only materials conforming to the requirements of the specifications shall be incorporated in the work.
- The materials furnished and used shall be new, except as may be provided elsewhere in these specifications, on the plans or in the special provisions. The materials shall be manufactured, handled and used in a workmanlike manner to ensure completed work in accordance with the plans and specifications.
- Materials to be used in the work will be subject to inspection and tests by the Engineer or the Engineer's designated representative. The Contractor shall furnish without charge such samples as may be required.
- The Contractor shall furnish the Engineer a list of the Contractor's sources of materials and the locations at which those materials will be available for inspection. The list shall be submitted on a State-furnished form and shall be furnished to the Engineer in sufficient time to permit inspecting and testing of materials to be furnished from the listed sources in advance of their use. The Engineer may inspect, sample or test materials at the source of supply or other locations, but the inspection, sampling or testing will not be undertaken until the Engineer is assured by the Contractor of the cooperation and assistance of both the Contractor and the supplier of the material. The Contractor shall assure that the Engineer or the Engineer's authorized representative has free access at all times to the material to be inspected, sampled or tested. It is understood that the inspections and tests if made at any point other than the point of incorporation in the work in no way shall be considered as a guaranty of acceptance of the material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made, and that inspection and testing performed by the State shall not relieve the Contractor or the Contractor's suppliers of responsibility for quality control.
- Manufacturers' warranties, guaranties, instruction sheets and parts lists, which are furnished with certain articles or materials incorporated in the work, shall be delivered to the Engineer before acceptance of the contract.
- Reports and records of inspections made and tests performed, when available at the site of the work, may be examined by the Contractor.

6-1.02 STATE-FURNISHED MATERIALS

- Materials which are listed as State-furnished materials in the special provisions will be available to the Contractor free of charge.
- The Contractor shall submit a written request to the Engineer for the delivery of State-furnished material at least 15 days in advance of the date of its intended use, except that the written request for the delivery of State-furnished sign panels for roadside signs and overhead sign structures shall be submitted at least 30 days

in advance of their intended installation. The request shall state the quantity and the type of each material.

- The locations at which State-furnished materials will be available to the Contractor free of charge will be designated in the special provisions. In those cases the materials shall be hauled to the site of the work by the Contractor at the Contractor's expense, including any necessary loading and unloading that may be involved. If the locations are not designated in the special provisions, the State-furnished materials will be furnished to the Contractor free of charge at the site of the project. In either case, all costs of handling and placing State-furnished material shall be considered as included in the price paid for the contract item involving the State-furnished material.

- The Contractor shall be responsible for all State-furnished materials furnished to the Contractor, and shall pay all demurrage and storage charges. State-furnished materials lost or damaged from any cause whatsoever shall be replaced by the Contractor at the Contractor's expense. The Contractor shall be liable to the Department for the cost of replacing State-furnished material, and those costs may be deducted from any moneys due or to become due the Contractor. All State-furnished material that is not used on the work shall remain the property of the State and shall be delivered to the Engineer.

- The Engineer may increase the number of sign panels in any shipment to provide economical use of the State's transportation facilities.

- The quantity of each type of State-furnished paint required shall be determined by the Contractor subject to verification by the Engineer.

6-1.03 STORAGE OF MATERIALS

- Articles or materials to be incorporated in the work shall be stored in such a manner as to ensure the preservation of their quality and fitness for the work, and to facilitate inspection.

6-1.04 DEFECTIVE MATERIALS

- All materials which the Engineer has determined do not conform to the requirements of the plans and specifications will be rejected whether in place or not. The rejected materials shall be removed immediately from the site of the work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used in the work, unless approval in writing has been given by the Engineer. Upon failure of the Contractor to comply promptly with any order of the Engineer made under the provisions in this Section 6-1.04, the Engineer shall have authority to cause the removal and replacement of rejected material and to deduct the cost thereof from any moneys due or to become due the Contractor.

6-1.05 TRADE NAMES AND ALTERNATIVES

- For convenience in designation on the plans or in the specifications, certain articles or materials to be incorporated in the work may be designated under a trade name or the name of a manufacturer and the manufacturer's catalogue information. The use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor, and the Contractor shall furnish all information necessary as required by the Engineer. The Engineer shall be the sole judge as to the quality and suitability of alternative articles or materials, and the Engineer's decision shall be final.

Whenever the specifications permit the substitution of a similar or equivalent material or article, no tests or action relating to the approval of the substitute material will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the material or article proposed. The request shall be made in ample time to permit approval without delaying the work, but need not be made in less than 35 days after award of the contract.

6-1.06 PLANT INSPECTION

- The Engineer may inspect the production of material or the manufacture of products at the source of supply.
- Plant inspection, however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both the Contractor and the material producer. The Engineer or the Engineer's authorized representative shall have free entry at all times to those parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The State assumes no obligation to inspect materials at the source of supply.

6-1.07 CERTIFICATES OF COMPLIANCE

- A Certificate of Compliance shall be furnished prior to the use of any materials for which these specifications or the special provisions require that a certificate be furnished. In addition, when so authorized in these specifications or in the special provisions, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the specifications. A Certificate of Compliance shall be furnished with each lot of material delivered to the work and the lot so certified shall be clearly identified in the certificate.
- Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the work which conforms to the requirements of the plans and specifications, and any material not conforming to the requirements will be subject to rejection whether in place or not.
- The Department reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.
- The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

6-1.08 FOREIGN MATERIALS

- Materials which are manufactured, produced or fabricated outside of the United States shall be delivered to a distribution point in California, unless otherwise required in these specifications or the special provisions, where they shall be retained for a sufficient period of time to permit inspection, sampling and testing.
- Attention is directed to the provisions in Section 8-1.07, "Liquidated Damages." The Contractor shall not be entitled to an extension of time for acts or events occurring outside of the United States, and it shall be the Contractor's responsibility to deliver materials obtained from outside of the United States to the point of entry into the continental United States in sufficient time to permit timely delivery to the job site.
- The Contractor, at no cost to the State, shall supply the facilities and arrange for any testing required in California which the State is not equipped to perform. All testing by the Contractor shall be subject to witnessing by the Engineer.
- The manufacturer, producer or fabricator of foreign material shall furnish to the Engineer a Certificate of Compliance in conformance with the provisions in Section 6-1.07, "Certificates of Compliance." In addition, certified mill test reports clearly identifiable to the lot of material shall be furnished where required in these specifications or otherwise requested by the Engineer.
- If the welding of steel for structural steel members or the casting and prestressing of precast prestressed concrete members is to be performed outside of the United States, the following requirements shall apply:
 1. The fabrication shall be performed only within the plants and by fabricators who have previously established, to the satisfaction of the Engineer, that they have the experience, knowledge, trained manpower, quality controls, equipment and other facilities required to produce the quality and quantity of work required. At the option of the Engineer, prequalification of the plant and fabricator will be established either by the submission of detailed written proof thereof or through in-plant inspection by the Engineer or the Engineer's representative, or both.
 2. The Contractor shall make written application to the Engineer for approval for the foreign fabrication at the earliest possible time and in no case later than 50 days in advance of the planned start of fabrication. The application shall list the specific units or portion of a work which will be fabricated outside of the United States.
 3. The Contractor shall advise the Engineer, in writing, at least 20 days in advance of the actual start of any of the foreign fabrication.
 4. All documents pertaining to the contract, including but not limited to, correspondence, bid documents, working drawings and data shall be written in the English language and all numerical data shall use the International System of Units (SI) for measurement.

SECTION 6

CONTROL OF MATERIALS

- The use of steel manufactured outside of the United States as unidentified stock material, as provided in Section 55-2.07, "Unidentified Stock Material," will not be allowed.

6-1.09 STATE SPECIFICATION NUMBERS

- The State Specification number of material furnished on the contract shall conform to the number specified in these specifications or the special provisions for the material involved, except that material conforming to a later specification issue will be acceptable.

6-2 LOCAL MATERIALS

6-2.01 GENERAL

- Local material is rock, sand, gravel, earth or other mineral material, other than local borrow or selected material, obtained or produced from sources in the vicinity of the work specifically for use on the project. Local material does not include materials obtained from established commercial sources.
- Local materials shall be furnished by the Contractor from any source the Contractor may elect, except that when mandatory local material sources of certain materials are designated in the special provisions, the Contractor shall furnish material from those designated mandatory sources.
- The Contractor shall be responsible for making all arrangements necessary to obtain materials from any local material source other than a mandatory local material source. If the Contractor elects to obtain materials from a possible local material source, subject to the provisions in Section 6-2.02, "Possible Local Material Sources," the Contractor shall comply with the requirements of that section. If the Contractor elects to obtain material from any other non-mandatory source, the Contractor shall furnish the Engineer with satisfactory evidence that the Contractor has entered into an agreement with the property owner for obtaining material from that source and with copies of any necessary permits, licenses and environmental clearances before removing any material from those sources.
- The furnishing of local materials from any source is subject to the provisions in Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site of Work," and in Section 6-2, "Local Materials."
- Unless described in the special provisions as a mandatory local material source, or approved in writing by the Engineer, material sources shall not be excavated at locations where the resulting scars will present an unsightly appearance from any highway. No payment will be made for material obtained in violation of this provision.
- The Contractor shall, at the Contractor's expense, make any arrangements necessary for hauling over local public and private roads from any source.
- When requested by the Contractor in writing, the Department will test materials from any local material source, which has not been previously tested. If satisfactory material from that local source is used in the work, the Contractor will not be charged for the costs of the tests.
- In all other cases, the cost of the testing requested by the Contractor shall be at the Contractor's expense, and deductions will be made from any moneys due or to become due the Contractor, sufficient to cover the costs of the tests.

- Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in conforming to the provisions in this Section 6-2.01, for furnishing and producing materials from any source shall be considered as included in the price paid for the contract item of work involving the material and no additional compensation will be allowed therefor.

6-2.02 POSSIBLE LOCAL MATERIAL SOURCES

- Where the Department has made arrangements with owners of land in the vicinity of a project for the obtaining of material from an owner's property, the arrangements are made solely for the purpose of providing all bidders an equal opportunity to obtain material from that property. Bidders or Contractors may, upon written request, inspect the documents evidencing those arrangements between property owners and the Department. The Contractor may, if the Contractor so elects, exercise any rights that have been obtained, which may be exercised by a Contractor under the arrangements, subject to and upon the conditions hereinafter set forth.

- Arrangements made by the Department are not a part of the contract, and it is expressly understood and agreed that the Department assumes no responsibility to the bidder or Contractor whatsoever in respect to the arrangements made with the property owner to obtain materials therefrom and that the Contractor shall assume all risks in connection with the use of the property, the terms upon which the use shall be made, and there is no warranty or guaranty, either express or implied, as to the quality or quantity of materials that can be obtained or produced from the property or the type or extent of processing that may be required in order to produce material conforming to the requirements of the specifications.

- In those instances in which the Department has compiled "Materials Information" as referred to in Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site of Work," the compilation may include the documents setting forth the arrangement made with some of the property owners for the obtaining of material from those owners' properties. The inclusion of these documents therein shall not in any respect operate as a waiver of any of the provisions in this Section 6-2.02 concerning the documents.

- All necessary permits, licenses and environmental clearances needed to enable the Contractor to use a possible local material source for which the "Materials Information" compilation for the project does not include permits, licenses and environmental clearances issued to the Department (whether or not the arrangement made by the Department with the owner of the property is included in the compilation) shall be obtained by the Contractor, and copies thereof shall be furnished the Engineer before any material is removed from the source.

- The bidder or Contractor is cautioned to make such independent investigation and examination as the Contractor deems necessary to be satisfied as to the quality and quantity of materials available from the property, the type and extent of processing that may be required in order to produce material conforming to the requirements of the specifications and the rights, duties and obligations acquired or undertaken under the arrangement with the property owner.

SECTION 6

CONTROL OF MATERIALS

• Notwithstanding that the Contractor may elect to obtain materials from any such property owner's property, no material may be obtained from the property unless the Contractor has first either:

1. Executed a document that will guarantee to hold the owner harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises and also agree to conform to all other provisions set forth in the arrangement made between the Department and the property owner. The document will be prepared by the Engineer for execution by the Contractor, or
2. Entered into an agreement with the owner of the material source on any terms mutually agreeable to the owner and the Contractor, provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving the Department of any and all obligations under the Department's arrangement with the owner.

• If the Contractor elects to obtain material under (1), the use of the site shall be subject to the terms, conditions and limitations of the arrangement made between the property owner and the Department, and the Contractor shall pay the charges as are provided for in the arrangement made by the Department with the property owner. Deductions will be made from any moneys due or that may become due the Contractor under the contract sufficient to cover the charges for the material removed.

• If the Contractor elects to obtain material under (2), the Contractor shall pay the charges as are provided for in the agreement between the owner and the Contractor, and deductions will not be made from any moneys due or that may become due the Contractor under the contract to cover the charges.

• Before acceptance of the contract, the Engineer may require the Contractor to submit written evidence that the owner of the material source is satisfied that the Contractor has satisfactorily complied with the provisions of either—(1), the arrangement between the Department and the owner, or (2), the agreement between the owner and the Contractor, as the case may be.

• Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in furnishing and producing specified materials from possible local material sources, including the construction of any access roads or fences and any clearing, grubbing and stripping of material sources, and all processing of whatever nature and extent required, shall be considered as included in the price paid for the contract item of work involving the material and no additional compensation will be allowed therefor.

6-2.03 MANDATORY LOCAL MATERIAL SOURCES

• The Contractor shall perform all work required to obtain and produce acceptable materials from the mandatory local material sources designated in the special provisions and shall have no right to obtain the materials from any other source or sources. As part of the work in producing acceptable materials from the mandatory sources, it will be necessary for the Contractor to perform certain

processing of the material as set forth in the special provisions. Any processing of the material required in addition to that specified in the special provisions which, in the opinion of the Engineer, is necessary to produce acceptable material from the mandatory sources will be paid for as extra work as provided in Section 4-1.03D.

- If the Engineer determines that the designated mandatory local material source or sources are no longer to be used because they are exhausted or for other reasons, the Engineer will designate an alternative mandatory local material source or sources from which the Contractor shall obtain the balance of the material required.

