

**AGREEMENT FOR DESIGN, INSTALLATION, AND COMMISSIONING OF ENERGY  
CONSERVATION FACILITIES SERVING THE LAKE COUNTY COURTHOUSE CAMPUS**

This Agreement is made and entered into this 9th day of January, 2024, by and between the COUNTY of Lake, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Staten Solar Corporation, a California Corporation, hereinafter referred to as "CONTRACTOR".

**WHEREAS**, the COUNTY owns and controls real property which is suitable for installation and operation of a ground-mounted photovoltaic system with solar panels to serve as an energy conservation facility as defined by Government Code, Section 4217.11(e); and

**WHEREAS**, Government Code, Section 4217.10, et seq., provides that COUNTY may enter into an agreement by which COUNTY may purchase such energy conservation facilities; and

**WHEREAS**, California Government Code Section 4217.12(a)(1) authorizes a public agency to enter into an energy service contract with respect to an Energy Conservation Facility ("Facility") on terms that the public agency's governing board determines are in the best interests of the public agency and if the governing board finds that the anticipated cost to the public agency for the thermal or electrical energy or conservation services provided by the Energy Conservation Facility will be less than the anticipated marginal cost to the public agency of thermal, electrical or other energy that would have been consumed by the public agency in the absence of those purchases; and

**WHEREAS**, the Lake County Board of Supervisors has made the necessary finding; and

**WHEREAS**, CONTRACTOR represents that it is qualified to design, install, construct and maintain an Energy Conservation Facility (the "Project" or "Project Work") to serve the Lake County Courthouse Campus (the "Site").

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, CONTRACTOR and COUNTY agree as follows:

- 1. Services.** In consideration for the compensation provided for hereinafter, CONTRACTOR shall furnish to the COUNTY the labor, equipment, material, and services as described in Exhibits "**A-1**" through "**A-6**" attached hereto and incorporated herein by this reference ("Services" or "Project Work"). Said Services are inclusive of complete planning, design, engineering, complete permitted plan sets, construction services, completion and commissioning services, and turnover of a complete, functional and legally operable Project, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents. Project Work includes system components of PV carport arrays and EV chargers, and ten-year operations and maintenance for the same. Without limiting the foregoing, the Project Work shall include conducting, performing, providing or procuring when and as necessary to permit progress of the Project Work to proceed in accordance with the **Project Milestone and Schedule of Values (the "Project Schedule")**, which is attached hereto as **Exhibit B-4** and incorporated by this reference as if fully set forth herein. Said Project Work shall also include compliance with the Technical Specifications and Requirements set forth in **Exhibit D** which is attached hereto.

**2. Term.** CONTRACTOR shall commence providing services under this Agreement upon execution of the Agreement by both parties, and will diligently perform such Services as required and will achieve Final Completion of the Services on or before December 31, 2024.

**2.1** Final Completion means that each of the following has been achieved in accordance with Prudent Industry Practices and the other requirements of the Contract Documents: (a) Achievement of Mechanical Completion and all conditions thereto continue to be satisfied; (b) All of the electrical works and all other infrastructure necessary to achieve connection of the System to the Utility's electricity transmission system are fully energized; (c) Successful testing of all systems comprising the System in accordance with the requirements of the Agreement; and (d) The System is capable of operating safely in accordance with Prudent Industry Practices and all applicable Laws.

**3. Liquidated Damages.** Time is of the essence for all Work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the COUNTY will sustain in the event of and by reason of CONTRACTOR's delay; therefore, CONTRACTOR agrees that it shall pay to the COUNTY the sum of FIVE HUNDRED DOLLARS (\$500) per day as liquidated damages for each and every day's delay beyond the Final Completion Date that Final Completion is not achieved.

It is hereby understood and agreed that this amount is not a penalty.

In the event any portion of the liquidated damages is not paid to the COUNTY, the COUNTY may deduct that amount from any money due or that may become due to CONTRACTOR under this Agreement, the COUNTY may seek recovery of Liquidated Damages from the CONTRACTOR's Performance Bond Surety and/or the COUNTY may seek recovery of Liquidated Damages from CONTRACTOR or the Performance Bond Surety without having exhausted remedies against the other.

**4. Grants/Rebates/Incentives.** CONTRACTOR shall use commercially reasonable efforts to support the COUNTY in obtaining or maintaining grants/rebates/incentives for the Site(s). These grants/rebates/incentives shall include, but not be limited to, the Communities in Charge program and the Elective Pay provision of the federal Inflation Reduction Act. CONTRACTOR shall use commercially reasonable efforts to support the COUNTY in obtaining an extension, if allowed and if necessary.

**5. Contract Documents.** The Agreement and the documents listed immediately hereafter, and any written modification or Change Order, as defined herein, made subsequent to the date of this Agreement shall collectively be referred to as the "Contract Documents" forming the entire Agreement between the Parties. The Contract Documents are intended to supplement each other, so that any work mentioned in one of those documents, but not in the others, shall be performed in the same manner as if mentioned in all the documents and instruments.

6.1 This AGREEMENT FOR DESIGN, INSTALLATION, AND COMMISSIONING OF ENERGY CONSERVATION FACILITIES SERVING THE LAKE COUNTY COURTHOUSE CAMPUS

6.2 CONTRACTOR's Proposal dated June 12, 2023.

- 6.3 CONTRACTOR's Payment Bond.
- 6.4 CONTRACTOR's Performance Bond.
- 6.5 COUNTY General Conditions dated 2/13/2019 (Exhibit C)
- 6.6 Final Plans prepared by CONTRACTOR, dated TBD.
- 6.7 Construction Permit issued by the City of Lakeport.
- 6.8 Workers' Compensation Certification (Exhibit B-3).
- 6.9 Change Orders

**6. Submittal of Documents.** CONTRACTOR shall not commence the Work under this Agreement until the CONTRACTOR has submitted and the COUNTY has approved the following documents:

- |  |   |
|--|---|
| Performance (Output) Guarantee   | Workers' Compensation Certification (Exhibit B-3)     |
| Maintenance Services Agreement<br>4)   | Project Milestones / Schedule of Values (Exhibit B-3) |
| Insurance Certificates and Endorsements<br>Exhibit "A-1" through Exhibit "A-6" inclusive |   |
| Performance Bond (Exhibit B-1)   |   |
| Payment Bond (Exhibit B-2)   |   |

The above-referenced documents shall be presented to the COUNTY for approval within seven (7) days after execution of the Agreement.

**a) Compensation.** As compensation for the Work, the COUNTY shall pay to CONTRACTOR TWO MILLION TWO HUNDRED EIGHTY-FOUR THOUSAND ONE HUNDRED THIRTY-ONE DOLLARS (\$2,284,131) ("Total Contract Price").

**b) Escalation/ Price Variance.** The amount payable to the contractor may be requested to be adjusted with the rise or any increase in cost caused by applicable government law, regulation, tax or other burden imposed after the date of this agreement. If material costs, or prevailing wage rates, or fuel prices are raised by over 10% at the time of procurement (based on the current USA Producer Price Index/CRU), the price of the as-yet un-invoiced components of the contract may be requested to be adjusted in equivalent percentage. The same should not be treated as a force majeure clause. Contractor shall request such an adjustment in accordance with Section 22, Change in Scope of Work.

- 7. Expenses.** COUNTY shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for COUNTY.
- 8. Payment.** On a monthly basis, CONTRACTOR shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Agreement as of the date of submission ("Application for Payment"). Within thirty (30) days after COUNTY's approval of the Application for Payment, CONTRACTOR shall be paid a sum equal to ninety-five percent (95%), unless a higher retention amount is required pursuant to Public Contract Code section 7201(b)(4), of the value of the Work performed (as verified by COUNTY's designated representative and Inspector and certified by CONTRACTOR) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The COUNTY may deduct from any payment an amount necessary to protect the COUNTY from loss because of: (1) any sums expended by the COUNTY in performing any of

CONTRACTOR's obligations under the Agreement which CONTRACTOR has failed to perform or has performed inadequately; (2) defective Work not remedied; (3) stop notices as allowed by state law; (4) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract price or by the scheduled completion date; (5) unsatisfactory prosecution of the Work by CONTRACTOR; (6) unauthorized deviations from the Agreement; (7) failure of CONTRACTOR to maintain or submit on a timely basis proper and sufficient documentation as required by the Agreement or by COUNTY during the prosecution of the Work; (8) erroneous or false estimates by the CONTRACTOR of the value of the Work performed; (9) any sums representing expenses, losses, or damages, as determined by the COUNTY, incurred by the COUNTY for which CONTRACTOR is liable under the Contract; and (10) any other sums which the COUNTY is entitled to recover from CONTRACTOR under the terms of the Agreement or pursuant to state law, including section 1727 of the California Labor Code. The failure by the COUNTY to deduct any of these sums from a progress payment shall not constitute a waiver of the COUNTY's right to such sums. The COUNTY shall retain 5% from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.