- In this case the Department will pay the Contractor for the cost of moving the Contractor's plant to the new mandatory source and erecting the plant as extra work as provided in Section 4-1.03D. Construction of access roads, fences, clearing and grubbing or stripping of the new mandatory source, ordered by the Engineer to be performed, will be paid for as extra work as provided in Section 4-1.03D. The Department will also allow or deduct, as the case may be, the increase or decrease in haul cost due to an increase or decrease in the length of haul involved. Increased haul costs will be paid for as extra work as provided in Section 4-1.03D, and deductions for decreased haul will be determined in the same manner. No allowance or additional compensation will be made for lost time or for delay in completing the work due to moving the Contractor's plant from the designated mandatory source to the alternative mandatory source, other than an extension of time pursuant to the provisions in Section 8-1.07, "Liquidated Damages." Any processing of the material required in addition to that specified in the special provisions for the originally designated mandatory source which, in the opinion of the Engineer, is necessary to produce acceptable material from the alternative mandatory source will be paid for as extra work as provided in Section 4-1.03D. The Contractor will be charged the same royalty as provided in the special provisions for the original designated mandatory local material source.

- The Contractor shall, prior to entering a mandatory local material source or an alternative mandatory local material source, execute a document that will guarantee to hold the owner of the property harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises. The document will be prepared by the Engineer for execution by the Contractor.

- Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in obtaining and producing specified materials from mandatory sources, including the construction of any access roads or fences and any clearing, grubbing and stripping of mandatory local material sources, except as otherwise provided for in this Section 6-2.03, shall be considered as included in the price paid for the contract item of work involving the material and no additional compensation will be allowed therefor.

6-3 TESTING

6-3.01 GENERAL

- Unless otherwise specified, all tests shall be performed in accordance with the methods used by the Department of Transportation and shall be made by the Engineer or the Engineer's designated representative.

SECTION 6

CONTROL OF MATERIALS

- The Department has developed methods for testing the quality of materials and work. These methods are identified by number and are referred to in the specifications as California Test. Copies of individual California Tests are available at the Transportation Laboratory, Sacramento, California, and will be furnished to interested persons upon request.
- Whenever the specifications require compliance with specified values for the following properties, tests will be made by the California Test indicated unless otherwise specified:

Properties	California Test
Relative Compaction	216 or 231
Sand Equivalent	217
Resistance (R-value)	301
Grading (Sieve Analysis)	202
Durability Index	229

- Whenever a reference is made in the specifications to a California Test by number, it shall mean the California Test in effect on the day the Notice to Contractors for the work is dated.
- Whenever the specifications provide an option between 2 or more tests, the Engineer will determine the test to be used.
- Whenever a reference is made in the specifications to a specification, manual or test designation either of the American Society for Testing and Materials, the American Association of State Highway and Transportation Officials, Federal Specifications or any other recognized national organization, and the number or other identification representing the year of adoption or latest revision is omitted, it shall mean the specification, manual or test designation in effect on the day the Notice to Contractors for the work is dated. Whenever the specification, manual or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of those reports, identified as to the lot of material, shall be furnished to the Engineer. The manufacturer's test reports shall supplement the inspection, sampling and testing provisions in Section 6, "Control of Materials," and shall not constitute a waiver of the State's right to inspect. When material which cannot be identified with specific test reports is proposed for use, the Engineer may, at the Engineer's discretion, select random samples from the lot for testing. Test specimens from the random samples, including those required for retest, shall be prepared in accordance with the referenced specification and furnished by the Contractor at the Contractor's expense. The number of the samples and test specimens shall be entirely at the discretion of the Engineer. Unidentified metal products, such as sheet, plate and hardware shall be subject to the requirements of Section 55-2.07, "Unidentified Stock Material."
- When requested by the Engineer, the Contractor shall furnish, without charge, samples of all materials entering into the work, and no material shall be used prior to approval by the Engineer, except as provided in Section 6-1.07, "Certificates of Compliance." Samples of material from local sources shall be taken by or in the presence of the Engineer; otherwise, the samples will not be considered for testing.

6-3.02 TESTING BY CONTRACTOR

- The Contractor shall be responsible for controlling the quality of the material entering the work and of the work performed, and shall perform testing as necessary to ensure control. The test methods used for quality control testing shall be as determined by the Contractor. The results of the testing shall be made available to the Engineer upon request. These tests are for the Contractor's use in controlling the work and will not be accepted for use as acceptance tests.
- Full compensation for performing quality control tests and making the results available to the Engineer shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefor.

SECTION 7: LEGAL RELATIONS AND RESPONSIBILITY

7-1.01 LAWS TO BE OBSERVED

• The Contractor shall keep fully informed of all existing and future State and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with, and shall cause all the Contractor's agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work; and shall protect and indemnify the State of California, and all officers and employees thereof connected with the work, including but not limited to the Director and the Engineer, against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order or decree, whether by the Contractor or the Contractor's employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications or contract for the work in relation to any law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing.

7-1.01A Labor Code Requirements

• Attention is directed to the following Notice that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations:

NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM (GOV. CODE, SECTION 12990)

Your attention is called to the "Nondiscrimination Clause", set forth in Section 7 1.01A(4), "Labor Nondiscrimination," of the Standard Specifications, which is applicable to all nonexempt State contracts and subcontracts, and to the "Standard California Nondiscrimination Construction Contract Specifications" set forth therein. The specifications are applicable to all nonexempt State construction contracts and subcontracts of \$5,000 or more.

Statement of Compliance.--The Contractor's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

• Attention is directed to the following requirements of the Labor Code:

7-1.01A(1) Hours of Labor

• Eight hours labor constitutes a legal day's work. The Contractor or any subcontractor under the Contractor shall forfeit, as a penalty to the State of California, \$25 for each worker employed in the execution of the contract by the respective Contractor or subcontractor for each calendar day during which that worker is required or permitted to work more than 8 hours in any one calendar day

and 40 hours in any one calendar week in violation of the requirements of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of Contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay, as provided in Section 1815 thereof.

7-1.01A(2) Prevailing Wage

• The Contractor and any subcontractor under the Contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the Contractor and any subcontractor under the Contractor shall forfeit to the State or political subdivision on whose behalf the contract is made or awarded a penalty of not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by the Contractor or by any subcontractor under the Contractor in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor or subcontractor had knowledge of the obligations under the Labor Code. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates 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 or subcontractor. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project is not liable for the penalties described above unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

1. The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the requirements in Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code.
2. The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.
3. Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, the contractor shall diligently take corrective action to halt or rectify the failure,

including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

4. Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amounts due pursuant to Section 1813 of the Labor Code.

- Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify the Contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if the Department did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. The Contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the Contractor within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, the Contractor shall pay all moneys retained from the subcontractor to the Department. These moneys shall be retained by the Department pending the final decision of an enforcement action.

- Pursuant to the requirements in Section 1773 of the Labor Code, the Department has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Section 1773.8 of the Labor Code, apprenticeship or other training programs authorized by Section 3093 of the Labor Code, and similar purposes) applicable to the work to be done, for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workmen concerned.

- The general prevailing wage rates and any applicable changes to these wage rates are available at the Labor Compliance Office at the offices of the District Director of Transportation for the district in which the work is situated. General prevailing wage rates are also available from the California Department of Industrial Relations' Internet Web Site at: <http://www.dir.ca.gov>.

- The wage rates determined by the Director of Industrial Relations for the project refer to expiration dates. Prevailing wage determinations with a single asterisk after the expiration date are in effect on the date of advertisement for bids and are good for the life of the contract. Prevailing wage determinations with

double asterisks after the expiration date indicate that the wage rate to be paid for work performed after this date has been determined. If work is to extend past this date, the new rate shall be paid and incorporated in the contract. The Contractor shall contact the Department of Industrial Relations as indicated in the wage rate determinations to obtain predetermined wage changes.

- Pursuant to Section 1773.2 of the Labor Code, general prevailing wage rates shall be posted by the Contractor at a prominent place at the site of the work.
- Changes in general prevailing wage determinations which conform to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204 shall apply to the project when issued by the Director of Industrial Relations at least 10 days prior to the date of the Notice to Contractors for the project.
- The State will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining the bid, and will not under any circumstances be considered as the basis of a claim against the State on the contract.

7-1.01A(2)(a) Travel and Subsistence Payments

• Attention is directed to the requirements in Section 1773.8 of the Labor Code. The Contractor shall make travel and subsistence payments to each workman, needed to execute the work, in conformance with the requirements in Labor Code Section 1773.8.

7-1.01A(3) Payroll Records

• Attention is directed to the requirements in Labor Code Section 1776, a portion of which is quoted below. Regulations implementing Labor Code Section 1776 are located in Sections 16016 through 16019 and Sections 16207.10 through 16207.19 of Title 8, California Code of Regulations.

"(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

"(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

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- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

"(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

"(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

"(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so 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 the subcontractor performing the contract shall not be marked or obliterated.

"(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

"(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) 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, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section."

- The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the requirements in Section 1776 may be deducted from any moneys due or which may become due to the Contractor.

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

- If by the 15th of the month, the Contractor has not submitted satisfactory payrolls for all work performed during the monthly period ending on or before the 1st of that month, the Department will retain an amount equal to 10 percent of the estimated value of the work performed (exclusive of Mobilization) during the month from the next monthly estimate, except that this retention shall not exceed \$10 000 nor be less than \$1000. Retentions for failure to submit satisfactory payrolls shall be additional to all other retentions provided for in the contract. The retention for failure to submit payrolls for any monthly period will be released for payment on the monthly estimate for partial payments next following the date that all the satisfactory payrolls for which the retention was made are submitted.

- The Contractor and each subcontractor shall preserve their payroll records for a period of 3 years from the date of completion of the contract.

7-1.01A(4) Labor Nondiscrimination

- Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

- Attention is directed to the following "Nondiscrimination Clause" that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

NONDISCRIMINATION CLAUSE

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

STANDARD CALIFORNIA NONDISCRIMINATION CONSTRUCTION CONTRACT SPECIFICATIONS (GOV. CODE, SECTION 12990).

These specifications are applicable to all state contractors and subcontractors having a construction contract or subcontract of \$5,000, or more.

1. As used in the specifications:
 - a. "Administrator" means Administrator, Office of Compliance Programs, California Department of Fair Employment and Housing, or any person to whom the Administrator delegates authority;
 - b. "Minority" includes:
 - (i) Black (all persons having primary origins in any of the black racial groups of Africa, but not of Hispanic origin);
 - (ii) Hispanic (all persons of primary culture or origin in Mexico, Puerto Rico, Cuba, Central or South America or other Spanish derived culture or origin regardless of race);
 - (iii) Asian / Pacific Islander (all persons having primary origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and
 - (iv) American Indian / Alaskan Native (all persons having primary origins in any of the original peoples of North America and who maintain culture identification through tribal affiliation or community recognition).

2. Whenever the contractor or any subcontractor subcontracts a portion of the work, it shall physically include in each subcontract of \$5,000 or more the nondiscrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.
3. The contractor shall implement the specific nondiscrimination standards provided in paragraph 6(a) through (e) of these specifications.
4. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Government Code, Section 12990, or the regulations promulgated pursuant thereto.
5. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.
6. The contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor must be able to demonstrate fully its efforts under Steps a. through e. below:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Provide written notification within seven days to the director of DFEH when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - c. Disseminate the Contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the

- Contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.
- d. Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general foremen, on-site foremen, etc., are aware of the Contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.
 - e. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the Contractor's obligations under these specifications are being carried out.
7. Contractors are encouraged to participate in voluntary associations which assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's.
 8. The Contractor is required to provide equal employment opportunity for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) if a particular group is employed in a substantially disparate manner.
 9. Establishment and implementation of a bona fide affirmative action plan pursuant to Section 8104 (b) of this Chapter shall create a rebuttal presumption that a contractor is in compliance with the requirements of Section 12990 of the Government Code and its implementing regulations.
 10. The Contractor shall not use the nondiscrimination standards to discriminate against any person because of race, color, religion, sex, national origin, ancestry, physical handicap, medical condition, marital status or age over 40.
 11. The Contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code Section 12990.

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12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code Section 12990 and its implementing regulations by the awarding agency. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code Section 12990.
13. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. References: Section 12990, Government Code.

7-1.01A(5) Apprentices

- Attention is directed to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on the public works contract. Responsibility for compliance with this section lies with the Contractor.
- It is State policy to encourage the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

7-1.01A(6) Workers' Compensation

- Pursuant to the requirements in Section 1860 of the Labor Code, the Contractor will be required to secure the payment of workers' compensation to the Contractor's employees in conformance with the requirements in Section 3700 of the Labor Code.
- Prior to the commencement of work, the Contractor shall sign and file with the Engineer a certification in the following form:

"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

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of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- This certification is included in the contract, and signature and return of the contract as provided in Section 3-1.03, "Execution of Contract," shall constitute signing and filing of the certificate.

7-1.01A(7) Suits to Recover Penalties and Forfeitures

- Attention is directed to Sections 1730 to 1733, inclusive, of the Labor Code concerning suits to recover amounts withheld from payment for failure to comply with requirements of the Labor Code or contract provisions based on those laws.
- Those sections provide that a suit on the contract for alleged breach thereof in not making the payment is the exclusive remedy of the Contractor or the Contractor's assignees with reference to amounts withheld for those penalties or forfeitures; and that the suit must be commenced and actual notice thereof received by the awarding authority prior to 90 days after completion of the contract and the formal acceptance of the job.
- Submission of a claim under Section 9-1.07B, "Final Payment and Claims," for the amounts withheld from payment for those penalties and forfeitures is not a prerequisite for those suits, and these claims will not be considered.

7-1.01B Fair Labor Standards Act

- The attention of bidders is invited to the fact that the State of California, Department of Transportation, has been advised by the Wage and Hour Division, U.S. Department of Labor, that contractors engaged in highway construction work are required to meet the provisions of the Fair Labor Standards Act of 1938 and as amended (52 Stat. 1060).

7-1.01C Contractor's Licensing Laws

- Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors.
- All bidders and contractors shall be licensed in accordance with the laws of this State and any bidder or contractor not so licensed is subject to the penalties imposed by those laws.
- Attention is also directed to the requirements in Public Contract Code Section 10164. In all projects where Federal funds are involved, the Contractor shall be properly licensed at the time the contract is awarded.

7-1.01D Vehicle Code

- Pursuant to the authority contained in Vehicle Code Section 591, the Department has determined that within those areas that are within the limits of the project and are open to public traffic, the Contractor shall comply with all the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code.
- Attention is directed to the statement in Vehicle Code Section 591 that this section shall not relieve the Contractor or any person from the duty of exercising due care. The Contractor shall take all necessary precautions for safe operation of the Contractor's equipment and the protection of the public from injury and damage from the Contractor's equipment.

7-1.01E Trench Safety

- Attention is directed to the requirements in Section 6705 of the Labor Code concerning trench excavation safety plans.

7-1.01F Air Pollution Control

- The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the contract, including any air pollution control rules, regulations, ordinances and statutes, specified in Section 11017 of the Government Code.

- Unless otherwise provided in the special provisions, material to be disposed of shall not be burned, either inside or outside the highway right of way.

7-1.01G Water Pollution

- The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, and coastal waters from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials and shall conduct and schedule operations so as to avoid or minimize muddying and silting of streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

- Water pollution control work is intended to provide prevention, control and abatement of water pollution to streams, waterways and other bodies of water, and shall consist of constructing those facilities which may be shown on the plans, specified herein or in the special provisions, or directed by the Engineer.

- In order to provide effective and continuous control of water pollution it may be necessary for the Contractor to perform the contract work in small or multiple units, on an out of phase schedule, and with modified construction procedures. The Contractor shall provide temporary water pollution control measures, including but not limited to, dikes, basins, ditches, and applying straw and seed, which become necessary as a result of the Contractor's operations. The Contractor shall coordinate water pollution control work with all other work done on the contract.

- Before starting any work on the project, the Contractor shall submit, for acceptance by the Engineer, a program to control water pollution effectively during construction of the project. The program shall show the schedule for the erosion control work included in the contract and for all water pollution control measures which the Contractor proposes to take in connection with construction of the project to minimize the effects of the operations upon adjacent streams and other bodies of water. The Contractor shall not perform any clearing and grubbing or earthwork on the project, other than that specifically authorized in writing by the Engineer, until the program has been accepted.

- If the measures being taken by the Contractor are inadequate to control water pollution effectively, the Engineer may direct the Contractor to revise the operations and the water pollution control program. The directions will be in writing and will specify the items of work for which the Contractor's water pollution control measures are inadequate. No further work shall be performed on those items until the water pollution control measures are adequate and, if also required, a revised water pollution control program has been accepted.

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- The Engineer will notify the Contractor of the acceptance or rejection of any submitted or revised water pollution control program in not more than 5 working days.
- The State will not be liable to the Contractor for failure to accept all or any portion of an originally submitted or revised water pollution control program, nor for any delays to the work due to the Contractor's failure to submit an acceptable water pollution control program.
- The Contractor may request the Engineer to waive the requirement for submission of a written program for control of water pollution when the nature of the Contractor's operation is such that erosion is not likely to occur. Waiver of this requirement will not relieve the Contractor from responsibility for compliance with the other provisions of this section. Waiver of the requirement for a written program for control of water pollution will not preclude requiring submittal of a written program at a later time if the Engineer deems it necessary because of the effect of the Contractor's operations.
- Unless otherwise approved by the Engineer in writing, the Contractor shall not expose a total area of erodible earth material, which may cause water pollution, exceeding 70 000 m² for each separate location, operation or spread of equipment before either temporary or permanent erosion control measures are accomplished.
- Where erosion which will cause water pollution is probable due to the nature of the material or the season of the year, the Contractor's operations shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.
- Nothing in the terms of the contract nor in the provisions in this Section 7-1.01G shall relieve the Contractor of the responsibility for compliance with Sections 5650 and 12015 of the Fish and Game Code, or other applicable statutes relating to prevention or abatement of water pollution.
- When borrow material is obtained from other than commercially operated sources, erosion of the borrow site during and after completion of the work shall not result in water pollution. The material source shall be finished, where practicable, so that water will not collect or stand therein.
- The requirements of this section shall apply to all work performed under the contract and to all non-commercially operated borrow or disposal sites used for the project.
- The Contractor shall also conform to the following provisions:
 1. Where working areas encroach on live streams, barriers adequate to prevent the flow of muddy water into streams shall be constructed and maintained between working areas and streams, and during construction of the barriers, muddying of streams shall be held to a minimum.
 2. Removal of material from beneath a flowing stream shall not be commenced until adequate means, such as a bypass channel, are provided to carry the stream free from mud or silt around the removal operations.
 3. Should the Contractor's operations require transportation of materials across live streams, the operations shall be conducted without muddying the stream. Mechanized equipment shall not be operated in the stream

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channels of the live streams except as may be necessary to construct crossings or barriers and fills at channel changes.

4. Water containing mud or silt from aggregate washing or other operations shall be treated by filtration, or retention in a settling pond, or ponds, adequate to prevent muddy water from entering live streams.
5. Oily or greasy substances originating from the Contractor's operations shall not be allowed to enter or be placed where they will later enter a live stream.
6. Portland cement or fresh portland cement concrete shall not be allowed to enter flowing water of streams.
7. When operations are completed, the flow of streams shall be returned as nearly as possible to a meandering thread without creating possible future bank erosion, and settling pond sites shall be graded so they will drain and will blend in with the surrounding terrain.
8. Material derived from roadway work shall not be deposited in a live stream channel where it could be washed away by high stream flows.
9. Where there is possible migration of anadromous fish in streams affected by construction on the project, the Contractor shall conduct work operations so as to allow free passage of the migratory fish.

- Compliance with the provisions in this section shall in no way relieve the Contractor from the responsibility to comply with the other provisions of the contract, in particular the responsibility for damage and for preservation of property.
- Full compensation for conforming to the provisions in this section shall be considered as included in the prices paid for the various items of work and no additional compensation will be allowed therefor.

7-1.01H Use of Pesticides

- The Contractor shall comply with all rules and regulations of the Department of Food and Agriculture, the Department of Health, the Department of Industrial Relations and all other agencies which govern the use of pesticides required in the performance of the work on the contract.
- Pesticides shall include but shall not be limited to herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliant, desiccants, soil sterilants and repellents.
- Any substance or mixture of substances intended for preventing, repelling, mitigating, or destroying weeds, insects, diseases, rodents, or nematodes and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant shall be considered a pesticide.

7-1.01I Sound Control Requirements

- The Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the contract.
- Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the

manufacturer. No internal combustion engine shall be operated on the project without the muffler.

7-1.01J Assignment of Antitrust Actions

• The Contractor's attention is directed to the following requirements in Public Contract Code 7103.5 and Government Code Sections 4553 and 4554, which shall be applicable to the Contractor and the Contractor's subcontractors:

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

"If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

"Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

7-1.02 LOAD LIMITATIONS

• Unless expressly permitted in the special provisions, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated bases, surfacing, pavement or structures in any areas within the limits of the project, whether or not the area is subject to weight limitations under Section 7-1.01D, "Vehicle Code," except as hereinafter provided in this Section 7-1.02.

• After application of the curing seal, no traffic or Contractor's equipment will be permitted on cement treated base or lean concrete base for a period of 72 hours. After 72 hours, traffic and equipment operated on the base shall be limited to that used in paving operations and placing additional layers of cement treated base. No traffic or Contractor's equipment will be permitted on treated permeable base except for that equipment required to place the permeable base and the subsequent

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layer of pavement. Trucks used to haul treated base, portland cement concrete, or asphalt concrete shall enter onto the base to dump at the nearest practical entry point ahead of spreading equipment. Empty haul trucks shall exit from the base at the nearest practical exit point. Entry and exit points shall not be more than 300 m ahead of spreading equipment except in locations where specifications prohibit operation of trucks outside the area occupied by the base or where steep slopes or other conditions preclude safe operation of hauling equipment. In those locations, entry and exit points shall be established at the nearest point ahead of spreading equipment permitted by specifications and allowing safe operation of hauling equipment. Damage to curing seal or base shall be repaired promptly by the Contractor, at the Contractor's expense, as directed by the Engineer.

• Within the limits of the project and subject to the control of the Engineer, and provided that the Contractor, at the Contractor's expense, shall provide such protective measures as are deemed necessary by the Engineer and shall repair any damage caused by the operations, the Contractor will be permitted to:

- (1) Make transverse crossings of those portions of an existing public road or street that are within the highway right of way, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
- (2) Make transverse crossings of treated bases, surfacing or pavement which are under construction or which have been completed, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
- (3) Cross bridge structures that are not open to public traffic and which are designed for HS20-44 Live Loading (culverts and pipes excluded), with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code, but not exceeding the load limitations hereinafter specified, provided that the Contractor furnishes to the Engineer the dimensions and maximum axle loadings of equipment proposed for use on bridge structures:
 - (a) The maximum loading on bridge structures due to pneumatic-tired truck and trailer combinations shall not exceed (1) 12 700 kg for single axles, (2) 21 700 kg for tandem axles, nor (3) 27 200 kg total gross load for single vehicles or 50 000 kg total gross load for truck and trailer or semi-trailer combinations.
 - (b) The loading on bridge structures due to 2 and 3 axle pneumatic-tired earthmovers shall not exceed that shown in the following table.

Allowable Construction Loading On Bridges
For 2 and 3 Axle Earthmovers

Spacing of Bridge Girders (center to center in meters)	Maximum Axle Loading (in kilograms)
1.2	12 700
1.5	13 100
1.8	13 600
2.1	14 500
2.4	15 400
2.7	16 700
3.0 and over	18 000

Minimum axle spacing:

For 3-axle earthmovers

Axles 1 to 2 = 2.4 m

Axles 2 to 3 = 6.1 m

For 2-axle earthmovers

Axles 1 to 2 = 6.1 m

- (4) Move equipment within the limits of the project over completed or existing base, surfacing, pavement and structures, whether or not open to the public, in accordance with the limitations and conditions in the "Permit Policy" of the Department of Transportation.

• Within the limits of the project and subject to the condition that the Contractor shall repair, at the Contractor's expense, any damage caused thereby, the Contractor will be permitted to cross culverts and pipes with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code in accordance with the conditions set forth on the plans. If the conditions are not set forth on the plans, the provisions in the first paragraph in this Section 7-1.02 will apply.

• Should the Contractor desire to increase the load carrying capacity of a structure or structures which are to be constructed as a part of the contract, in order to facilitate the Contractor's own operations, the Contractor may request the Engineer to consider redesigning the structure or structures. Proposals by the Contractor to increase the load carrying capacity of structures above 59 000 kg per single axle or pair of axles less than 2.4 m apart, or above 149 000 kg total gross vehicle weight, will not be approved. The request shall include a description of the structure or structures involved and a detailed description of the overloads to be carried, the date the revised plans would be required, and a statement that the Contractor agrees to pay all costs involved in the strengthening of the structure or structures, including the cost of revised plans, and further that the Contractor agrees that no extension of time will be allowed by reason of any delay to the work which may be due to the alteration of the structure or structures. If the Engineer determines that strengthening the structure or structures will be permitted, the Engineer will inform the Contractor of the estimated cost of the alterations, including engineering, and the date that revised plans could be furnished. If the

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cost and date are satisfactory to the Contractor, the Engineer will prepare a change order providing for the agreed upon alterations.

7-1.03 PAYMENT OF TAXES

- The contract prices paid for the work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the Department, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the contract.

7-1.04 PERMITS AND LICENSES

- The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.
- The Environmental Quality Act (Public Resources Code, Sections 21000 to 21176, inclusive) may be applicable to permits, licenses and other authorizations which the Contractor must obtain from local agencies in connection with performing the work of the contract. The Contractor shall comply with the provisions of those statutes in obtaining the permits, licenses and other authorizations and they shall be obtained in sufficient time to prevent delays to the work.
- In the event that the Department has obtained permits, licenses or other authorizations, applicable to the work, in conformance with the requirements in the Environmental Quality Act, the Contractor shall comply with the provisions of those permits, licenses and other authorizations.

7-1.05 PATENTS

- The Contractor shall assume all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the work, and agrees to indemnify and save harmless the State of California, the Director, the Engineer, and their duly authorized representatives, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices or processes.

7-1.06 SAFETY AND HEALTH PROVISIONS

- The Contractor shall conform to all applicable occupational safety and health standards, rules, regulations and orders established by the State of California.
- Working areas utilized by the Contractor to perform work during the hours of darkness, shall be lighted to conform to the minimum illumination intensities established by California Division of Occupational Safety and Health Construction Safety Orders.
- All lighting fixtures shall be mounted and directed in a manner precluding glare to approaching traffic.
- Full compensation for conforming to the provisions in this section shall be considered as included in the contract prices paid for the various items of work involved and no separate payment will be made therefor.

7-1.07 (BLANK)**7-1.08 PUBLIC CONVENIENCE**

- This Section 7-1.08 defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with the Contractor's operations.
- Attention is directed to Section 4-1.04, "Detours," for provisions relating to the passage of traffic around the work over detours.
- Attention is directed to Section 7-1.09, "Public Safety," for provisions relating to the Contractor's responsibility for the safety of the public. The provisions in Section 7-1.09 are in addition to the provisions in this Section 7-1.08, and the Contractor will not be relieved of the responsibilities as set forth in Section 7-1.09 by reason of conformance with any of the provisions in this Section 7-1.08.
- Attention is directed to Section 12, "Construction Area Traffic Control Devices," for provisions concerning flagging and traffic-handling equipment and devices used in carrying out the provisions in this Section 7-1.08 and Section 7-1.09.
- In the event of a suspension of the work, attention is directed to Section 8-1.05, "Temporary Suspension of Work."
- The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public.
- Unless otherwise provided in the special provisions, all public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible. Where possible, public traffic shall be routed on new or existing paved surfaces.
- Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.
- Existing traffic signals and highway lighting shall be kept in operation for the benefit of the traveling public during progress of the work, and other forces will continue routine maintenance of existing systems.
- Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.
- Convenient access to driveways, houses, and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.
- The Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs shall be covered. Except as otherwise provided for construction area signs in Section 12, "Construction Area Traffic Control Devices," furnishing, installing and removing covers will be paid for as extra work as provided in Section 4-1.03D.