- 9. Failure of Payment.** If County , through no fault of Contractor, does not make a payment owed to Contractor when the payment is due under this Agreement, then Contractor may, upon 10 Business Days' written notice to County, stop the Work until payment of the amount owing has been received. The Commercial Operation Date and the Final project Completion Date shall be extended by one Day for each Day that Contractor stops the Work in accordance with this and the County shall agree to a change order to effect such date extensions.
- 10. Independent Contractor.** CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the COUNTY, and are not entitled to benefits of any kind or nature normally provided employees of the COUNTY and/or to which COUNTY's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONTRACTOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR's employees. CONTRACTOR shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.
- 11. Standard of Care.** CONTRACTOR's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of Solar Practices and all Applicable Law, including the applicable provisions of California Code of Regulations, Title 24, and Pacific Gas and Electric, Co.'s applicable interconnection requirements ("PG&E"). CONTRACTOR represents and warrants that it is fully experienced in projects of the nature and scope of Work, and that it is properly qualified, licensed and equipped to supply and perform the Work. The Work completed herein must meet the approval of the COUNTY and shall be subject to the COUNTY's general right of inspection and supervision to secure the satisfactory completion thereof.

If COUNTY determines that any of CONTRACTOR's work is not in accordance with such level of competency and standard of care, COUNTY, in its sole discretion, shall have

the right to do any or all of the following: (a) require CONTRACTOR to meet with COUNTY to review the quality of the work and resolve matters of concern; (b) require CONTRACTOR to correct the work at no additional charge to generally accepted standards and practices of the engineering profession; (c) terminate this Agreement pursuant to the provisions of Section 32; or (d) pursue any and all other remedies at law or in equity.

**12. Originality of Services.** CONTRACTOR agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the COUNTY and/or used in connection with this Agreement, shall be wholly original to CONTRACTOR and shall not be copied in whole or in part from any other source, except that submitted to CONTRACTOR by COUNTY as a basis for such services.

**13. Copyright/Trademark/Patent.** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of COUNTY and cannot be used without COUNTY's express written permission. COUNTY shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the COUNTY. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

**14. Notice to Proceed.** After the design of the PV system is approved by the COUNTY, the COUNTY shall provide a Notice to Proceed to CONTRACTOR at which time CONTRACTOR shall proceed with the construction Work.

**15. Site Examination.**

**15.1 Access Granted by COUNTY.** CONTRACTOR acknowledges it has been given ample time to investigate the nature and physical conditions of the Site and it has made reasonable efforts to investigate the physical conditions affecting the Site, and local conditions that may affect the Site, and the cost of making the Site fit for the construction of the Facility, consistent with the access that has been to CONTRACTOR and its agents, which includes all areas reflected on the Final Plans as well as proposed Off-Site Staging Areas and Lay Down Areas that the parties shall mutually identify.

**15.2** CONTRACTOR further acknowledges and agrees that it was required to inspect the Site to determine the scope of work and difficulties to be encountered and assumes all risks that could have been discovered by that inspection. Except for environmental conditions and subsurface or other conditions that could not have reasonably been discovered by a reasonable inspection of the Site within the scope of access the COUNTY has granted, CONTRACTOR is responsible for accommodating all Site conditions in the Final Plans and construction of the Project Work, regardless of when the Site condition is discovered, but shall not be responsible for any conditions of the off-Site Staging and Lay Down Areas, except to the extent that such conditions were disclosed by the drawings and other information provided by COUNTY to CONTRACTOR. Notwithstanding a failure by CONTRACTOR to perform its Site investigation due diligence consistent with the access COUNTY has granted under this Section, CONTRACTOR shall be responsible for successfully constructing the Project Work without adjustment of the Compensation provided for herein.

- 15.3** CONTRACTOR further acknowledges that it has visually examined the Site and certifies that it accepts all measurements and specifications that it has been provided and the conditions which CONTRACTOR has examined as of the date of this Agreement which affect the Work to be performed at the Site. By submitting its quote, CONTRACTOR warrants that it has made all reasonable Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Design- Builder's ability to protect existing surface and subsurface improvements. Except as provided under Public Contract Code section 7104, no claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.
- 16. Materials.** CONTRACTOR shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
- 16.1 Anti-Trust Claim.** CONTRACTOR and its subcontractor(s) agree to assign to the COUNTY all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. 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 Contract or a subcontract. This assignment shall be made and become effective at the time the COUNTY tenders final payment to the CONTRACTOR, without further acknowledgment by the parties.
- 16.2 Substitutions.** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the COUNTY.
- 16.3 Hazardous Materials.** If photovoltaic modules using hazardous materials are to be provided by CONTRACTOR, then the environmental impact of the hazardous material usage must be discussed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life. Modules containing hazardous materials must comply with the EPA Landfill Disposal Requirements. Any additional costs and/or COUNTY responsibilities related to photovoltaic modules containing hazardous materials must be clearly identified.
- 16.4 Technical Requirements.** Technical requirements will be as shown in Exhibit D.
- 17. Equipment and Labor.** CONTRACTOR shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized COUNTY representative indicated in the Work specifications attached hereto.
- 18. CONTRACTOR's Warranties.** CONTRACTOR warrants to COUNTY as follows:
- 18.1** CONTRACTOR shall perform its construction services hereunder in a good and workmanlike manner and otherwise in accordance with Good Utility Practice associated with constructing facilities such as the Energy Conservation

Facility.

- 18.2** At the time of Final Completion and during the Warranty Period, the Energy Conservation Facility shall be free of construction defects in design, engineering, materials, workmanship or operability that cause it to fail to meet any design, construction, Mechanical Completion standard, or Commercial Operation standard in the Final Plans or other Contract Documents ("Defect")
- 18.3** The Energy Conservation Facility will, at all times through the Final Completion, comply with all Laws. CONTRACTOR shall have no obligation for breach of warranty under this Section 19 to the extent any deficiencies are the result of Force Majeure, normal wear and tear, misuse or negligence by COUNTY or someone other than CONTRACTOR acting on COUNTY's behalf.
- 18.4** All materials procured or furnished by CONTRACTOR hereunder shall be new (unless otherwise agreed by COUNTY in writing), of good quality and in accordance with the specifications set forth in this Contract and the Exhibits.
- 18.5** CONTRACTOR shall provide the System and Equipment Warranties set forth in Exhibits "A-3.1" through "A-3.4"; and as provided in the Performance Bond incorporated herein; and
- 18.6** All workmanship and materials shall be warranted to be in compliance with applicable California energy, conservation, and environmental standards.
- 19. Correction of Errors.**
- 19.1** Standard of Care. CONTRACTOR shall perform, at its own cost and expense and without reimbursement from the COUNTY, any work necessary to correct errors or omissions which are caused by the CONTRACTOR's failure to comply with the standard of care required herein.
- 19.2** Repair and Replacement of Defective Project Work. If any breach arises under CONTRACTOR's warranties in Section 19 herein, CONTRACTOR shall, at its sole cost and expense promptly correct, replace, repair or remedy (collectively "Remedial Measures"), at COUNTY's selection, any Defect in design, engineering, materials, workmanship or operability in the Facility discovered during the Warranty Period. CONTRACTOR's correction, replacement, or repair shall be made with due regard to COUNTY's operational requirements. In the event the Remedial Measures include supplying equipment and materials that were necessary to the Facility, but omitted from its design, CONTRACTOR shall pay for the costs of such omitted equipment and materials as part of the Cost of the Project Work.
- 20. Trench Shoring.** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, CONTRACTOR must submit and obtain COUNTY acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.
- 21. Excavations Over Four Feet.** If this Contract includes excavations over four (4) feet, CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the COUNTY, in writing, of any: (1) Material that the CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site differing from those indicated; or (3) Unknown

physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The COUNTY shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between the COUNTY and the CONTRACTOR whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the CONTRACTOR's cost of, or time required for, performance of any part of the work, the CONTRACTOR shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all Work to be performed under the contract. CONTRACTOR shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

**22. Change in Scope of Work.** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in writing by a valid change order executed by the COUNTY and CONTRACTOR ("Change Order"), subject to CONTRACTOR's rights under the Disputes provisions herein. CONTRACTOR specifically understands, acknowledges, and agrees that the COUNTY shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and CONTRACTOR shall be entitled to an adjustment in the Total Contract Price, Project Schedule, or other time limitations based on such changes to the Scope of Work, delays not caused by CONTRACTOR, or unforeseen conditions, subject to the CONTRACTOR complying with the procedures provided herein and substantiation of the additional cost and/or time extension. CONTRACTOR shall notify the COUNTY of any claim for additional compensation and/or extension of time within fourteen (14) calendar days after the first occurrence giving rise to the Proposed Change Order. Within twenty-five (25) calendar days of the foregoing Notice, CONTRACTOR agrees to provide the COUNTY with all reasonable information requested to substantiate the cost of the change order, including an analysis of any impacts to the critical path to the Project schedule, and to inform the COUNTY whether the Work will be done by the CONTRACTOR or a subcontractor.