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- Roadway excavation and the construction of embankments shall be conducted in such a manner as to provide a reasonably smooth and even surface satisfactory for use by public traffic at all times; sufficient fill at culverts and bridges to permit traffic to cross shall be placed in advance of other grading operations; and if ordered by the Engineer roadway cuts shall be excavated in lifts and embankments constructed part width at a time, construction being alternated from one side to the other and traffic routed over the side opposite the one under construction. Culvert installation or culvert construction shall be conducted on but one-half the width of the traveled way at a time, and that portion of the traveled way being used by public traffic shall be kept open and unobstructed until the opposite side of the traveled way is ready for use by traffic.
- Upon completion of rough grading at the grading plane, or placing any subsequent layer thereon, the surface of the roadbed shall be brought to a smooth, even condition free of humps and depressions, satisfactory for the use of public traffic.
- After the surface of the roadbed has been brought to a smooth and even condition for the passage of public traffic as above provided, any work ordered by the Engineer for the accommodation of public traffic prior to commencing subgrade operations will be paid for as extra work as provided in Section 4-1.03D. After subgrade preparation for a specified layer of material has been completed, the Contractor shall, at the Contractor's expense, repair any damage to the roadbed or completed subgrade, including damage caused by the Contractor's operations or use by public traffic.
- While subgrade and paving operations are underway, public traffic shall be permitted to use the shoulders and, if half-width paving methods are used, shall also be permitted to use the side of the roadbed opposite the one under construction. When sufficient width is available, a passageway wide enough to accommodate at least 2 lanes of traffic shall be kept open at locations where subgrade and paving operations are in active progress. Any shaping of shoulders or reshaping of subgrade necessary for the accommodation of public traffic thereon during subgrade preparation and paving operations will be paid for as extra work as provided in Section 4-1.03D.
- When ordered by the Engineer, the Contractor shall furnish a pilot car and driver and flaggers for the purpose of expediting the passage of public traffic through the work under one-way controls, and the cost thereof will be paid for as extra work as provided in Section 4-1.03D, except that the cost of flaggers furnished for this purpose will be paid for as provided in Section 12-2.02, "Flagging Costs." At locations where traffic is being routed through construction under one-way controls and when ordered by the Engineer, the movement of the Contractor's equipment from one portion of the work to another shall be governed in accordance with the one-way controls.
- Water or dust palliative shall be applied if ordered by the Engineer for the alleviation or prevention of dust nuisance as provided in Section 10, "Dust Control."
- In order to expedite the passage of public traffic through or around the work and where ordered by the Engineer, the Contractor shall install signs, lights, flares,

temporary railing (Type K), barricades and other facilities for the sole convenience and direction of public traffic. Also where directed by the Engineer, the Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the work. The cost of furnishing and installing the signs, lights, flares, temporary railing (Type K), barricades, and other facilities, not to be paid for as separate contract items, will be paid for as extra work as provided in Section 4-1.03D.

- The cost of furnishing flaggers for the sole convenience and direction of public traffic will be paid for as provided in Section 12-2.02, "Flagging Costs."
- The Contractor will be required to pay the cost of replacing or repairing all facilities installed under extra work for the convenience or direction or warning of public traffic that are lost while in the Contractor's custody, or are damaged by reason of the Contractor's operations to such an extent as to require replacement or repair, and deductions from any moneys due or to become due the Contractor will be made to cover the cost.
- Whenever a section of surfacing, pavement or the deck of a structure has been completed, the Contractor shall open it to use by public traffic if the Engineer so orders or may open it to use by public traffic if the Engineer so consents. In either case the Contractor will not be allowed any compensation due to any delay, hindrance or inconvenience to the Contractor's operations caused by public traffic, but will thereupon be relieved of responsibility for damage to completed permanent facilities caused by public traffic, within the limits of that use. The Contractor will not be relieved of any other responsibility under the contract nor will the Contractor be relieved of cleanup and finishing operations.
- Except as otherwise provided in this Section 7-1.08 or in the special provisions, full compensation for conforming to the provisions in this Section 7-1.08 shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

7-1.09 PUBLIC SAFETY

- It is the Contractor's responsibility to provide for the safety of traffic and the public during construction.
- Attention is directed to Section 7-1.12, "Idemnification and Insurance."
- Attention is directed to Section 7-1.08, "Public Convenience," for provisions relating to the Contractor's responsibility for providing for the convenience of the public in connection with the Contractor's operations.
- Attention is directed to Section 12, "Construction Area Traffic Control Devices," for provisions concerning flagging and traffic-handling equipment and devices used in carrying out the provisions of Section 7-1.08 and this Section 7-1.09.
- Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense and without cost to the State, furnish, erect and maintain those fences, temporary railing (Type K), barricades, lights, signs and other devices and take such other protective measures that are necessary to prevent accidents or damage or injury to the public.
- Fences, temporary railing (Type K), barricades, lights, signs, and other devices furnished, erected and maintained by the Contractor, at the Contractor's expense,

are in addition to any construction area traffic control devices for which payment is provided for elsewhere in the specifications.

- The Contractor shall also furnish such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered, and payment therefor will be made as provided in Section 12-2.02, "Flagging Costs."

- Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in the current Manual of Traffic Controls. Signs or other protective devices furnished and erected by the Contractor, at the Contractor's expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the specifications. Signs furnished and erected by the Contractor, at the Contractor's expense, shall be approved by the Engineer as to size, wording and location.

- The installation of general roadway illumination shall not relieve the Contractor of the responsibility for furnishing and maintaining any of the protective facilities herein before specified.

- Construction equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic. All movements of workmen and construction equipment on or across lanes open to public traffic shall be performed in a manner that will not endanger public traffic.

- The Contractor's trucks or other mobile equipment which leave a freeway lane, that is open to public traffic, to enter the construction area, shall slow down gradually in advance of the location of the turnoff to give following public traffic an opportunity to slow down.

- When leaving a work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

- Lanes, ramps and shoulders shall be closed in accordance with the details shown on the plans, the provisions of Section 12, "Construction Area Traffic Control Devices," and as provided in the special provisions.

- The Contractor shall notify the Engineer not less than 15 days before the anticipated start of each falsework and girder erection operation whenever the falsework or girders will reduce clearances available to public traffic.

- Pedestrian openings through falsework shall be paved or provided with full width continuous wood walks and shall be kept clear. Pedestrians shall be protected from falling objects and curing water for concrete. Overhead protection for pedestrians shall extend not less than 1.2 m beyond the edge of the bridge deck. All pedestrian openings through falsework shall be illuminated in conformance with the provisions in Section 86-6.11, "Falsework Lighting."

- Where the height of vehicular openings through falsework is less than 4.6 m, a W34B "Vertical Clearance" sign shall be provided above each opening facing approaching traffic. The signs shall have black letters and numbers on an orange reflectorized background and shall be illuminated so that the signs are clearly

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visible. The minimum height of the letters and numbers shall be 150 mm and 250 mm, respectively.

- No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

- Temporary facilities which the Contractor uses to perform the work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.

- Temporary facilities which could be a hazard to public safety if improperly designed shall comply with design requirements specified in the contract for those facilities or, if none are specified, with standard design criteria or codes appropriate for the facility involved. Working drawings and design calculations for the temporary facilities shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California and shall be submitted to the Engineer for approval pursuant to Section 5-1.02, "Plans and Working Drawings." The submittals shall designate thereon the standard design criteria or codes used. Installation of the temporary facilities shall not start until the Engineer has reviewed and approved the drawings.

- Should the Contractor appear to be neglectful or negligent in furnishing warning devices and taking protective measures as above provided, the Engineer may direct attention to the existence of a hazard and the necessary warning devices shall be furnished and installed and protective measures taken by the Contractor at the Contractor's expense. Should the Engineer point out the inadequacy of warning devices and protective measures, that action on the part of the Engineer shall not relieve the Contractor from responsibility for public safety or abrogate the obligation to furnish and pay for these devices and measures.

- Provision for the payment for signs, lights, flares, temporary railing (Type K), barricades, and other facilities by extra work as provided in Section 7-1.08, "Public Convenience," or by contract item as provided in Section 12, "Construction Area Traffic Control Devices," shall in no wise relieve the Contractor from the responsibility as provided in this Section 7-1.09.

- Except as otherwise provided in this Section 7-1.09 or in the special provisions, full compensation for conforming to all of the provisions in this Section 7-1.09 shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

7-1.10 USE OF EXPLOSIVES

- When explosives are used, the Contractor shall exercise the utmost care not to endanger life or property.

- In advance of doing any blasting work within 60 m of any railroad's tracks or structures, the Contractor shall notify the railroad of the location, date, time and approximate duration of the blasting operations.

7-1.11 PRESERVATION OF PROPERTY

• Attention is directed to Section 7-1.12, "Idemnification and Insurance," and to Section 8-1.10, "Utility and Non-Highway Facilities." Due care shall be exercised to avoid injury to existing highway improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs and other plants that are not to be removed.

• Roadside trees, shrubs and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway facilities and any other improvements or facilities within or adjacent to the highway shall be protected from injury or damage, and if ordered by the Engineer, the Contractor shall provide and install suitable safeguards, approved by the Engineer, to protect the objects from injury or damage. If the objects are injured or damaged by reason of the Contractor's operations, the objects shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by the specifications accompanying the contract, if any of the objects are a part of the work being performed under the contract. The Engineer may make or cause to be made those temporary repairs that are necessary to restore to service any damaged highway facility. The cost of the repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the contract.

• The fact that any underground facility is not shown upon the plans shall not relieve the Contractor of the responsibility under Section 8-1.10, "Utility and Non-Highway Facilities." It shall be the Contractor's responsibility, pursuant thereto, to ascertain the location of those underground improvements or facilities which may be subject to damage by reason of the Contractor's operations.

• Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property as specified in this Section 7-1.11, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

7-1.12 INDEMNIFICATION AND INSURANCE

• The Contractor's obligations regarding indemnification of the State of California and the requirements for insurance shall conform to the provisions in Sections 7-1.12A, "Indemnification," and 7-1.12B, "Insurance," of this Section 7-1.12.

7-1.12A Indemnification

• With the exception that this section shall in no event be construed to require indemnification by the Contractor to a greater extent than permitted by law, the Contractor shall defend, indemnify and save harmless the State, including its officers, directors, agents (excluding agents who are design professionals), and employees, and each of them (Indemnitees), from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or

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liabilities, in law or in equity, of every kind and nature whatsoever (Claims), arising out of or in connection with the Contractor's performance of this contract for:

- A. Bodily injury including, but not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to, the public, any employees or agents of the Contractor, State, Department, or any other contractor and;
- B. Damage to property of anyone including loss of use thereof;

caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of the Contractor or anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable.

• Except as otherwise provided by law, the indemnification provisions above shall apply regardless of the existence or degree of fault of Indemnitees. The Contractor, however, shall not be obligated to indemnify Indemnitees for Claims arising from conduct delineated in Civil Code Section 2782. Further, the Contractor's indemnity obligation shall not extend to Claims to the extent they arise from any defective or substandard condition of the roadway which existed at or prior to the time the Contractor commenced work, unless this condition has been changed by the work or the scope of the work requires the Contractor to maintain existing Roadway facilities and the claim arises from the Contractor's failure to maintain. The Contractor's indemnity obligation shall extend to Claims arising after the work is completed and accepted only if these Claims are directly related to alleged acts or omissions of the Contractor which occurred during the course of the work. No inspection by the Department, its employees or agents shall be deemed a waiver by the Department of full compliance with the requirements of this section.

• The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable to the claimant. The Contractor will respond within 30 days to the tender of any claim for defense and indemnity by the State, unless this time has been extended by the State. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of the contract as shall reasonably be considered necessary by the Department, may be retained by the State until disposition has been made of the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

• With respect to third party claims against the Contractor, the Contractor waives any and all rights of any type to express or implied indemnity against the State, its directors, officers, employees, or agents (excluding agents who are design professionals).

7-1.12B Insurance

• Insurance shall conform to the following requirements:

7-1.12B(1) Casualty Insurance

. The Contractor shall, at the Contractor's expense, procure and maintain insurance on all of its operations with companies acceptable to the Department as follows. All insurance shall be kept in full force and effect from the beginning of the work through final acceptance by the State. In addition, the Contractor shall maintain completed operations coverage with a carrier acceptable to the Department through the expiration of the patent deficiency in construction statute of repose set forth in Section 337.1 of the Code of Civil Procedure.

7-1.12B(1)(a) Workers' Compensation and Employer's Liability Insurance

. Workers' Compensation insurance shall be provided as specified in Section 7-1.01A(6), "Workers' Compensation." Employer's Liability Insurance shall be provided in amounts not less than:

- (a) \$1 000 000 for each accident for bodily injury by accident.
- (b) \$1 000 000 policy limit for bodily injury by disease.
- (c) \$1 000 000 for each employee for bodily injury by disease.

. If there is an exposure of injury to the Contractors' employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

7-1.12B(1)(b) Liability Insurance

. The Contractor shall carry General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of the Contractor providing insurance for bodily injury liability, and property damage liability for the limits of liability indicated below and including coverage for:

- (a) premises, operations and mobile equipment.
- (b) products and completed operations.
- (c) broad form property damage (including completed operations).
- (d) explosion, collapse and underground hazards.
- (e) personal injury.
- (f) contractual liability.

7-1.12B(1)(c) Liability Limits/Additional Insureds

. The limits of liability shall be at least:

- (a) \$1 000 000 for each occurrence (combined single limit for bodily injury and property damage).
- (b) \$2 000 000 aggregate for products-completed operations.
- (c) \$2 000 000 general aggregate. This general aggregate limit shall apply separately to the Contractor's work under this Agreement.
- (d) \$5 000 000 umbrella or excess liability. For projects over \$25 000 000 only, an additional \$10 000 000 umbrella or excess liability (for a total of \$15 000 000). Umbrella or excess policy shall include products liability completed operations coverage and may be subject to \$5 000 000 or \$15

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000 000 aggregate limits. Further, the umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

The State and the Department, including their officers, directors, agents (excluding agents who are design professionals), and State employees, shall be named as additional insureds under the General Liability and Umbrella Liability Policies with respect to liability arising out of or connected with work or operations performed by or on behalf of the Contractor under this contract. Coverage for such additional insureds shall not extend to liability:

- (1) arising from any defective or substandard condition of the Roadway which existed at or prior to the time the Contractor commenced work, unless such condition has been changed by the work or the scope of the work requires the Contractor to maintain existing Roadway facilities and the claim arises from the Contractor's failure to maintain; or
- (2) for claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of the Contractor which occurred during the course of the work; or
- (3) to the extent prohibited by Section 11580.04 of the Insurance Code.

The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance. Any other insurance or self insurance maintained by the Department or State will be excess only and shall not be called upon to contribute with this insurance. Such additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by the Insurance Services Office (ISO).

7-1.12B(2) Automobile Liability Insurance

The Contractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The primary limits of liability shall be not less than \$1 000 000 combined single limit each accident for bodily injury and property damage. The umbrella or excess liability coverage required under Section 7-1.12B(1)(c), "Liability Limits/Additional Insureds," shall also apply to automobile liability.

7-1.12B(3) Policy Forms, Endorsements and Certificates

The Contractor's General Liability Insurance shall be provided under Commercial General Liability policy form No. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form No. CG0001.

Evidence of insurance in a form acceptable to the Department, including the required "additional insured" endorsements, shall be furnished by the Contractor to the Department at or prior to the pre-construction conference. The evidence of insurance shall provide that there will be no cancellation, lapse, or reduction of coverage without thirty (30) days' prior written notice to the Department.

Certificates of Insurance, as evidence of required insurance, for the General Liability, Auto Liability and Umbrella-Excess Liability policies shall set forth deductible amounts applicable to each policy and all exclusions which are added by endorsement to each policy. The Department may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to the interests of the State. Standard ISO form No. CG 0001 or similar exclusions will be allowed provided they are not inconsistent with the requirements of this section. Allowance of any additional exclusions is at the discretion of the Department. Regardless of the allowance of exclusions or deductions by the Department, the Contractor shall be responsible for any deductible amount and shall warrant that the coverage provided to the Department is consistent with the requirements of this section.

7-1.12B(4) Enforcement

• The Department may take any steps as are necessary to assure Contractor's compliance with its obligations. Should any insurance policy lapse or be canceled during the contract period the Contractor shall, within thirty (30) days prior to the effective expiration or cancellation date, furnish the Department with evidence of renewal or replacement of the policy. Failure to continuously maintain insurance coverage as herein provided is a material breach of contract. In the event the Contractor fails to maintain any insurance coverage required, the Department may, but is not required to, maintain this coverage and charge the expense to the Contractor or terminate this Agreement. The required insurance shall be subject to the approval of Department, but any acceptance of insurance certificates by the Department shall in no way limit or relieve the Contractor of the Contractor's duties and responsibilities under the Contract to indemnify, defend and hold harmless the State, its officers, agents, and employees. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude the State from taking other actions as is available to it under any other provision of the contract or law. Failure of the Department to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

7-1.12B(5) Self-Insurance

• Self-insurance programs and self-insured retentions in insurance policies are subject to separate annual review and approval by the State of evidence of the Contractor's financial capacity to respond. Additionally, self-insurance programs or retentions must provide the State with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance.

7-1.12B(6) Miscellaneous

• Nothing contained in the Contract is intended to make the public or any member thereof a third party beneficiary of the Insurance or Indemnity provisions of these Standard Specifications, nor is any term, condition or other provision of the Contract intended to establish a standard of care owed to the public or any member thereof.

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7-1.125 Legal Actions Against the Department

. In the event litigation is brought against the Department concerning compliance by the Department with State or Federal laws, rules or regulations applicable to highway work, the provisions of this Section 7-1.125 shall apply.

- (A) If, pursuant to court order, the Department prohibits the Contractor from performing all or any portion of the work, the delay will be considered a right of way delay within the meaning of Section 8-1.09, "Right of Way Delays," unless the contract is terminated as hereinafter provided.
- (B) If, pursuant to court order (other than an order to show cause) the Department is prohibited from requiring the Contractor to perform all or any portion of the work, the Department may, if it so elects, eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the contract.
- (C) If the final judgment in the action prohibits the Department from requiring the Contractor to perform all or any portion of the work, the Department will either eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the contract.
- (D) If the contract is to be terminated, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions in Section 8-1.11, "Termination of Contract."

7-1.13 DISPOSAL OF MATERIAL OUTSIDE THE HIGHWAY RIGHT OF WAY

. Disposal of all material shall be as indicated in the Work Order or as directed by Board staff.

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7-1.14 COOPERATION

. Should construction be under way by other forces or by other contractors within or adjacent to the limits of the work specified or should work of any other nature be under way by other forces within or adjacent to those limits, the Contractor shall cooperate with all the other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to

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perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

- When 2 or more contractors are employed on related or adjacent work, or obtain materials from the same material source, as provided in Section 6-2.02, "Possible Local Material Sources," or Section 6-2.03, "Mandatory Local Material Sources," each shall conduct their operations in such a manner as not to cause any unnecessary delay or hindrance to the other.
- Each contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by their operations, and for loss caused the other due to unnecessary delays or failure to finish the work within the time specified for completion.

7-1.15 RELIEF FROM MAINTENANCE AND RESPONSIBILITY

- Upon the request of the Contractor, the Director may relieve the Contractor of the duty of maintaining and protecting certain portions of the work as described below, which have been completed in all respects in accordance with the requirements of the contract and to the satisfaction of the Engineer, and thereafter except with the Contractor's consent, the Contractor will not be required to do further work thereon. In addition, the action by the Director will relieve the Contractor of responsibility for injury or damage to those completed portions of the work resulting from use by public traffic or from the action of the elements or from any other cause but not from injury or damage resulting from the Contractor's own operations or from the Contractor's negligence.
- Portions of the work for which the Contractor may be relieved of the duty of maintenance and protection as provided in the above paragraph include, but are not limited to, the following:

- (1) The completion of 0.5-km of roadway or 0.5-km of one roadway of a divided highway or a frontage road including the traveled way, shoulders, drainage control facilities, planned roadway protection work, lighting and any required traffic control and access facilities.
- (2) A bridge or other structure of major importance.
- (3) A complete unit of a traffic control signal system or of a highway lighting system.
- (4) Non-highway facilities constructed for other agencies.

- However, nothing in this Section 7-1.15 providing for relief from maintenance and responsibility will be construed as relieving the Contractor of full responsibility for making good any defective work or materials found at any time before the formal written acceptance of the entire contract by the Director.

7-1.16 CONTRACTOR'S RESPONSIBILITY FOR THE WORK AND MATERIALS

- Until the acceptance of the work, the Contractor shall be responsible for the work and the materials to be used therein. The Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the work or materials occasioned by any cause before its completion and acceptance and shall

bear the expense thereof when Board staff determines that the damage was the result of negligence, improper construction procedures and practices, or a failure to protect the work, on the part of the Contractor.

7-1.165 DAMAGE BY STORM, FLOOD, TSUNAMI OR EARTHQUAKE

• Attention is directed to Section 7-1.16, "Contractor's Responsibility for the Work and Materials." In the event damage to the work is caused by a storm, flood, tsunami, earthquake or other natural disaster which constitutes an "Occurrence," as hereinafter defined, the provisions in this Section 7-1.165 shall be applicable, and the Contractor may apply in writing to the Engineer for the State to pay or participate in the cost of repairing damage to the work from that cause or, in lieu thereof, and at the sole discretion of the Department, terminate the contract and relieve the Contractor of further obligation to perform the work, subject to the following:

- A. Occurrence—"Occurrence" shall include tsunamis, earthquakes in excess of a magnitude of 3.5 on the Richter Scale, and storms, floods and other natural disasters as to which the Governor has proclaimed a state of emergency when the damaged work is located within the territorial limits to which the proclamation is applicable or, which were, in the opinion of the Engineer, of a magnitude at the site of the work sufficient to have caused such a proclamation had they occurred in a populated area or in an area in which such a proclamation was not already in effect.
- B. Application by Contractor— The Contractor's written request for the State to pay or to participate in the cost of rebuilding, repairing, restoring or otherwise remedying the damage to the work caused by the Occurrence shall be submitted to the Engineer before performing any work other than emergency work, including emergency work necessary to provide for passage of public traffic.
- C. Protecting the Work from Damage— Nothing in this section shall be construed to relieve the Contractor of the responsibility to protect the work from damage. The Contractor shall bear the entire cost of repairing damage to the work caused by the Occurrence which the Engineer determines was due to the failure of the Contractor to comply with the requirements of the Plans and Specifications, take reasonable and adequate measures to protect the work or exercise sound engineering and construction practices in the conduct of the work, and those repair costs shall be excluded from consideration under the provisions of this section.
- D. Repair Work— Repair of damaged work under the provisions of this section shall be pursuant to a contract change order issued hereunder and specifying the repair work to be performed on the damaged facility. The repair work shall consist of restoring the in-place construction (for the purposes of this section erected falsework and formwork shall be considered in-place construction) to the same state of completion to which the work had advanced prior to the Occurrence. Emergency work which the Engineer determines would have been part of the repair work if it had

not previously been performed, will be considered to be part of the repair work.

The Department reserves the right to make changes in the plans and specifications applicable to the portions of the work to be repaired, and if those changes will increase the cost of repairing the damage over the Engineer's estimate of the cost of repair without the changes, the Contractor will be paid for the increased costs in accordance with Subsection E and the increased cost amount shall not be considered in determining the cost of repair to be borne by the Contractor under Subsection F.

Nothing in this section shall be construed to relieve the Contractor of full responsibility for the risk of injury, loss or damage to materials not yet incorporated in the work and to materials, tools and equipment (except erected falsework and formwork) used to perform the work, or to relieve the Contractor of responsibility under Section 7-1.12, "Idemnification and Insurance." The provisions of this section shall not be applicable to the repair of damage caused by an Occurrence to any portion of the work as to which the Contractor has been granted relief from maintenance and responsibility pursuant to Section 7-1.15, "Relief From Maintenance and Responsibility," or to the removal of slides and slipouts or the repair and restoration of damage to the work resulting from slides and slipouts pursuant to Section 19-2.04, "Slides and Slipouts."

- E. Determination of Costs— Unless otherwise agreed between the Engineer and the Contractor, the cost of the work performed pursuant to this Section 7-1.165 will be determined in conformance with the provisions in Section 9-1.03, "Force Account Payment," except there shall be no markup allowance pursuant to Section 9-1.03A, "Work Performed by Contractor," unless the Occurrence that caused the damage was a tsunami or earthquake. The cost of emergency work, which the Engineer determines would have been part of the repair work if it had not previously been performed, will be determined in the same manner as the authorized repair work. The cost of repairing damaged work which was not in compliance with the requirements of the plans and specifications shall be borne solely by the Contractor, and those costs shall not be considered in determining the cost of repair under this Subsection E.
- F. Payment for Repair Work— When the Occurrence that caused the damage was a tsunami or earthquake, the State will pay the cost of repair determined as provided in Subsection E, that exceeds 5 percent of the amount of the Contractor's bid for bid comparison purposes. When the Occurrence that caused the damage was a storm, flood or other natural disaster, the State will participate in the cost of the repair determined as provided in Subsection E in accordance with the following:
 - 1. On projects for which the amount of the Contractor's bid for bid comparison purposes is \$2 000 000 or less, the State will pay 90

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percent of the cost of repair that exceeds 5 percent of the amount of the Contractor's bid for bid comparison purposes.

2. On projects for which the Contractor's bid for bid comparison purposes is greater than \$2 000 000, the State will pay 90 percent of the cost of repair that exceeds \$100 000.

G. Termination of Contract— If the Department elects to terminate the contract, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of Section 8-1.11, "Termination of Contract."

7-1.17 ACCEPTANCE OF CONTRACT

• When Board staff has made the final inspection as provided in Section 5-1.13, "Final Inspection," and determines that work has been completed in all respects in accordance with the Work Order and plans, Board staff will prepare a letter of formal acceptance of the project, and the Contractor will be relieved of the duty of maintaining and protecting the work as a whole, and the Contractor will not be required to perform any further work thereon; and the Contractor shall be relieved of the responsibility for injury to persons or property or damage to the work.

7-1.18 PROPERTY RIGHTS IN MATERIALS

• Nothing in the contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the work or soil or after partial payment has been made as provided in Section 9-1.06, "Partial Payments," for material delivered on the ground or stored subject to or under the control of the State and unused. All the material shall become the property of the State of California upon being so attached or affixed or upon payment for materials delivered on the ground or stored subject to or under the control of the State and unused, as provided in Section 9-1.06.

7-1.19 RIGHTS IN LAND AND IMPROVEMENTS

• Nothing in these specifications shall be construed as allowing the Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the contract for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the State and any owner, former owner, or tenant of the land, structure, or building.

• The Contractor shall not occupy State-owned property outside the right of way as shown on the plans or maps available in the office of the district in which the work is situated, unless the Contractor enters into a rental agreement with the Department. The agreement will be based on the fair rental values.

7-1.20 PERSONAL LIABILITY

• Neither the Director, the Engineer nor any other officer or authorized employee of the State of California, nor any officer or employee of any county, city or district shall be personally responsible for any liability arising under or by virtue of the contract.

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7-1.21 REPAIR OF EQUIPMENT

• The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment or tools used in or upon the work shall be considered a part of the work to be performed under the contract and any laborers, workers or mechanics working on the machinery, equipment or tools, unless employed by bona fide commercial repair shops, garages, blacksmith shops or machine shops, which have been established and operating on a commercial basis for a period of at least 2 months prior to the award of the contract, shall be subject to all the requirements relating to labor set forth in these specifications and in the special provisions.

7-1.22 MATERIAL PLANTS

• The construction, erection and operation of material production, proportioning or mixing plants from which material is used wholly on the contract or on contracts under the supervision of the Department shall be considered a part of the work to be performed under the contract and any laborers, workers or mechanics working on those plants shall be subject to all of the requirements relating to labor set forth in these specifications and in the special provisions.

SECTION 8: PROSECUTION AND PROGRESS

8-1.01 SUBCONTRACTING

- The Contractor shall give personal attention to the fulfillment of the contract and shall keep the work under the Contractor's control.
- No subcontractor will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the Contractor and the Contractor will be held responsible for their work, which shall be subject to the provisions of the contract and specifications.
- The Contractor shall perform, with the Contractor's own organization, contract work amounting to not less than 50 percent of the original total contract price, except that any designated "Specialty Items" may be performed by subcontract and the amount of any designated "Specialty Items" performed by subcontract may be deducted from the original total contract price before computing the amount of work required to be performed by the Contractor with the Contractor's own organization. When items of work in the Engineer's Estimate are preceded by the letters (S) or (S-F), those items are designated as "Specialty Items." Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the contract item bid price, determined from information submitted by the Contractor, subject to approval by the Engineer.
- Subcontracts shall include provisions that the contract between the State and the Contractor is part of the subcontract, and that all terms and provisions of the contract are incorporated in the subcontract. Subcontracts shall also contain certification by the subcontractor that the subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted work. Copies of subcontracts shall be available to the Engineer upon written request, and shall be provided to the Engineer at the time any litigation against the State concerning the project is filed.
- Before work is started on a subcontract, the Contractor shall file with the Engineer a written statement showing the work to be subcontracted, the names of the subcontractors and the description of each portion of the work to be subcontracted.
- Pursuant to the provisions of Section 6109 of the Public Contract Code, the Contractor shall not perform work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- When a portion of the work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the Department, the subcontractor shall be removed immediately on the requisition of the Engineer and shall not again be employed on the work.
- The roadside production of materials produced by other than the Contractor's forces shall be considered as subcontracted. Roadside production of materials shall be construed to be production of aggregates of all kinds with portable, semiportable or temporary crushing or screening, proportioning and mixing plants established or

reopened for the purpose of supplying aggregate or material for a particular project or projects. The erection, establishment or reopening of the plants and the operation thereof in the production of materials for use on the work shall conform to the requirements relating to labor set forth in these specifications and in the special provisions.