CONTRACTOR shall prepare a written Proposed Change Order requesting that COUNTY issue a Change Order based upon a proposed change to the Total Contract Price, Scope of Work, or adjustment to the Project Schedule. If CONTRACTOR fails to comply with procedures provided herein, it shall be deemed to have waived its right to request such change order. A Proposed Change Order shall include price breakdowns for any additional labor, services, and materials substantially in the form set forth below and other reasonable backup documentation requested by the COUNTY. Upon agreement to a Proposed Change Order, CONTRACTOR and COUNTY shall execute a written Change Order stating their agreement regarding any of the following: (i) a change in the Scope of Work; (ii) an adjustment to the Total Contract Price; or (iii) an adjustment to the Project Schedule. If the Parties are unable to agree upon all terms for a Proposed Change Order, any unresolved disputes shall be submitted as a claim and resolved pursuant to the Disputes provisions herein below. CONTRACTOR shall continue to perform its Work under the

Agreement and shall not cause a delay of the Work during any dispute, claim, negotiation, or mediation proceeding, except by written agreement by the COUNTY.

The following format shall be used for Proposed Change Orders, supported by attached documentation:

	<b>WORK PERFORMED OTHER THAN BY DESIGN-BUILDER</b>	<b>ADD</b>
(a)	Material (attach itemized quantity & unit cost plus sales tax)	\$
(b)	Add Labor (attach itemized hours & rates, fully encumbered)	\$
(c)	Add Equipment (attach suppliers' invoice)	\$
(d)	Subtotal	\$
(e)	Add overhead and profit for any and all tiers of Subcontractor, the total not to exceed 10% of item (d)	\$
(f)	Subtotal	\$
(g)	Add overhead and profit for CONTRACTOR, not to exceed 5% of Item (f)	\$
(h)	Subtotal	\$
(i)	Add Bond and Insurance, not to exceed two percent (2%) of Item (h)	\$
(j)	TOTAL	\$
(k)	Time	___ Days

	<b>WORK PERFORMED BY DESIGN-BUILDER</b>	<b>ADD</b>
(a)	Material (attach itemized quantity & unit cost plus sales tax)	
(b)	Add Labor (attach itemized hours & rates, fully encumbered)	
(c)	Add Equipment (attach suppliers' invoice)	
(d)	Subtotal	
(e)	Add overhead and profit for CONTRACTOR, not to exceed 15% of item (d).	
(f)	Subtotal	
(g)	Add Bond and Insurance, not to exceed 2% of Item (f)	
(h)	TOTAL	
(i)	Time	___ Days

**23. Workers.** CONTRACTOR shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. The COUNTY may evaluate the CONTRACTOR in any manner which is permissible under the law. Any person in the employ of the CONTRACTOR or a subcontractor whom the COUNTY may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the COUNTY.

**24. CONTRACTOR Supervision.** CONTRACTOR shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

**25. Safety and Security.** CONTRACTOR is responsible for maintaining safety in the

performance of this Agreement. CONTRACTOR shall be responsible to ascertain from the COUNTY the rules and regulations pertaining to safety, security, and driving on County grounds.

- 26. Clean Up.** During the progress of the Work, CONTRACTOR shall keep the Site and the Project free from accumulations of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish, and debris from and about the Site, as well as all tools, appliances, construction equipment and machinery, and surplus materials. CONTRACTOR shall leave the premises clean and ready for occupancy by COUNTY at Substantial Completion of Work. CONTRACTOR shall restore to original condition all property not designated for alteration by Contract Documents.
- 27. Access to Work.** COUNTY representatives shall, at all times and without limitation, have access to the Project Work Site wherever it is in preparation or in progress. CONTRACTOR shall provide safe and proper facilities for such access.
- 28. Protection of Work and Property.** CONTRACTOR shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, CONTRACTOR, without special instruction or authorization from COUNTY, is permitted to act at his discretion to prevent such threatened loss or injury.

CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by COUNTY, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to the owner or occupant thereof resulting from the performance of Work.

- 29. Occupancy.** COUNTY reserves the right to occupy buildings served by the Energy Conservation Facility at any time before formal Contract completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for completion of the Work.
- 30. Force Majeure.** Subject to the following requirements, CONTRACTOR shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, pandemic, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the COUNTY, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the CONTRACTOR.

**30.1 Notice of Occurrence and Impact.**

- 30.1.1 *Notice of Occurrence.* Any Party claiming that a Force Majeure condition has arisen shall immediately notify the other Party of the same, shall act diligently to overcome, remove and/or mitigate the effects of the event

of Force Majeure, shall notify the other Party on a continuing basis of its efforts to overcome, remove and/or mitigate the event of Force Majeure and shall notify the other Party immediately when said condition has ceased.

30.1.2 *Notice of Impact.* In addition to its obligations under Section 31.1.1, if CONTRACTOR claims there is a Force Majeure condition, CONTRACTOR shall (i) promptly notify COUNTY, in writing of the nature, cause and cost of such Force Majeure condition, (ii) state whether and to what extent the condition will delay the Mechanical Completion, the Agreed Commercial Operation Date or Final Completion Date, and (iii) state the date and time the Force Majeure condition commenced.

**30.2 Termination.** In the event that a Force Majeure event continues for more than 180 days after notice of the event of Force Majeure is given under Section 10.3.1, then the COUNTY may terminate this Contract, in its sole discretion, within 60 days after the aforementioned conditions, by giving at least 10 Business Days prior written notice to the CONTRACTOR.

### **31. Termination.**

**31.1 For Convenience by COUNTY.** COUNTY may, at any time, with or without reason, terminate this Agreement and compensate CONTRACTOR only for services satisfactorily rendered to the date of termination. Written notice by COUNTY shall be sufficient to stop further performance of services by CONTRACTOR. Notice shall be deemed given when received by the CONTRACTOR or no later than three (3) days after the day of mailing, whichever is sooner. In the event that COUNTY terminates this Agreement pursuant to this section, COUNTY shall compensate CONTRACTOR for work completed to date as a pro-rata amount of the full fees, costs, and expenses. COUNTY shall also compensate CONTRACTOR for any equipment, materials, or services that cannot be canceled or otherwise utilized, provided that CONTRACTOR makes a good-faith effort to cancel, sell, or use elsewhere all equipment, materials, or services that have not been completed at the time of termination by COUNTY.

If COUNTY exercises its termination right under this **Section 32.1**, as Contractor's sole remedy for payment of the Work for such termination, COUNTY shall pay the Contractor a sum equal to 20% of the as-yet un-invoiced Contract Sum as a termination fee.

**31.2 With Cause by COUNTY.** COUNTY may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

**31.2.1** material violation of this Agreement by the CONTRACTOR; or

**31.2.2** any act by CONTRACTOR exposing the COUNTY to liability to others for personal injury or property damage; or

**31.2.3** CONTRACTOR is adjudged a bankrupt, CONTRACTOR makes a general assignment for the benefit of creditors or a receiver is appointed on account of CONTRACTOR's insolvency.

Written notice by COUNTY shall contain the reasons for such intention to

terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the COUNTY may secure the required services from another CONTRACTOR. If the expense, fees, and costs to the COUNTY exceed the cost of providing the service pursuant to this Agreement, CONTRACTOR shall immediately pay the excess expense, fees, and/or costs to the COUNTY upon the receipt of the COUNTY's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to COUNTY.

**31.3** Upon termination, CONTRACTOR shall provide the COUNTY with all documents produced maintained or collected by CONTRACTOR pursuant to this Agreement, whether or not such documents are final or draft documents.

**32 Indemnification.** To the fullest extent permitted by law (including, without limitation, California Civil Code sections 2782, 2782.6 and 2782.8), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the County), indemnify, and hold harmless, the County and its officers, agents and employees (collectively, the "County") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert CONTRACTORS or expert witnesses incurred in connection therewith and costs of investigation) arising from, or alleged to have arisen from, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities") in the performance of its services under this Agreement, regardless of whether the County has reviewed or approved the work or services which has given rise to the claim, loss, cost, damage, injury or liability for damages.