8-1.02 ASSIGNMENT

- The performance of the contract may not be assigned, except upon the written consent of the Director. Consent will not be given to any proposed assignment which would relieve the original Contractor or the Contractor's surety of their responsibilities under the contract nor will the Director consent to any assignment of a part of the work under the contract.
- The Contractor may assign moneys due or to become due the Contractor under the contract and the assignment will be recognized by the Department, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper set-offs in favor of the Department and to all deductions provided for in the contract and particularly all money withheld, whether assigned or not, shall be subject to being used by the Department for the completion of the work in the event that the Contractor should be in default therein.

8-1.03 BEGINNING OF WORK

- Upon Work Order issuance, the Contractor shall begin work within the time indicated in the Work Order or approved by Board staff. After operations have commenced, work shall continue on each consecutive workday, without interruption or delay, until all work included in the Work Order has been completed. The Contractor shall not arbitrarily suspend operations without prior approval of Board staff. A workday shall be considered as every day except Saturday, Sunday, legal holidays, or days on which the Contractor and Board staff agree that inclement weather precludes normal operations..
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- Should the Contractor begin work in advance of receiving notice that the contract has been approved as above provided, any work performed by the Contractor in advance of the date of approval shall be considered as having been done by the Contractor at the Contractor's own risk and as a volunteer unless the contract is approved.
- The delivery to the State for execution and approval of the contract properly executed on behalf of the Contractor and surety and the minimum 72 hours advance written notice as required above shall constitute the Contractor's authority to enter upon the site of the work and to begin operations, subject to the Contractor's assumption of the risk of the disapproval of the contract, as above provided, and subject also to the following:
 - (1) The Contractor shall, on commencing operations, take all precautions required for public safety and shall observe all the provisions in these specifications and the special provisions.
 - (2) In the event of disapproval, the Contractor shall at the Contractor's expense do that work that is necessary to leave the site in a neat condition

to the satisfaction of the Engineer. If the work done affects any existing road or highway, the Contractor shall at the Contractor's expense restore it to its former condition, or the equivalent thereof, to the satisfaction of the Engineer.

- (3) All work done according to the contract prior to its approval, will, when the contract is approved, be considered authorized work and will be paid for as provided in the contract.
- (4) The Contractor shall not be entitled to any additional compensation or an extension of time for any delay, hindrance or interference caused by or attributable to commencement of work prior to the date on which the contract was approved by the Attorney General or the attorney appointed and authorized to represent the Department, except to the extent the delay, hindrance or interference would have been compensable hereunder had work been commenced on the date of the approval and the progress thereof been the same as that actually made.

8-1.04 PROGRESS SCHEDULE

- The Contractor shall submit a proposed schedule with the Work Plan. The schedule shall be amended and updated to reflect work completed and adjustments in progress, and will be submitted to Board Staff on a weekly basis unless otherwise indicated in the Work Order.
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- The schedule shall show the order in which the Contractor proposes to carry out the work, the dates on which the Contractor will start the several salient features of the work (including procurement of materials, plant, and equipment), and the contemplated dates for completing those salient features.
- The progress schedules submitted shall be consistent in all respects with the time and order of work requirements of the contract.
- Subsequent to the time that submittal of a progress schedule is required in accordance with these specifications, no progress payments will be made for any work until a satisfactory schedule has been submitted to the Engineer.

8-1.05 TEMPORARY SUSPENSION OF WORK

- The Engineer shall have the authority to suspend the work wholly or in part, for any time period as the Engineer deems necessary, due to unsuitable weather, or to such other conditions considered unfavorable for the suitable prosecution of the work, or for any time period as the Engineer deems necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the contract. The Contractor shall immediately comply with the written order of the Engineer to suspend the work wholly or in part. The suspended work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the Engineer.
- In the event that a suspension of work is ordered as provided above, and should that suspension be ordered by reason of the failure of the Contractor to carry out orders or to perform any provision of the contract; or by reason of weather conditions being unsuitable for performing any item or items of work, which work, in the sole opinion of the Engineer, could have been performed prior to the

occurrence of the unsuitable weather conditions had the Contractor diligently prosecuted the work when weather conditions were suitable; the Contractor, at the Contractor's expense, shall do all the work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public traffic during the period of that suspension as provided in Sections 7-1.08, "Public Convenience," and 7-1.09, "Public Safety," and as specified in the special provisions for the work. In the event that the Contractor fails to perform the work above specified, the Department will perform that work and the cost thereof will be deducted from moneys due or to become due the Contractor.

- In the event that a suspension of work is ordered by the Engineer due to unsuitable weather conditions, and in the sole opinion of the Engineer, the Contractor has prosecuted the work with energy and diligence prior to the time that operations were suspended, the cost of providing a smooth and unobstructed passageway through the work will be paid for as extra work as provided in Section 4-1.03D or, at the option of the Engineer, that work will be performed by the Department at no cost to the Contractor.

- If the Engineer orders a suspension of all of the work or a portion of the work which is the current controlling operation or operations, due to unsuitable weather or to other conditions considered unfavorable to the suitable prosecution of the work, the days on which the suspension is in effect shall not be considered working days as defined in Section 8-1.06, "Time of Completion." If a portion of work at the time of the suspension is not a current controlling operation or operations, but subsequently does become the current controlling operation or operations, the determination of working days will be made on the basis of the then current controlling operation or operations.

- If a suspension of work is ordered by the Engineer, due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the contract, the days on which the suspension order is in effect shall be considered working days if those days are working days within the meaning of the definition set forth in Section 8-1.06, "Time of Completion."

- In addition to the requirements specified above, the following shall apply:

If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation or contract time or additional compensation and contract time is due as a result of that suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for the adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost or time or cost and time required for the performance of the contract has increased as a result of the suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit)

and modify the contract in writing accordingly. The Engineer will notify the Contractor of the Engineer's determination whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

No contract adjustment will be allowed under the provisions specified in this section to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any term or condition of this contract.

Any contract adjustment warranted due to suspension of work ordered by the Engineer will be made in the same manner as provided for right of way delays in Section 8-1.09, "Right of Way Delays."

- In the event of a suspension of work under any of the conditions set forth in this Section 8-1.05, the suspension of work shall not relieve the Contractor of the responsibilities as set forth in Section 7, "Legal Relations and Responsibility."

8-1.06 TIME OF COMPLETION

- Upon issuance of the Work Order, and commencement of construction operations, the Contractor shall prosecute the work on each consecutive work day until all work contemplated by the Work Order has been completed. The Contractor shall not arbitrarily suspend operations without the approval of Board staff.

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- Should the Contractor prepare to begin work at the regular starting time of any day on which inclement weather, or the conditions resulting from the weather, or the condition of the work, prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter during that day and the major portion of the day could be considered to be suitable for those construction operations.

- The current controlling operation or operations is to be construed to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Engineer and the Contractor, which, if delayed or prolonged, will delay the time of completion of the contract.

- Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom, shall be made by the Engineer. The Contractor will be allowed 15 days from the issuance of the weekly statement of working days in which to file a written protest setting forth in what respects the Contractor differs from the Engineer; otherwise, the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct. The Engineer will furnish the Contractor a weekly statement showing the number of working days

charged to the contract for the preceding week, the number of working days of time extensions being considered or approved, the number of working days originally specified for the completion of the contract and the number of working days remaining to complete the contract and the extended date for completion thereof, except when working days are not being charged in conformance with the provisions in Section 8-1.05, "Temporary Suspension of Work."

8-1.07 LIQUIDATED DAMAGES

• It is the intent of this Contract that individual projects proceed in an uninterrupted manner from the date of commencement until all work contemplated in the Work Order has been completed. The Work Plan prepared by the Contractor shall include the number of days estimated to complete the project. Board staff may modify this number with the actual number of days allowed for completion of work to be stated in the Work Order. All parties to the Contract agree that the Board will sustain damage for any day on which the Contractor arbitrarily suspends operations, or fails to prosecute the work. It is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the Board will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the Board the sum of \$1,000 for each day on which the Contractor fails to perform work on the site in accordance with the approved schedule without the approval of Board staff. The Contractor agrees to pay said liquidated damages herein provided for, and further agrees that the Board may deduct the amount thereof from any moneys due or that may become due the Contractor under the Contract.

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8-1.08 TERMINATION OF CONTROL

• Failure to supply an adequate working force, or material of proper quality, or failure to comply with Section 10262 of the State Contract Act, or in any other respect to prosecute the work with the diligence and force specified by the contract, is grounds for termination of the Contractor's control over the work and for taking over the work by the State as provided in the State Contract Act.

• If the Contractor's control of the work is terminated or the Contractor abandons the work and the contract work is completed in conformance with the provisions in Section 10255 of the State Contract Act, any dispute concerning the amount to be paid by the State to the Contractor or the Contractor's surety or to be paid to the State by the Contractor or the Contractor's surety, under the provisions in Section 10258 of the State Contract Act, shall be subject to arbitration in conformance with the provisions in Section 9-1.10, "Arbitration." The surety shall be bound by the arbitration award and is entitled to participate in the arbitration proceedings.

8-1.09 RIGHT OF WAY DELAYS

. If, through the failure of the State to acquire or clear right of way, the Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there shall be paid to the Contractor that amount that the Engineer may find to be a fair and reasonable compensation for that part of the Contractor's actual loss, that, in the opinion of the Engineer, was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work paid for on a force account basis, as provided in Section 9-1.03A(3), "Equipment Rental," with the following exceptions:

- (1) The right of way delay factor for each classification of equipment shown in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is a part of the contract, will be applied to that equipment rental rate.
- (2) The time for which the compensation will be paid will be the actual normal working time during which the delay condition exists, but in no case will exceed 8 hours in any one day.
- (3) The days for which compensation will be paid will be the calendar days, excluding Saturdays, Sundays and legal holidays, during the existence of the delay, except that when rental of equipment is paid for under the provisions in Section 9-1.03A (3b), "Equipment not on the Work," no payment will be made for right of way delays in conformance with the provisions in this Section 8-1.09.

Actual loss shall be understood to include no items of expense other than idle time of equipment and necessary payments for idle time of workers, cost of extra moving of equipment and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this Section 8-1.09 and compensation for idle time of workers will be determined as provided in Section 9-1.03A(1), "Labor," and no markup will be added in either case for overhead and profit. The cost of extra moving of equipment and the cost of longer hauls will be paid for as extra work as provided in Section 4-1.03D.

If performance of the Contractor's work is delayed as the result of the failure of the Department to acquire or clear right of way, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," will be granted.

8-1.10 UTILITY AND NON-HIGHWAY FACILITIES

. Attention is directed to Section 7-1.11, "Preservation of Property," and Section 7-1.12, "Indemnification and Insurance." The Contractor shall protect from damage utility and other non-highway facilities that are to remain in place, be installed, relocated or otherwise rearranged.

. It is anticipated that some or all of the utility and other non-highway facilities, both above ground and below ground, that are required to be rearranged (as used

herein, rearrangement includes installation, relocation, alteration or removal) as a part of the highway improvement will be rearranged in advance of construction operations. Where it is not anticipated that the rearrangement will be performed prior to construction, or where the rearrangement must be coordinated with the Contractor's construction operations, the existing facilities that are to be rearranged will be indicated on the plans or in the special provisions. Where a rearrangement is indicated on the plans or in the special provisions, the Contractor will have no liability for the costs of performing the work involved in the rearrangement.

- The right is reserved to the Department and the owners of facilities, or their authorized agents, to enter upon the highway right of way for the purpose of making those changes that are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in this work and shall conduct operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by the other forces. Wherever necessary, the work of the Contractor shall be coordinated with the rearrangement of utility or other non-highway facilities, and the Contractor shall make arrangements with the owner of those facilities for the coordination of the work.

- Attention is directed to the possible existence of underground main or trunk line facilities not indicated on the plans or in the special provisions and to the possibility that underground main or trunk lines may be in a location different from that which is indicated on the plans or in the special provisions. The Contractor shall ascertain the exact location of underground main or trunk lines whose presence is indicated on the plans or in the special provisions, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities which can be inferred from the presence of visible facilities such as buildings, meters and junction boxes prior to doing work that may damage any of the facilities or interfere with their service.

- If the Contractor cannot locate an underground facility whose presence is indicated on the plans or in the special provisions, the Contractor shall so notify the Engineer in writing. If the facility for which the notice is given is in a substantially different location from that indicated on the plans or in the special provisions, the additional cost of locating the facility will be paid for as extra work as provided in Section 4-1.03D.

- If the Contractor discovers underground main or trunk lines not indicated on the plans or in the special provisions, the Contractor shall immediately give the Engineer and the Utility Company written notification of the existence of those facilities. The main or trunk lines shall be located and protected from damage as directed by the Engineer, and the cost of that work will be paid for as extra work as provided in Section 4-1.03D. The Contractor shall, if directed by the Engineer, repair any damage which may occur to the main or trunk lines. The cost of that repair work, not due to the failure of the Contractor to exercise reasonable care, will be paid for as extra work as provided in Section 4-1.03D. Damage due to the Contractor's failure to exercise reasonable care shall be repaired at the Contractor's cost and expense.

- Where it is determined by the Engineer that the rearrangement of an underground facility is essential in order to accommodate the highway improvement and the plans and specifications do not provide that the facility is to be rearranged, the Engineer will provide for the rearrangement of the facility by other forces or the rearrangement shall be performed by the Contractor and will be paid for as extra work as provided in Section 4-1.03D.
- When ordered by the Engineer in writing, the Contractor shall rearrange any utility or other non-highway facility necessary to be rearranged as a part of the highway improvement, and that work will be paid for as extra work as provided in Section 4-1.03D.
- Should the Contractor desire to have any rearrangement made in any utility facility, or other improvement, for the Contractor's convenience in order to facilitate the Contractor's construction operations, which rearrangement is in addition to, or different from, the rearrangements indicated on the plans or in the special provisions, the Contractor shall make whatever arrangements are necessary with the owners of the utility or other non-highway facility for the rearrangement and bear all expenses in connection therewith.
- The Contractor shall immediately notify the Engineer of any delays to the Contractor's operations as a direct result of underground main or trunk line facilities which were not indicated on the plans or in the special provisions or were located in a position substantially different from that indicated on the plans or in the special provisions, or as a direct result of utility or other non-highway facilities not being rearranged as herein provided (other than delays in connection with rearrangements made to facilitate the Contractor's construction operations or delays due to a strike or labor dispute). These delays will be considered right of way delays within the meaning of Section 8-1.09, "Right of Way Delays," and compensation for the delay will be determined in conformance with the provisions in Section 8-1.09. The Contractor shall be entitled to no other compensation for that delay.
- Any delays to the Contractor's operations as a direct result of utility or other non-highway facilities not being rearranged as provided in this Section 8-1.10, due to a strike or labor dispute, will entitle the Contractor to an extension of time as provided in Section 8-1.07, "Liquidated Damages." The Contractor shall be entitled to no other compensation for that delay.

8-1.11 TERMINATION OF CONTRACT

- The contract may be terminated by the Director when termination is authorized by Section 7-1.125, "Legal Actions Against the Department," Section 7-1.165, "Damage by Storm, Flood, Tsunami or Earthquake," or by other provisions of the contract which authorize termination. The Department also reserves the right to terminate the contract at any time upon a determination by the Director that termination of the contract is in the best interest of the State.
- If the Director elects to terminate the contract, the termination of the contract and the total compensation payable to the Contractor shall be governed by the following:

- (A) The Engineer will issue the Contractor a written notice signed by the Director, specifying that the contract is to be terminated. Upon receipt of

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the written notice, the Contractor will be relieved of further responsibility for damage to the work (excluding materials) as specified in Section 7-1.16, "Contractor's Responsibility for the Work and Materials," and, except as otherwise directed in writing by the Engineer, the Contractor shall:

- (1) Stop all work under the contract except that specifically directed to be completed prior to acceptance.
 - (2) Perform work the Engineer deems necessary to secure the project for termination.
 - (3) Remove equipment and plant from the site of the work.
 - (4) Take action that is necessary to protect materials from damage.
 - (5) Notify all subcontractors and suppliers that the contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
 - (6) Provide the Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including its storage location, and such other information as the Engineer may request.
 - (7) Dispose of materials not yet used in the work as directed by the Engineer. It shall be the Contractor's responsibility to provide the State with good title to all materials purchased by the State hereunder, including materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," and with bills of sale or other documents of title for those materials.
 - (8) Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the Department all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
 - (9) Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the contract.
 - (10) Take other actions directed by the Engineer.
- (B) Acceptance of the contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials. The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:
- (1) The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," and for materials furnished by the State for use in the work and unused shall terminate when the Engineer certifies that

those materials have been stored in the manner and at the locations the Engineer has directed.

- (2) The Contractor's responsibility for damage to materials purchased by the State subsequent to the issuance of the notice that the contract is to be terminated shall terminate when title and delivery of those materials has been taken by the State.

When the Engineer determines that the Contractor has completed the work under the contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, the Engineer will recommend that the Director formally accept the contract, and immediately upon and after the acceptance by the Director, the Contractor will not be required to perform any further work thereon and shall be relieved of the contractual responsibilities for injury to persons or property which occurs after the formal acceptance of the project by the Director.

- (C) Termination of the contract shall not relieve the surety of its obligation for any just claims arising out of the work performed.
- (D) The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:

- (1) The reasonable cost to the Contractor, without profit, for all work performed under the contract, including mobilization, demobilization and work done to secure the project for termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. Deductions will also be made, when the contract is terminated under the authority of Section 7-1.165, "Damage by Storm, Flood, Tsunami or Earthquake," for the cost of materials damaged by the "occurrence."

When, in the opinion of the Engineer, the cost of a contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.

- (2) A reasonable allowance for profit on the cost of the work performed as determined under Subsection (1), provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that the Contractor would have made a profit had the contract been completed and provided further, that the profit allowed shall in no event exceed 4 percent of the cost.
- (3) The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the Department or otherwise disposed of as directed by the Engineer.

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- (4) A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the contract.

All records of the Contractor and the Contractor's subcontractors, necessary to determine compensation in conformance with the provisions in this Section 8-1.11, shall be open to inspection or audit by representatives of the Department at all times after issuance of the notice that the contract is to be terminated and for a period of 3 years, thereafter, and those records shall be retained for that period.

After acceptance of the work by the Director, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate in conformance with the provisions in Section 9-1.07B, "Final Payment and Claims," when, in the Engineer's opinion, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

- The Board has the authority and express right to terminate any contract awarded under this RFQ at any time during the term of the contract for any reason or if the Board finds that Contractor's work is negligent, not satisfactory, or not in accordance with the Contract.
- The provisions in this Section 8-1.11 shall be included in all subcontracts.

SECTION 9: MEASUREMENT AND PAYMENT

9-1.01 MEASUREMENT OF QUANTITIES

- All work to be paid for at a contract price per unit of measurement will be measured by the Engineer in accordance with the International System of Units (SI).
- Unless shipped by rail, material paid for by mass shall be weighed on scales furnished by and at the expense of the Contractor or on other sealed scales regularly inspected by the Division of Measurement Standards or its designated representative.
- Weighing, measuring and metering devices used to measure the quantity of materials used in the work shall be suitable for the purpose intended and shall conform to the tolerances and specifications as outlined in Title 4, Chapter 9 of the California Code of Regulations, the provisions of the California Business and Professions Code, Division 5, and these specifications. Devices not Type-approved by the Division of Measurement Standards shall be Type-approved in conformance with the requirements in California Test 109.
- Elements of the material plant controller which affect the accuracy or delivery of data shall be made available for the application of security seals. These devices will be inspected and adjusting elements sealed prior to the first production of materials for the contract. The security seals will be furnished by the Engineer. Material production shall cease when alteration, disconnection or otherwise manipulation of the security seals occur, and production shall not resume until the device is inspected and resealed by the Engineer.
- Weighing, measuring or metering devices used to determine the quantity of materials to be paid for will be considered to be "commercial devices" and shall be sealed by the Division of Measurement Standards or its authorized representative as often as the Engineer may deem necessary. The installation of all portable vehicle scales must be approved by the Engineer prior to sealing.
- Vehicle scales shall be of sufficient size to permit the entire vehicle or combination of vehicles to rest on the scale deck while being weighed. Combination vehicles may be weighed as separate units provided they are disconnected while being weighed. The maximum concentrated load shall not exceed the manufacturer's designed sectional capacity of the scale.
- Weighing, measuring or metering devices required by these specifications for the purpose of proportioning a material or product will be considered to be "non-commercial devices" and shall be tested and approved in conformance with the requirements in California Test 109. This testing shall be done by one of the following, in the presence of the Engineer, as often as the Engineer deems necessary:
 1. A County Sealer of Weights and Measures;
 2. A Scale Service Agency; or
 3. A Division of Measurement Standards Official.

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- The Contractor shall notify the Engineer at least 24 hours in advance of testing the device.
- Undersupports for scale bearing points shall be constructed of portland cement concrete produced from commercial quality aggregates and cement, which contains not less than 275 kg of cement per cubic meter. Undersupports shall be constructed in a manner to prevent any shifting or tilting of the support and shall have a minimum height of 350 mm above ground line. The footings shall have a minimum depth of 150 mm below the ground line. The bearing surface of the footings shall have a minimum width of 760 mm and shall be of sufficient area so the pressure does not exceed 200 kPa. Adequate drainage shall be provided to prevent saturation of the ground under the scale. Scale bulkheads shall be of adequate material and strength to resist displacement. If timber bulkheads are used, the minimum cross section shall be 200 mm x 200 mm. Wedges shall not be used to shim the supports. If shimming is necessary, the shimming shall be done by securely attached metal shims, or by grouting. Shimming shall not exceed 75 mm. The approach ramps shall be level with the scale deck for a distance of not less than one-half the length of the scale deck. The mechanical indicating elements shall be installed level and plumb and shall be rigidly mounted upon a concrete foundation.
- The lever system and mechanical indicating elements of hopper scales shall be rigidly attached to non-yielding supports in such a manner as to prevent any loss in weight due to bending and distortion of the supports.
- When a multiple beam type scale is used in proportioning materials, an over and under indicator shall be provided which will give positive visible evidence of the amount of any over and under weight. The indicator shall be so designed that the indicator will operate during the addition of the last 90 kg of any weighing. The over-travel of the indicator shall be at least one-third of the loading travel. Indicators shall be enclosed against moisture and dust.
- Over and under dials, and other indicators for weighing and measuring systems used in proportioning materials shall be grouped so that the smallest increment for each indicator can be accurately read from the point at which the proportioning operation is controlled.
- The Contractor shall bear the expense of all service fees for testing and approving of "non-commercial devices." The cost of the equipment, labor and materials furnished by the Contractor to assist in the testing of weighing, measuring or metering devices will be considered as included in the contract prices paid for the various contract items of work requiring the weighing, measuring or metering and no separate payment will be made therefor.
- Whenever pay quantities of material are determined by weighing, the scales shall be operated by a weighmaster licensed in conformance with the requirements in the California Business and Professions Code, Division 5, Chapter 7. The Contractor shall furnish a Public weighmasters certificate or certified daily summary weigh sheets. A representative of the Department may, at the discretion of the Engineer, be present to witness the weighing and to check and compile the daily record of the scale weights.

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- When required by the Engineer, the operator of each vehicle weighed shall obtain a weight or load slip from the weigher and deliver that slip to the Engineer at the point of delivery of the material.
- If material is shipped by rail, the car mass will be accepted provided that actual mass of material only will be paid for and not minimum car mass used for assessing freight tariff, and provided further that car mass will not be acceptable for material to be passed through mixing plants.
- Vehicles used to haul material being paid for by mass shall be weighed empty daily and at additional times as the Engineer may direct. Each vehicle shall bear a plainly legible identification mark. Vehicles may from time to time be required by the Engineer to have the mass of the material to be paid for verified by weighing the empty and loaded vehicle on such other scales as the Engineer may designate.
- Materials which are specified for measurement by the cubic meter "measured in the vehicle" shall be hauled in vehicles of such type and size that the actual contents may be readily and accurately determined. Unless all vehicles are of uniform capacity, each vehicle must bear a plainly legible identification mark indicating its water level capacity. Vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery. Loads hauled in vehicles not meeting the above requirements or loads of a quantity less than the capacity of the vehicle, measured after being leveled off as above provided, will be subject to rejection, and no compensation will be allowed for that material.
- When material is to be measured and paid for on a volume basis and it is impractical to determine the volume by the specified method of measurement, or when requested by the Contractor in writing and approved by the Engineer in writing, the material will be weighed in accordance with the requirements specified for mass measurement and the mass will be converted to volume measurement for payment purposes. Factors for conversion from mass measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before that method of measurement of pay quantities will be adopted.
- Quantities of material wasted or disposed of in a manner not called for under the contract; or rejected loads of material, including material rejected after it has been placed by reason of the failure of the Contractor to conform to the provisions of the contract; or material not unloaded from the transporting vehicle; or material placed outside of the lines indicated on the plans or established by the Engineer; or material remaining on hand after completion of the work will not be paid for, and those quantities will be deducted from the final total quantities. No compensation will be allowed for hauling and disposing of rejected material.
- The mass of all aggregate or other roadway material which is to be paid for on a mass basis, except imported borrow, imported topsoil, straw, fiber, aggregate subbases, aggregate bases or aggregate for cement treated bases, will be determined by deducting from the mass of material, the mass of water in the material at the time of weighing in excess of 3 percent of the dry mass of the material. When imported borrow, imported topsoil or aggregate subbase is being paid for on a mass basis, the mass to be paid for will be determined by deducting from the mass of the material, the mass of water in the material at the time of weighing in excess of 6

percent of the dry mass of the material. When straw is being paid for on a mass basis, the mass to be paid for will be determined by deducting from the mass of straw, the mass of water in the straw at the time of weighing in excess of 15 percent of the dry mass of the straw. When fiber is being paid for on a mass basis, the mass of water in the fiber at the time of weighing shall not exceed 15 percent of the dry mass of the fiber. No deduction will be made for the mass of water in fiber. The percentage of water in the material shall be determined by California Test 226. The mass of aggregate base and aggregate for cement treated bases which are to be paid for on a mass basis, will be determined as provided in Section 26, "Aggregate Bases," and Section 27, "Cement Treated Bases," respectively.

- The mass of water deducted as provided in this Section 9-1.01 will not be paid for.
- Full compensation for all expense involved in conforming to the requirements specified in this Section 9-1.01 shall be considered as included in the unit prices paid for the materials being measured or weighed and no additional compensation will be allowed therefor.
- At the Contractor's option, metric or English or a combination of both may be used for measuring, weighing or metering materials.

9-1.015 FINAL PAY ITEMS

- When an item of work is designated as (F) or (S-F) in the Engineer's Estimate, the estimated quantity for that item of work shall be the final pay quantity, unless the dimensions of any portion of that item are revised by the Engineer, or the item or any portion of the item is eliminated. If the dimensions of any portion of the item are revised, and the revisions result in an increase or decrease in the estimated quantity of that item of work, the final pay quantity for the item will be revised in the amount represented by the changes in the dimensions, except as otherwise provided for minor structures in Section 51-1.22, "Measurement." If a final pay item is eliminated, the estimated quantity for the item will be eliminated. If a portion of a final pay item is eliminated, the final pay quantity will be revised in the amount represented by the eliminated portion of the item of work.
- The estimated quantity for each item of work designated as (F) or (S-F) in the Engineer's Estimate shall be considered as approximate only, and no guarantee is made that the quantity which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantity. No allowance will be made in the event that the quantity based on computations does not equal the estimated quantity.
- In case of discrepancy between the quantity shown in the Engineer's Estimate for a final pay item and the quantity or summation of quantities for the same item shown on the plans, payment will be based on the quantity shown in the Engineer's Estimate.

9-1.02 SCOPE OF PAYMENT

- The Contractor shall accept the compensation provided in the contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work contemplated and embraced under the contract; also for loss or damage arising from the nature of the

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9-1.04 NOTICE OF POTENTIAL CLAIM

• The Contractor shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the Engineer, including failure or refusal to issue a change order, or for the happening of any event, thing, occurrence or other cause, unless the Contractor shall have given the Engineer due written notice of potential claim as hereinafter specified. Compliance with this Section 9-1.04 shall not be a prerequisite as to matters within the scope of the protest provisions in Section 4-1.03, "Changes," or Section 8-1.06, "Time of Completion," or the notice provisions in Section 5-1.116, "Differing Site Conditions," or Section 8-1.07, "Liquidated Damages," or Section 8-1.10, "Utility and Non-Highway Facilities," nor to any claim which is based on differences in measurements or errors of computation as to contract quantities.