This indemnification shall extend for a reasonable period of time after completion of the project as well as during the period of actual performance of services under this Agreement. The County's acceptance of the insurance certificates required under this Agreement does not relieve the CONTRACTOR from its obligation under this paragraph.

To the extent that there is an obligation to indemnify under this Agreement, CONTRACTOR shall be responsible for incidental and consequential damages resulting directly or indirectly, in whole or in part, from CONTRACTOR's negligence, recklessness, or willful misconduct,

Such obligations to defend, hold harmless and indemnify the County shall not apply to the extent such Liabilities are caused by the County's sole negligence, active negligence or willful misconduct. The obligation to defend shall be proportionate as to CONTRACTOR's percentage of fault as provided in California Civil Code section 2782.8.

**33 Insurance.** CONTRACTOR shall not commence work under this Agreement until he has obtained all the insurance required herein, Certificates of Insurance have been submitted to COUNTY, and said insurance has been approved by COUNTY. The Certificates of Insurance shall contain a provision that coverage afforded under the

policies will not be cancelled until at least twenty (20) days prior written notice has been given to COUNTY.

CONTRACTOR shall not allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been obtained.

Any failure of CONTRACTOR to maintain the insurance required by this provision, or to comply with any of the requirements of this provision, shall constitute a material breach of the entire Agreement.

Certificates evidencing the issuance of the following insurance shall be filed with COUNTY within ten (10) days after the date of execution of this Agreement by CONTRACTOR and prior to commencement of work hereunder.

**33.1 Compensation Insurance:** CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense, during the term hereof, Workers' Compensation Insurance and Employer's Liability Insurance as required by the State of California, for all employees to be engaged in work. In case any such work is sublet, CONTRACTOR shall require subcontractor similarly to provide Employer's Liability and Workers' Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by CONTRACTOR's Workers' Compensation Insurance. Employer's Liability Insurance shall be in an amount not less than \$1,000,000 per occurrence.

**33.2 Commercial General Liability.** CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense during the term hereof, upon CONTRACTOR and CONTRACTOR's employees at all times during the course of this Agreement, Commercial General Liability Insurance (Occurrence Form CG 0001, or equivalent form acceptable to the COUNTY) for bodily injury, personal injury, and broad form property damage, in an amount of not less than One Million dollars (\$1,000,000.00) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverages: Personal and advertising injury, Premises-operations, Products and completed operations, Blanket contractual, and Independent contractor's liability

**33.3 Automobile Liability Insurance.** CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense during the term hereof, Comprehensive automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased, and non-owned vehicles used in connection with CONTRACTOR's business in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit coverage per occurrence.

**33.4 Professional Liability Insurance.** CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense during the term hereof, Professional Liability Insurance for protection against claims arising out of the performance of services under this Agreement caused by errors, omissions, or other acts for which CONTRACTOR, its employees, subcontractors, and agents are liable. Said insurance shall be written with limits of not less than One Million Dollars (\$1,000,000.00). If said insurance is written on a "Claims Made" form, insurance shall be maintained and evidence of insurance must be provided for at least one (1) year after completion of the work under this Agreement.

**33.5 Builder's Risk Insurance.** On a replacement cost value basis, Design-Builder shall procure and maintain, during the life of this Agreement, Builder's Risk (Course of Construction), or similar first party property coverage to insure against all risks of accidental physical loss and shall include without limitation

the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

- 33.6 Subcontractors:** CONTRACTOR shall include all subcontractors as insureds under the aforesaid policies or shall furnish separate certificates and endorsements for each subcontractor to COUNTY for review and approval. All coverages for subcontractors shall be subject to all of the requirements hereinabove and contain the additional insured endorsement required by CONTRACTOR hereinafter.
- 33.7 Additional Insured Endorsement:** The Commercial General Liability and automobile policies are to contain, or be endorsed to contain, the following provisions: The COUNTY, its officers officials employees, agents and volunteers are to be covered as additional insureds and shall be added in the form of an endorsement to CONTRACTOR's insurance on Form **CG 20 38 04 13** or coverage at least as broad. CONTRACTOR shall not commence work under this Contract until he has had delivered to COUNTY the Additional Insured Endorsements required herein.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

**33.8 Other Insurance Provisions:**

**33.8.1** For any claims related to the work performed under this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, agents, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

**33.8.2** Any deductibles or self-insured retentions must be declared to and approved by COUNTY. At the option of COUNTY, either: the CONTRACTOR shall reduce or eliminate such deductibles or self-insurance retentions; or CONTRACTOR shall provide a financial guarantee satisfactory to COUNTY guaranteeing payment of losses and related investigations, claim administration and defense related expenses.

**33.8.3** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

**33.8.4** 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 COUNTY from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of COUNTY 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.

**33.8.5** If any insurance coverage required by this Agreement is provided on a "Claims Made", rather than "Occurrence" form, CONTRACTOR agrees to maintain required coverage for a period of three years after the expiration of this Agreement (hereinafter, "Post Agreement Coverage") and any extensions

thereof. CONTRACTOR may maintain the required Post Agreement Coverage by renewal or purchase of prior acts or tail coverage. This subprovision is contingent upon Post Agreement Coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for Post Agreement Coverage shall be deemed to be reasonable.

**33.8.6** CONTRACTOR agrees to waive all rights of subrogation against COUNTY, its officers, officials, employees, agents, and volunteers for losses arising from work performed by CONTRACTOR under this Agreement.

**34 Payment Bond and Performance Bond.** CONTRACTOR shall not commence the Work until it has provided to the COUNTY, in a form acceptable to the COUNTY, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the Construction Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the COUNTY.

**35 Permits and Licenses.** CONTRACTOR and all CONTRACTOR's employees or agents shall secure and maintain in force, at CONTRACTOR's sole cost and expense, such permits and licenses as are required by law in connection with the furnishing of materials, supplies, or services pursuant to this Agreement.

**36 Assignment.** CONTRACTOR shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of COUNTY, except that claims for money due or to become due the CONTRACTOR from COUNTY under this Agreement may be assigned by the CONTRACTOR to a bank, a trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to the COUNTY. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

**37 Subcontractors.** Subcontractors, if any, engaged by the CONTRACTOR for any Service or Work under this Agreement shall be subject to the approval of the COUNTY. Design- Builder agrees to bind every subcontractor by the terms of the Agreement as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If CONTRACTOR shall subcontract any part of this Agreement, CONTRACTOR shall be fully responsible to the COUNTY for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in this Agreement shall create any contractual relations between any subcontractor and the COUNTY.

**38 Compliance with Laws.** CONTRACTOR will comply with all laws, regulations, orders, and decrees applicable to the PROJECT and indemnify and defend the COUNTY against any claim or liability arising from the violation of a law, regulation, order, or decree by CONTRACTOR or your employees. Immediately report to the Contract Manager a discrepancy or inconsistency between the Contract and a law, regulation, order, or decree. If the COUNTY incurs any fines or penalties because of CONTRACTOR's failure to comply with a law, regulation, order, or decree, the COUNTY will deduct the amount of the fine or penalty. Immediately notify the Contract Manager, if a regulatory agency requests access to the job site or to records. Submit a list of documents provided to the agency and issued enforcement actions.

- 38.1 Labor Code Requirements.** CONTRACTOR shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the COUNTY. In addition, the CONTRACTOR and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by CONTRACTOR or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.
- 39 Certified Payroll Records:** CONTRACTOR and its subcontractor(s) shall keep accurate certified payroll records of employees and shall make them available to the COUNTY immediately upon request. CONTRACTOR shall ensure that all labor and subcontracting complies with prevailing wage and apprenticeship requirements and documentation to enable the COUNTY to receive the thirty-percent (30%) Investment Tax Credit Elective Pay.
- 40 Retention of Records.** CONTRACTOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of CONTRACTOR transacted under this Agreement. CONTRACTOR shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter.
- 41 Anti-Discrimination.** It is the policy of the COUNTY that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the CONTRACTOR agrees to require like compliance by all its subcontractors.
- 42 Environmental Attributes and Energy Credits.** COUNTY shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of any facilities installed on the Project ("Generating Facilities"). This ownership includes the production, sale, purchase or use of the energy output including, and includes without limitation:
- 42.1** All Environmental Incentives associated in any way with the Generating Facilities. "Environmental Incentives" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Generating Facilities or the energy produced or otherwise from the development, construction, installation or ownership of the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities. Without limiting the foregoing, Environmental Incentives includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under the California Solar Initiative or other incentive programs offered by the State of California and

the right to claim federal income tax credits under Section 45 or 48 of the Code as such credits are available arising from the Environmental Attributes of the Generating Facilities or the energy produced from the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities.

- 42.2** All reporting rights and the exclusive rights to claim responsibility for the delivery of the energy from the Generating Facilities.
- 42.3** All reporting rights and the exclusive rights to claim responsibility for the reductions in emissions of pollution and greenhouse gases resulting from the generation and delivery of energy.
- 42.4** All carbon reduction credits as defined under the California Action Reserve or such similar definition as enacted by the State of California or the U.S. Federal Government.
- 42.5** All "renewable energy credits," as such term is defined in Section 399.12(h)(2) of the California Public Utilities Code, associated with the Generating Facilities.

**43. Limitation of Liability and Mutual Waiver of Consequential Damages.** Other than as provided in this Agreement, COUNTY's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, other than those arising from or related to a Party's willful misconduct shall either Party be liable, regardless of whether the claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including but not limited to, lost profits or revenue. The foregoing limitation shall not apply in the event of Termination for Convenience, the cost of cost of contracting with a third party to complete or correct the Work hereunder, or reasonable costs, profit, or direct damages awarded by a court of competent jurisdiction or arbitrator in proceedings involving disputes related to changes in the Work. Except for the obligations of indemnification set forth herein and liabilities arising from or related to CONTRACTOR's willful misconduct, whether any action or claim is based on warranty, contract, tort or otherwise, under no circumstances shall CONTRACTOR's total liability arising out of or related to this Agreement exceed the total amount paid by COUNTY to CONTRACTOR hereunder and the limits of the insurance policies CONTRACTOR is required to maintain under this

**44. Confidentiality.** CONTRACTOR and all CONTRACTOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services to the extent allowed by law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

**45. Disputes.** In the event of a dispute between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104, et seq., if applicable. Pending resolution of the dispute, CONTRACTOR agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the COUNTY's administration office is located, having competent jurisdiction of the dispute. All claims of over \$375,000,

which are outside the scope of Public Contract Code section 20104, et seq., may be determined by mediation if mutually agreeable, otherwise by litigation. The demand for mediation of any claim over \$375,000 shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice, and the demand shall not be made later than the time of CONTRACTOR's submission of the request for final payment. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Design- Builder shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Design- Builder's right to bring a civil action against the COUNTY. For purposes of those provisions, the running of the time within which a claim must be presented to the COUNTY shall be tolled from the time the claimant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

**46. Attorney Fees and Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

**47. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or enclosed in a properly addressed envelope and deposited in the United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party.

County of Lake  
 Public Services Department  
 333 Second Street  
 Lakeport, CA 95453  
 95134  
 Attn: Lars Ewing  
 Bhanot

CONTRACTOR  
 Staten Solar Corporation  
 175 Nortech Pkwy  
 San Jose, CA  
 Attn: Sam

**48. Governing Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the COUNTY's administrative offices are located.

**49. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

**50. Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

- 51. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 52. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
- 53. Cooperation.** The Parties hereto hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of this Agreement.
- 54. Binding Contract.** This Agreement shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.
- 55. Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 56. No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 57. Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.
- 58. Counterparts.** This Agreement and all amendments to it may be executed in counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one document binding all the Parties hereto.
- 59. Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- 60. Entire Contract.** This Agreement sets forth the entire contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Agreement may be modified only in writing upon mutual consent.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

ENERGY CONSERVATION FACILITIES FOR LAKE COUNTY COURTHOUSE CAMPUS

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

ATTEST: Susan Parker  
Clerk of the Board

COUNTY OF LAKE

By:   
Bruno Sabatier (Jan 12, 2024 16:44 PST)  
Chair, Board of Supervisors

By: Johanna Delong  
Johanna Delong (Jan 12, 2024 15:05 PST)

APPROVED AS TO FORM:  
LLOYD GUINTIVANO  
County Counsel

CONTRACTOR (STATEN SOLAR CORP.)

By: 

By:   
Name: SAM BHANOT  
Title: PRESIDENT

Mailing Address: 175 NORTECH PKWY  
SAN JOSE CA 95134



**Exhibit A-1**

**System Description**

**System Size (DC kW): 444.27 kW-DC**

**System Size (AC kW): 385.00 kW-AC**

**System Location: Parking lot of County of Lake District Attorney Building at 375 Third Street, Lakeport, CA**

**Expected Modules: (753) Trina Bifacial NEG19RC.20 590-Watt modules**

**Expected Energy: 669,597 kWh in first year of production**

**Expected Inverters: (1) CPS 60-kW inverters, (5) CPS 50-kW inverters, (3) CPS 25kW inverters**

**Expected Structure: Raised Carport Structure with minimum height of fourteen (14) feet over parking lot drive aisles**

**Point of Interconnection: First floor electrical room of County of Lake Courthouse and Administration Building at 255 North Forbes Street, Lakeport, CA**

**Electric Vehicle Chargers: (3) Dual-port Tellus UP-160J-PMP chargers with EVGateway control software**

**Exhibit A-2**

**Scope of Work**

CONTRACTOR's entire Proposal is made part of this Agreement.

The Work shall include the turn-key project management, design, engineering, permitting, procurement, construction, installation, connection, interconnection, and commissioning of the System described in Exhibit A-1. The Work shall also include procurement and support for COUNTY to receive all identified applicable incentives for the System. In addition, the Work shall include ten (10) years of Operations and Maintenance services, as described in Exhibit D, along with two hundred (200) hours of pre-paid corrective maintenance services.

**EXHIBIT A-3.1**

**SYSTEM WARRANTY - [10 YEARS]**

A 10-year workmanship warranty is provided as a testament to the quality and durability of the installation. This warranty provides assurance that the installation work has been carried out to the highest standards. During this warranty period, any issues arising from the workmanship, such as faulty wiring or improper panel placement, will be addressed and fixed at no additional cost to the COUNTY.

**EXHIBIT A-3.2**  
**MODULE WARRANTY**

Product Workmanship warranty	12 Years
Power Warranty	30 Years

**EXHIBIT A-3.4**

**INVERTER WARRANTY - [DURATION]**



**CHINT POWER SYSTEMS AMERICA INVERTER WARRANTY**

**BUYER ACCEPTS THIS WARRANTY IN LIEU OF ANY OTHER WARRANTY, WHETHER WRITTEN, ORAL, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY, WORKMANSHIP, AND FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND CHINT POWER SYSTEMS AMERICA CO.'S LIMIT OF LIABILITY FOR ANY AND ALL LOSS OR DAMAGE RESULTING FROM DEFECTIVE OR NONCONFORMING PRODUCT(S).**

Chint Power Systems America Co. ("CPS") and its parent company, Shanghai Chint Power Systems Co., Ltd, warrant that all new inverter Products conform to applicable codes and standards in effect at the time of Product manufacture and are free of any defects in material and workmanship for a standard warranty period of ten (10) years for 1000Vdc models and five (5) years for 1500Vdc models. The warranty period begins one (1) month from the date CPS ships the Product or the date of installation, whichever comes first. If the Buyer purchases an extended warranty, the warranty terms and conditions provided herein will continue for the duration of the extended warranty. The CPS Warranty, including the limitations, is transferrable from the original Buyer to subsequent owners.

Scope of Warranty Services:

- Covers new inverter Products installed in North America.
- CPS will repair, replace with a Product of the same type, or refund the purchase price, at its sole discretion, at no cost to the Buyer if the Buyer notifies CPS of any breach of warranty within the warranty period.
- CPS will, with commercially reasonable efforts, respond to Buyer inquiries within 24 hours and provide a resolution plan within 48 hours to rapidly resolve warranty issues.
- If the unit is replaced in the field, the Buyer agrees to utilize the CPS Return Material Authorization ("RMA") process in place at the time of replacement.
- CPS warrants that any repaired or replaced Product will be free from defects in material or workmanship for the remainder of original unit warranty period.

Warranty Exclusions:

- Damage from shipping or transportation.
- Damage caused by improper installation, operation and maintenance according to the installation manual or any local, state or federal codes and requirements, or other misuse.
- Replaceable service items, including fuses and filters.
- Any costs incurred by the Buyer or installer for troubleshooting, installation, removal or the value of lost energy production.
- Damage caused by force majeure, including but not limited to flood, fire, earthquakes and lightning.
- Material or workmanship not provided by CPS or its approved service providers.
- Damage caused by rust or corrosion.
- Units not paid for in full by original purchaser per mutually agreed payment terms.