• The written notice of potential claim shall be submitted to the Engineer prior to the time that the Contractor performs the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Engineer, or in all other cases within 15 days after the happening of the event, thing, occurrence or other cause, giving rise to the potential claim.

• The written notice of potential claim shall be submitted on Form CEM-6201 furnished by the Department and shall be certified with reference to the California False Claims Act, Government Code Sections 12650 - 12655. The notice shall set forth the reasons for which the Contractor believes additional compensation will or may be due and the nature of the costs involved. Unless the amount of the potential claim has been stated in the written notice, the Contractor shall, within 15 days of submitting the notice, furnish an estimate of the cost of the affected work and impacts, if any, on project completion. The estimate of costs may be changed or updated by the Contractor when conditions have changed. When the affected work is completed, the Contractor shall submit substantiation of the Contractor's actual costs. Failure to do so shall be sufficient cause for denial of any claim subsequently filed on the basis of the notice of potential claim.

• It is the intention of this Section 9-1.04 that differences between the parties arising under and by virtue of the contract be brought to the attention of the Engineer at the earliest possible time in order that the matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that the Contractor shall have no right to additional compensation for any claim that may be based on any act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed.

• Should the Contractor, in connection with or subsequent to the assertion of a potential claim, request inspection and copying of documents or records in the

possession of the Department that pertain to the potential claim, the Contractor's records of the project, as deemed by the Department to be pertinent to the potential claim, shall be made available to the Department for inspection and copying.

9-1.05 STOP NOTICES

- The State of California, by and through the Department or other appropriate State office or officers, may at its option and at any time retain out of any amounts due the Contractor, sums sufficient to cover claims, filed pursuant to Section 3179 et seq. of the Civil Code. Stop notice information may be obtained from the Departmental Disbursing Office at 1801 30th Street, East Building, Sacramento, California.

9-1.06 PARTIAL PAYMENTS

- The Department, once in each month, shall cause an estimate in writing to be made by the Engineer. The estimate shall include the total amount of work done and acceptable materials furnished, provided the acceptable materials are listed as eligible for partial payment as materials in the special provisions and are furnished and delivered by the Contractor on the ground and not used or are furnished and stored for use on the contract, if the storage is within the State of California and the Contractor furnishes evidence satisfactory to the Engineer that the materials are stored subject to or under the control of the Department, to the time of the estimate, and the value thereof. The estimate shall also include any amounts payable for mobilization. Daily extra work reports furnished by the Contractor less than 5 calendar days, not including Saturdays, Sundays and legal holidays, prior to the preparation of the monthly progress estimate shall not be eligible for payment until the following month's estimate.

- The amount of any material to be considered in making an estimate will in no case exceed the amount thereof which has been reported by the Contractor to the Engineer on State-furnished forms properly filled out and executed, including accompanying documentation as therein required, less the amount of the material incorporated in the work to the time of the estimate. Only materials to be incorporated in the work will be considered. The estimated value of the material established by the Engineer will in no case exceed the contract price for the item of work for which the material is furnished.

- The Department shall retain 10 percent of the estimated value of the work done and 10 percent of the value of materials so estimated to have been furnished and delivered and unused or furnished and stored as aforesaid as part security for the fulfillment of the contract by the Contractor, except that at any time after 20 percent of the work has been completed, if the Engineer finds that satisfactory progress is being made, the Department may reduce the total amount being retained from payment pursuant to the above requirements to 5 percent of the total estimated value of the work and materials and may also reduce the amount retained from any of the remaining partial payments to 5 percent of the estimated value of the work and materials. In addition, on any partial payment made after 95 percent of the work has been completed, the Department may reduce the amount withheld from payment pursuant to the requirements of this Section 9-1.06, to such lesser amount as the Department determines is adequate security for the fulfillment of the balance

of the work and other requirements of the contract, but in no event will that amount be reduced to less than 125 percent of the estimated value of the work yet to be completed as determined by the Engineer. The reduction will only be made upon the written request of the Contractor and shall be approved in writing by the surety on the Performance Bond and by the surety on the Payment Bond. The approval of the surety shall be submitted to the Disbursing Officer of the Department; the signature of the person executing the approval for the surety shall be properly acknowledged and the power of attorney authorizing the person to give that consent must either accompany the document or be on file with the Department.

- The Department shall pay monthly to the Contractor, while carrying on the work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the contract. No monthly estimate or payment shall be required to be made when, in the judgment of the Engineer, the work is not proceeding in accordance with the provisions of the contract.

- No monthly estimate or payment shall be construed to be an acceptance of any defective work or improper materials.

- Attention is directed to the prohibitions and penalties pertaining to unlicensed contractors as provided in Business and Professions Code Sections 7028.15(a) and 7031.

9-1.065 PAYMENT OF WITHHELD FUNDS

- Attention is directed to Section 9-1.06, "Partial Payments," and in particular to the retention provisions of that section.

- Upon the Contractor's request, pursuant to Public Contract Code Section 10263, the Department will make payment of funds withheld from progress payments to ensure performance of the contract if the Contractor deposits in escrow with the State Treasurer, or with a bank acceptable to the Department, securities equivalent to the amount withheld. The Contractor shall be beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

- Alternatively, upon the Contractor's request, the Department will make payment of retentions earned directly to the escrow agent. The Contractor may direct the investment of the payments into securities, and the Contractor shall receive the interest earned on the investments upon the same terms provided for securities deposited by the Contractor. Upon satisfactory completion of the contract, the Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from the Department, pursuant to the terms in Section 10263 of the Public Contract Code.

- Alternatively, and subject to the approval of the Department, the payment of retentions earned may be deposited directly with a person licensed under Division 6 (commencing with Section 17000) of the Financial Code as the escrow agent. Upon written request of an escrow agent that has not been approved by the Department under subdivision (c) of Section 10263 of the Public Contract Code, the Department will provide written notice to that escrow agent within 10 business days of receipt of the request indicating the reason or reasons for not approving that

escrow agent. The payments will be deposited in a trust account with a Federally chartered bank or savings association within 24 hours of receipt by the escrow agent. The Contractor shall not place any retentions with the escrow agent in excess of the coverage provided to that escrow agent pursuant to subdivision (b) of Section 17314 of the Financial Code. In all respects not inconsistent with subdivision (c) of Section 10263 of the Public Contract Code, the remaining provisions of Section 10263 of the Public Contract Code shall apply to escrow agents acting pursuant to subdivision (c) of Section 10263 of the Public Contract Code.

- Securities eligible for investment shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit or any other security mutually agreed to by the Contractor and the Department.
- The escrow agreement used pursuant to this Section 9-1.065 shall be substantially similar to the "Escrow Agreement for Security Deposits In Lieu of Retention" in Section 10263 of the Public Contract Code, deemed as incorporated herein by reference.
- The Contractor shall obtain the written consent of the surety to the agreement.

9-1.07 PAYMENT AFTER ACCEPTANCE

- After the work has been accepted by the Director, as provided in Section 7-1.17, "Acceptance of Contract," payments will be made to the Contractor subject to the provisions in this Section 9-1.07.

9-1.07A Payment Prior to Proposed Final Estimate

- After acceptance of the work by the Director, the Engineer will make an estimate of the total amount of work done under the contract and the Department will make a final monthly payment pending issuance of the proposed final estimate. The Department will pay the balance thereon found to be due after deduction of all previous payments, all amounts to be kept or retained under the provisions of the contract and those further amounts that the Engineer determines to be necessary pending issuance of the proposed final estimate and payment thereon.

9-1.07B Final Payment and Claims

- After acceptance by the Director, the Engineer will make a proposed final estimate in writing of the total amount payable to the Contractor, including therein an itemization of the total amount, segregated as to contract item quantities, extra work and any other basis for payment, and shall also show therein all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the contract. All prior estimates and payments shall be subject to correction in the proposed final estimate. The Contractor shall submit written approval of the proposed final estimate or a written statement of all claims arising under or by virtue of the contract so that the Engineer receives the written approval or statement of claims no later than close of business of the thirtieth day after receiving the proposed final estimate. If the thirtieth day falls on a Saturday, Sunday or legal holiday, then receipt of the written approval or statement of claims by the Engineer shall not be later than close of business of the next business day. No claim will be considered that was not included in the written statement of

claims, nor will any claim be allowed as to which a notice or protest is required under the provisions in Sections 4-1.03, "Changes," 8-1.06, "Time of Completion," 8-1.07, "Liquidated Damages," 5-1.116, "Differing Site Conditions," 8-1.10, "Utility and Non-Highway Facilities," and 9-1.04, "Notice of Potential Claim," unless the Contractor has complied with the notice or protest requirements in those sections.

- On the Contractor's approval, or if the Contractor files no claim within the specified period of 30 days, the Engineer will issue a final estimate in writing in accordance with the proposed final estimate submitted to the Contractor, and within 30 days thereafter the State will pay the entire sum so found to be due. That final estimate and payment thereon shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except as otherwise provided in Sections 9-1.03C, "Records," and 9-1.09, "Clerical Errors."

- If the Contractor within the specified period of 30 days files claims, the Engineer will issue a semifinal estimate in accordance with the proposed final estimate submitted to the Contractor and within 30 days thereafter the State will pay the sum so found to be due. The semifinal estimate and payment thereon shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except insofar as affected by the claims filed within the time and in the manner required hereunder and except as otherwise provided in Sections 9-1.03C, "Records," and 9-1.09, "Clerical Errors."

- Claims filed by the Contractor shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of those claims. If additional information or details are required by the Engineer to determine the basis and amount of the claims, the Contractor shall furnish additional information or details so that the additional information or details are received by the Engineer no later than the fifteenth day after receipt of the written request from the Engineer. If the fifteenth day falls on a Saturday, Sunday or legal holiday, then receipt of the information or details by the Engineer shall not be later than close of business of the next business day. Failure to submit the information and details to the Engineer within the time specified will be sufficient cause for denying the claim.

- The Contractor shall keep full and complete records of the costs and additional time incurred for any work for which a claim for additional compensation is made. The Engineer or any designated claim investigator or auditor shall have access to those records and any other records as may be required by the Engineer to determine the facts or contentions involved in the claims. Failure to permit access to those records shall be sufficient cause for denying the claims.

- Claims submitted by the Contractor shall be accompanied by a notarized certificate containing the following language:

SECTION 9

MEASUREMENT AND PAYMENT

Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et. seq., the undersigned,

(name) _____ of
(title) _____
(company)

hereby certifies that the claim for the additional compensation and time, if any, made herein for the work on this contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the contract between parties.

Dated _____
/s/ _____
Subscribed and sworn before me this _____ day
of _____

(Notary Public)
My Commission Expires _____

- Failure to submit the notarized certificate will be sufficient cause for denying the claim.
- Any claim for overhead type expenses or costs, in addition to being certified as stated above, shall be supported by an audit report of an independent Certified Public Accountant. Any claim for overhead shall also be subject to audit by the State at its discretion.
- Any costs or expenses incurred by the State in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the State within the meaning of the California False Claims Act.
- The District Director of the District which administers the contract will make the final determination of any claims which remain in dispute after completion of claim review by the Engineer. A board or person designated by the District Director will review those claims and make a written recommendation thereon to the District Director. The Contractor may meet with the review board or person to make a presentation in support of those claims.
- Upon final determination of the claims, the Engineer will then make and issue the Engineer's final estimate in writing and within 30 days thereafter the State will pay the entire sum, if any, found due thereon. That final estimate shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except as otherwise provided in Sections 9-1.03C, "Records," and 9-1.09, "Clerical Errors."

9-1.08 ADJUSTMENT OF OVERHEAD COSTS

- When the final estimate of the contract cost of the work, including extra work, is made and the total of the final estimate is less than 90 percent of the total bid price for performing the contract work, as submitted by the Contractor in the bid proposal, an adjustment in the final payment to the Contractor to cover overhead costs will be made as set forth below. No adjustment for overhead costs will be made when the total of the final estimate is 90 percent or more of the total bid price for performing the contract work.
- Additional payment to the Contractor to cover overhead costs as above provided shall be 10 percent of the difference between a computed amount representing 90 percent of the estimated cost of the work as submitted by the Contractor in the bid proposal and the final estimate of cost of the work, including extra work.
- The provisions of this Section 9-1.08 shall not apply to contracts which have been terminated pursuant to Sections 7-1.125, "Legal Actions Against the Department," 7-1.165, "Damage by Storm, Flood, Tsunami or Earthquake," 8-1.11, "Termination of Contract," or other provisions for terminating the contract.

9-1.09 CLERICAL ERRORS

- Notwithstanding the provisions in Section 9-1.07, "Payment After Acceptance," for a period of 3 years after acceptance of the work, all estimates and payments made pursuant to Section 9-1.07, including the final estimate and payment, shall be subject to correction and adjustment for clerical errors in the calculations involved in the determination of quantities and payments. The Contractor and the Department agree to pay to the other any sum due under the provisions of this Section 9-1.09, provided, however, if the total sum to be paid is less than \$200, no payment shall be made.

9-1.10 ARBITRATION

- Article 7.1, (Sections 10240-10240.13, inclusive) of Chapter 1, Division 2 of the Public Contract Code provides for the resolution of contract claims by arbitration.
- Claims (demands for monetary compensation or damages) arising under or related to performance of the contract shall be resolved by arbitration unless the Department and the Contractor agree in writing, after the claim has arisen, to waive arbitration and to have the claim litigated in a court of competent jurisdiction. Arbitration shall be pursuant to Public Contract Code Sections 10240-10240.13, inclusive, and applicable regulations (see Subchapter 3 [Sections 301-382, inclusive] of Chapter 2 of Title 1 of the California Code of Regulations). The arbitration decision shall be decided under and in accordance with the law of this State, supported by substantial evidence and, in writing, contain the basis for the decision, findings of fact and conclusions of law.
- Arbitration shall be initiated by a Complaint in Arbitration made in compliance with the requirements of those regulations. A Complaint in Arbitration by the Contractor shall be made not later than 90 days after the date of service in person or by mail on the Contractor of the final written decision by the Department on the claim

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