If your Product requires troubleshooting or warranty service, contact your installer or dealer. If you are unable to contact your installer or dealer, or the installer or dealer is unable to provide service, contact CPS directly at:

**North American call center: 1-855-584-7168**

**CPS LIABILITY FOR LOSSES CAUSED BY PRODUCT FAILURE OR DAMAGE IS SOLELY LIMITED TO THE PURCHASE PRICE OF THE PARTICULAR PRODUCT(S) WITH RESPECT TO WHICH LOSS OR DAMAGE IS CLAIMED, PLUS ANY TRANSPORTATION CHARGES ACTUALLY PAID BY THE BUYER FOR SUCH PRODUCT(S) AND EXCLUDES CONSEQUENTIAL LOSSES. IN THE EVENT OF ANY DISCREPANCY BETWEEN OTHER APPLICABLE QUALITY GUARANTEE OR AFTER-SALES PROVISIONS AND THIS WARRANTY, THIS WARRANTY SHALL PREVAIL. IN THE EVENT THAT PROVISIONS OF THIS WARRANTY ARE IN CONTRADICTION WITH APPLICABLE STATE OR FEDERAL LAWS OR REGULATIONS, THE LATTER SHALL HAVE TOP PRIORITY. THE RIGHT OF MODIFICATION AND INTERPRETATION OF THIS WARRANTY IS RESERVED BY SHANGHAI CHINT POWER SYSTEM CO., LT**

Revision Effective September 25, 2019  
CHINT POWER SYSTEMS AMERICA CO.  
2188 Pomona Blvd  
Pomona, CA 91768



**Exhibit A-6**  
**EVSE LAYOUT**

**Exhibit B-1  
SAMPLE PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called PRINCIPAL, and  
(Corporation, Partnership or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called SURETY, are held and firmly bound unto the COUNTY OF LAKE, 255 North Forbes Street, Lakeport, CA 95453, hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, a copy of which is hereto attached and made a part hereof for the **Design, Installation, And Commissioning Of Energy Conservation Facilities Serving The Lake County Courthouse Campus**. PRINCIPAL and SURETY acknowledge that they have closely reviewed all the terms of the Contract, including, but not limited to, any liquidated damages terms of the Contract, and hereby stipulate and agree that the terms stated in the Contract are reasonable.

NOW, THEREFORE, if the PRINCIPAL shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the COUNTY, with or without notice to the SURETY and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that said PRINCIPAL and SURETY, and their respective heirs, successors, executors, and administrators, jointly and severally firmly by these presents, hereby stipulate and agree that they are held and firmly bound unto OWNER for the payment of any liquidated damages charged under the Contract.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the WORK to be performed thereunder or the conditions accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Contract Work or to the conditions.

PROVIDED, FURTHER, that no final settlement between the OWNER and the PRINCIPAL shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, that the parties to this BOND hereto agree that venue or forum from any action or proceeding regarding this BOND or performance thereof shall be in Lake County, California.

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED AS TO FORM:  
Lloyd Guintivano  
County Counsel

SURETY

\_\_\_\_\_

\_\_\_\_\_

PRINCIPAL

By: \_\_\_\_\_

NOTE: Date of BOND must not be prior to date of Contract.

If PRINCIPAL is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

END

**Exhibit B-2**

**SAMPLE PAYMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called PRINCIPAL, and  
(Corporation, Partnership or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called SURETY, are held and firmly bound unto the COUNTY OF LAKE, 255 North Forbes Street, Lakeport, CA 95453, hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, a copy of which is hereto attached and made a part hereof for the **Design, Installation, And Commissioning Of Energy Conservation Facilities Serving The Lake County Courthouse Campus.**

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK, whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect. If the above bonded PRINCIPAL, contractor, person, company or corporation, or his or its subcontractor, fails to any person, firm SUBCONTRACTORS, and corporations furnishing materials, or amounts due under the Unemployment Insurance Code, for or

performing labor in the prosecution of the WORK provided for in such Contract, the SURETY on this BOND shall pay the same, in an amount not exceeding the aggregate sum specified in this BOND.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the WORK to be performed thereunder or the conditions accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Contract Work or to the conditions.

PROVIDED, FURTHER, that no final settlement between the OWNER and the PRINCIPAL shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, that the parties to this BOND hereto agree that venue or forum from any action or proceeding regarding this BOND or performance thereof shall be in Lake County, California.

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED AS TO FORM:  
Lloyd Guintivano  
County Counsel

SURETY

\_\_\_\_\_

\_\_\_\_\_

PRINCIPAL

By: \_\_\_\_\_

NOTE: Date of BOND must not be prior to date of Contract.  
If CONTRACTOR is Partnership, all partners should execute BOND.

**IMPORTANT:** Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

END

**Exhibit B-3**

**WORKERS COMPENSATION CERTIFICATION**

Contract for the Design, Installation, And Commissioning Of Energy Conservation Facilities Serving the Lake County Courthouse Campus between County of Lake (the “County” or the “COUNTY”) and Staten Solar (the “Contractor” or the “Bidder”) (the “Contract” or the “Project”).

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
2. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

END

Exhibit B-4

**PROPOSED PROJECT MILESTONES AND SCHEDULE OF VALUES (the “Project Schedule”)**

Provide a breakdown of the bid amount, including alternates, in enough detail to facilitate continued evaluation of Applications for Payment and progress reports. This Form will be finalized with the selected CONTRACTOR.

Milestones	Completion Date	Value (%)
Notice to Proceed		20%
Site Investigation		5%
Design 50%		5%
Design 100%		5%
Permitting process		20%
Construction start -		5%
Equipment Pads complete		0%
Structural Steel complete on all lots		10%
Equipment Installation		5%
PV install complete on all lots		5%
Electrical complete on all lots		5%
Mechanical Completion		5%
Punch List Completion		5%
Commissioning and Final Completion		5%

# **COUNTY GENERAL CONDITIONS**

# GENERAL CONDITIONS - INDEX

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# GENERAL CONDITIONS

## 1. DEFINITIONS

- 1.1 Wherever used in the Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:
- 1.2 ADDENDA -- Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the Contract Documents, Drawings, and Specifications, by additions, deletions, clarifications or corrections.
- 1.3 AS APPROVED -- The words "as approved", unless otherwise qualified, shall be understood to be followed by the words "by the Engineer".
- 1.4 AS SHOWN, AS INDICATED, AS DETAILED -- These words, and words of like implication, refer to information contained in the drawings describing the work, unless explicitly stated otherwise in other Contract Documents.
- 1.5 BID -- The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.6 BIDDER -- Any individual, company, corporation, partnership, or joint venture who submits a Bid for the Work as distinct from a sub-bidder who submits a bid to a Bidder. "Lowest Responsive and Responsible Bidder" are as defined in California Public Contracts Code.
- 1.7 BIDDING DOCUMENTS -- The Invitation to Bid, Instructions to Bidders, Sample Forms, Proposal, all conditions of the Contract, Specifications, Drawings and Addenda issued prior to receipt of Bids by Owner.
- 1.8 BONDS -- Bid, Performance, and Payment Bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.
- 1.9 CHANGE ORDER -- A written order to the Contractor authorizing an addition, deletion or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Price or Contract Time.
- 1.10 THE CONTRACT -- The Contract is the sum of all the Contract Documents. This Contract represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by (1) a written amendment to the Contract signed by the Owner and the Contractor, (2) a Change Order, (3) a written interpretation or clarification issued by the Engineer, or (4) a written order issued by the Engineer.
- 1.11 CONTRACT DOCUMENTS -- The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General and Supplementary), the Drawings, the Specifications, and all Addenda issued prior to execution of the Contract, written amendments to the Contract signed by the Owner and the Contractor, Change Orders, written interpretations or clarifications issued by the Engineer or a written order issued by the Engineer, the Bidding Documents, such as the Advertisement or Invitation to Bid and the Instructions to Bidders, and the Contractor's Bid. Whenever the composite term "Plans and Specifications" is used, it shall be understood to mean the Contract Documents as defined herein. Further clarification of Contract Documents is outlined in the Contract between Owner and Contractor.
- 1.12 CONTRACT PRICE -- The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

- 1.13 CONTRACT TIME -- The number of calendar or working days stated in the Contract Documents for the completion of the Work.
- 1.14 CONTRACTOR -- The person, firm or corporation with whom the COUNTY has executed the Agreement.
- 1.15 CONTRACT DRAWINGS -- "Contract Drawings" or "drawings" means and includes (a) all drawings which have been prepared on behalf of the Owner and which are included in the Contract Documents and all modifying drawings issued by addenda thereto; (b) all drawings submitted pursuant to the terms of the Contract by the Contractor with his proposal and by the Contractor to the Owner during the progress of the Work when accepted by the Engineer.
- Except where a specific type of drawing is indicated, the terms "Drawings" and "Plans" are used interchangeably throughout the Contract Documents, and the Plans are Drawings as defined above.
- 1.16 DAYS -- Unless otherwise specifically stated, the term "days" shall be understood to mean "calendar days".
- 1.17 DIRECTED, REQUIRED, ACCEPTABLE -- When these words refer to the Work of its performance, "directed," "required," "permitted," "ordered," "designated," or "prescribed," and words of like implication, mean "by direction of," "permission of," "order of," "designation of," or "prescription of" the Engineer. Likewise, "acceptable", "satisfactory", "in the judgment of", and words of like import, mean "recommended by", "acceptable to", "satisfactory to", or "in the judgment of" the Engineer.
- 1.18 ENGINEER -- Wherever in these documents the word "Engineer" appears, it shall be understood to mean County of Lake, Director of Public Works, or his authorized agent. The authorized agent maybe an employee so designated by the Department of Public Works, or the Engineer and/or his consultants as defined in these documents. The Engineer will have final authority as regards contract administration, field inspection and related items.
- 1.19 FIELD ORDER -- A written order effecting a change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Engineer to the Contractor during construction.
- 1.20 INSTALL -- "Install", wherever and in whatever manner used, shall mean the installation complete in place of an item. A complete installation shall also mean to provide all materials/equipment/.utility services, etc. for a fully functional or operable installation to meet the requirements of use of equipment, devices, and materials in this work.
- 1.21 MANUFACTURER -- An individual, company, or a corporation who manufactures, fabricates, or assembles a standard product. A standard product is one that is not made to special design, and is furnished by either direct sale or by Contract to the Contractor, Subcontractor or Vendor.
- 1.22 MATERIAL SUPPLIER OR VENDOR -- A person or organization who supplies, but who is not responsible for the installation of, materials, products and equipment of a standard nature that are not specifically fabricated for this particular Contract.
- 1.23 NOTICE OF AWARD -- The written notice of the acceptance of the Bid from the Owner to the successful Bidder.
- 1.24 NOTICE TO PROCEED -- Written communication issued by the Owner to the Contractor authorizing him to proceed with the Work and establishing the date of commencement of the Work.
- 1.25 OR EQUAL -- The terms "or equal" or "approved equal" shall be understood to indicate that the "equal" product be the same or better than the product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Engineer.

- 1.26 OWNER -- Wherever in these documents the word "Owner" appears, it shall be understood to mean County of Lake.
- 1.27 PRODUCT -- The term "product" includes materials, systems and equipment.
- 1.28 PROJECT -- The undertaking to be performed as provided in the Contract Documents.
- 1.29 PROJECT MANUAL -- The Project Manual includes the Bidding Requirements, all conditions of the Contract and the Specifications.
- 1.30 PROPOSAL -- A complete and properly signed document whereby a Bidder proposes to do the Work or designated portion thereof for the sums stipulated therein, supported by data called for by the bidding requirements.
- 1.31 PROVIDE -- "Provide", wherever and in whatever manner used, shall be understood to mean provide complete in place, that is, furnish and install.
- 1.32 RESIDENT PROJECT REPRESENTATIVE -- The authorized representative of the Owner who is assigned to the Project site or any part thereof.
- 1.33 SERVICE OF NOTICES -- Any notice, order, direction, request or other communication given by the Owner to the Contractor under the Contract shall be deemed to be well and sufficiently given to the Contractor if left at any office used by the Contractor, or delivered to any of his officers, clerks or servants, or posted on the site of the work, or mailed in any post office, addressed to the Contractor at the address mentioned in the Contract, or at the Contractor's last known place of business, and if mailed, shall be deemed to have been given to and received by the Contractor a day after the day of mailing in any post office in the vicinity of the work. All written Notices to Owner shall be per Paragraph 1.45.
- 1.34 SHALL OR WILL -- "Shall", or "Will", whenever used to stipulate anything, means shall or will be done or be performed by either the Contractor or the Owner and means that the Contractor or the Owner has thereby entered into a covenant with the other party to do or perform the same.
- 1.35 SHOP DRAWINGS -- All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.
- 1.36 SHOWN -- "Shown", "indicated", "detailed", and words of like import, wherever and in whatever manner used, with or without reference to the drawings, means shown, indicated or detailed on the drawings or plans.
- 1.37 SPECIFICATIONS: Descriptions, provisions and requirements, pertaining to method and manner of performing work, or to quantities and qualities of materials to be furnished under terms of the Contract.
- 1.38 SPECIFIED -- "Specified", "described", or "noted", wherever and in whatever manner used, means as specified, described or noted in the Contract Documents.
- 1.39 SUBCONTRACTOR -- An individual, firm or corporation having a direct contract with the Contractor or with any other subcontractor for the performance of a part of the Work at the site.
- 1.40 SUBSTANTIAL COMPLETION -- That date as certified by the Engineer when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it is intended.

The Engineer may, at his sole discretion, issue a written notice of substantial completion for the purpose of establishing the starting date for specific equipment guarantees, and to establish the date that the Owner

will assume the responsibility for the cost of operating such equipment. Said notice shall not be considered as final acceptance of any portion of the work or relieve the Contractor from completing the remaining work within the specified time and in full compliance with the Contract Documents.

- 1.41 SUFFICIENT – “Sufficient”, “necessary”, or “proper”, “acceptable”, “satisfactory”, “desirable”, and words of like import, wherever and whatever manner used, with or without reference to the Engineer, means sufficient, necessary, proper, acceptable, satisfactory and desirable in the judgment of the Engineer.
- 1.42 SUPPLEMENTARY CONDITIONS -- Modifications to General Conditions required by a Federal Agency for participation in the PROJECT and approved by the Agency in writing prior to inclusion in the Contract Documents, or such requirements that may be imposed by applicable State laws or local protocols.
- References to “Supplemental General Conditions” in the General Conditions and elsewhere in the Contract Documents shall be construed to read “Supplementary Conditions”.
- 1.43 SUPPLIER -- Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.
- 1.44 WORK – The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.
- 1.45 WRITTEN NOTICE -- Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof complete, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the Work.

## **2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**

- 2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the Engineer, as necessary to carry out the Work required by the Contract Documents.
- 2.2 The additional drawings and instruction thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.
- 2.3 If for any reason it may become desirable during the course of the Work to change the alignment, dimensions or design of the Work, the Owner reserves the right to issue change orders in writing and give effect to such changes as may be necessary or desirable. The changes may or may not result in a change in the amount of work. When the Contractor considers that any change ordered in writing by the Owner involves extra Work, he shall immediately notify the Owner in writing and shall subsequently keep him informed as to when and where extra Work is to be performed and shall make claim for compensation therefor each month not later than the first day of the month following that in which the work claimed as extra work was performed. If the changes do, in the opinion of the Owner, change the amount of work, the Contract price shall be adjusted as extra work or work and material omitted, as the case may be.
- 2.4 The Engineer may instruct the Contractor in writing to make minor changes in the construction where such changes are, in the opinion of the Engineer, not inconsistent with the purposes of the Contract Documents and where such changes do not involve additional costs for the work to be provided. The Contractor shall make no such minor changes without receipt of written Engineer's instruction setting forth the minor change (usually in the form of a Field Order) to be made and the Contractor's compliance therewith shall constitute his acknowledgement that such minor change will not result in any additional cost for construction.
- 2.5 Except as modified in the contract Documents, any material or operation specified by reference to the published standard or specification shall comply with the latest revision thereof and any supplements or

amendments thereto, in effect on the date of the Notice to Contractors. Such standards and specifications, except as modified in the Contract Documents, shall have full force and effect as though printed in the Contract Documents. The Engineer will furnish, upon request, information as to how copies of the standards and specifications referred to may be obtained.

2.6 Where additional Work or modification to the Work as described in the Contract Documents is required by the enactment of new or revised Codes and Regulations, the Contract Documents shall be revised in accordance with the "General Conditions of the Contract for Construction" to reflect any change in Contract Time or Contract Cost that may result.

2.7 The Conditions of the Contract and the requirements of Division 1, General Requirements are to be considered a part of each Specification Section and/or heading. All portions of the Work, regardless of scope, location, materials or trade involved shall conform to the requirements therein.

### **3. CONSTRUCTION SCHEDULES, REPORTS AND RECORDS**

3.1 The Contractor shall submit to the owner such schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data, where applicable, as are required by the Contract Documents for the Work to be performed.

3.2 Prior to the first partial payment estimate, the Contractor shall submit construction progress schedules showing the order in which he proposes to carry on the Work, including dates at which he will start the various parts of the WORK, estimated date of completion of each part and as applicable:

3.2.1 The dates at which special detail drawings will be required; and,

3.2.2 Respective dates for submission of Shop Drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 The Contractor shall also submit a schedule of payments that he anticipates he will earn during the course of the Work.

### **4. DRAWINGS AND SPECIFICATIONS**

4.1 The intent of the Drawings and Specifications is that the Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental work necessary to complete the Project in an acceptable manner, ready for use, occupancy or operation by the Owner.

4.2 In case of conflict between the Drawings and Specifications, the Specifications shall govern. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general Drawings.

4.3 Any discrepancies found between the Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Drawings or Specifications shall be immediately reported to the Engineer in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

4.4 In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order: 1) Contract, 2) The Bid, 3) Supplementary Conditions, 4) Instructions to Bidders, 5) General Conditions, 6) Specifications and 7) Plans. Figure dimensions on Plans shall take precedence over scale dimensions; detailed Plans shall take precedence over general Plans. The Drawings shall govern in matters of quantity, and the Specifications in matter of quality. In case of conflict within the Drawings involving quantities, or within the Specifications involving qualities, the greatest quantity and the highest

quality shall be furnished.

- 4.5 The organization of the Specifications into division, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the work among subcontractors or in establishing the extent of the Work to be performed by any Trade. The Engineer will not arbitrate disputes among subcontractors concerning responsibility for performing any part of the Project.

## **5. SHOP DRAWINGS**

- 5.1 The Contractor shall provide Shop Drawings as may be necessary for the prosecution of the work as required by the Contract Documents. The Engineer's approval of any Shop Drawing shall not release the Contractor from responsibility for deviations from the Contract Documents. The approval of any Shop Drawing which substantially deviates from the requirements of the Contract Documents shall be evidenced by a Change Order.
- 5.2 When submitted for the Engineer's review, Shop Drawings shall bear the Contractor's certification that he has reviewed, checked and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Documents.
- 5.3 That Portion of Work requiring a Shop Drawing or sample submission shall not begin until the Shop Drawing or submission has been approved by the Engineer. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Engineer.
- 5.4 Acceptance by the Engineer of any drawing, method of work, or any information regarding materials and equipment the Contractor proposes to furnish shall not relieve the Contractor of his responsibility for any errors therein and shall not be regarded as an assumption of risks or liability by the Engineer or Owner, or any officer or employee thereof, and the Contractor shall have no claim under the Contract on account of the failure or partial failure or inefficiency or insufficiency of any plan or method of work or material and equipment so accepted. Such acceptance shall be considered to mean merely that the Engineer has no objection to the Contractor using, upon his own full responsibility, the plan or method of work proposed, or furnishing the materials and equipment proposed.

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

- 6.1 It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.
- 6.2 All proposed onsite staging and storage locations shall be submitted prior to placement for operational and security review.
- 6.3 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection.
- 6.4 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.5 Materials, supplies and equipment shall be in accordance with samples submitted by the Contractor and approved by the Engineer.
- 6.6 Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Contractor or the subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement

by which an interest is retained by the seller.

- 6.7 The completed work shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items required by the State and Federal (OSHA) industrial safety authorities and applicable local and national codes. Further, any features of the work subject to such safety regulations shall be fabricated, furnished, and installed in compliance with these requirements. Prior to performing Work specified herein, the Contractor shall request an inspection by a State Industrial Safety representative for the purpose of determining that the facilities provided are in compliance with the State and Federal safety requirements. Any facilities which are deemed necessary by official response following the above safety inspection shall be added or corrected as required as a part of the Contract work. However no payment will be made to the Contractor for such changes or additions to equipment furnished under this Contract since it is a requirement of these Specifications that such equipment be manufactured or fabricated in such a manner as to be in conformance with all Federal, State, and local safety requirements. The Contractor shall notify all manufacturers, equipment suppliers, and subcontractors of the provisions of this article.

In approving equipment for installation in the project, the Owner and Engineer assume no responsibility for injury or claims resulting from failure of the equipment to comply with applicable National, State, and local safety codes or requirements, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials.

- 6.8 All materials incorporated into the job shall be new, especially purchased for the project unless otherwise specified or agreed in writing. Unless otherwise noted, any equipment offered shall be current modifications which have been in successful regular operation under comparable conditions for a period sufficient to determine the reliability of the product. This time requirement, however, does not apply to minor details nor to thoroughly demonstrated improvements in design or in materials of construction.
- 6.9 Whenever the contractor shall furnish materials or manufactured articles or shall do work for which no detailed specifications are set forth, the materials or manufactured articles shall be of the best grade in quality and workmanship obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards of first-class materials or articles of the kind required with due consideration of the use to which they are to be put. In general, the Work performed shall be in full conformity and harmony with the intent to secure the best standard of construction and equipment of the work as a whole or in part.

## **7. INSPECTION AND TESTING**

- 7.1 All materials and equipment used in the construction of the Project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents.
- 7.2 Inspections, tests, or approvals by the Engineer or others shall not relieve the Contractor from his obligations to perform the Work in accordance with the requirements of the Contract Documents.
- 7.3 The Engineer and his representatives will at all times have access to the Work. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof.
- 7.4 If any Work is covered contrary to the written instructions of the Engineer, it must, if requested by the Engineer, be uncovered for his observation and replaced at the Contractor's expense.
- 7.5 If the Engineer considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Engineer's request, will uncover, expose or otherwise make available for observation,

inspection or testing, as the Engineer may require, that portion of the Work in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such Work is defective, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate Change Order shall be issued.

## **8. SUBSTITUTIONS**

- 8.1 Whenever a material, article or piece of equipment is identified on the Drawings or Specifications by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the Contract Documents by reference to brand name or catalogue number, and if, in the opinion of the Engineer, such material, article, or piece of equipment is of equal substance and function to that specified, the Engineer may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the Contract Price and the Contract Documents shall be appropriately modified by Change Order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time. **Substitutions shall be made during the bid period only.** Substitutions after the bid period will only be considered for items that are no longer being manufactured, are not available, or are equal to those specified as determined above by the Engineer, and a substantial cost savings may be realized. Contractor shall be held to those items, equipment or materials specified in the Contract Documents as a base price. Should the Contractor bid an item of less cost or quality with the intent to substitute after the bid, the Contractor shall (if the Owner accepts the change) provide the credit to the Owner of the difference in cost as if the specified item had been bid.
- 8.2 Requests for substitution shall be made, in writing to the Engineer, in ample time so as not to cause any delay in the execution of the Work and within the Substitution review period designated in the Contract Documents. Time used by Engineer in making decisions on substitute materials will not be allowed as a claim for extension of working time.
- 8.3 The technical sections of the Specifications have been written in accordance with the requirements of the Government Code of the State of California. Approval of any proposed substitution or equal for the specified material equipment or method will be made by the Engineer on the basis of quality, performance, finish, arrangement, price, colors and color selection range, ease of repair and maintenance, or any combination thereof. In his review of the data submitted concerning materials and equipment offered and an equal or in lieu of those specified, the Engineer will use for purposes of comparison all the characteristics of the specified item as they appear in the manufacturer's published data even though all the characteristics of the specified item may not have been particularly mentioned in the Specification. The Contractor shall furnish all data of the item being substituted for the Engineers use in determining acceptance of the substituted product. The Engineer may request such data, field tests, or physical presentation, to be submitted at Contractor's expense, as he may require to make his decision, which shall be final.
- 8.4 If, after the Engineer has made an approval of materials, method or equipment, it is found that the materials, method or equipment presented and approved for use are not justifiably equal in quality and performance to that originally specified, the Engineer retains the right to revoke said approval, and to reject the materials, method or equipment without any additional cost to the Owner.

## **9. PATENTS**

- 9.1 The Contractor shall pay all applicable royalties and license fees. He shall defend all suits or claims for

infringement of any patent rights and save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer of manufacturers is specified; however, if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Engineer.

## **10. SURVEYS, PERMITS, REGULATIONS**

- 10.1 The Contractor shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the Work together with a suitable number of bench marks adjacent to the Work as shown in the Contract Documents. Cost of these surveying services required to establish and check property elevations and to correctly locate and establish property and construction lines, streets, sidewalks, curbs, etc., shall be included in the Contract Sum. Contractor shall be responsible for encroachments on the rights or property of the public or surrounding property owners, and for encroachments on easements noted and required set backs, and he shall, without cost to the Owner, take down. Rebuild in an appropriate manner any unauthorized item that may have been constructed over the property, lot, easement or setback line. Contractor shall provide these surveys based upon the information provided by the Owner, unless otherwise specified in the Contract Documents, the Contractor shall develop and make all detail surveys needed for construction; such as, slope stakes, batter boards, lines, elevations and cut sheets.
- 10.2 The Contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.
- 10.3 Permits, Fees, and Licenses of a temporary nature (i.e.: SWPP permit, etc.) necessary for the prosecution of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received, shall be secured and paid for by the Contractor unless otherwise stated in the Supplemental General Conditions. Permits, licenses and easements for permanent structures shall be secured and paid for by the Owner unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn and specified. If the Contractor observes that the Contract Documents are at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in Section 13, "CHANGES IN THE WORK". The Contractor shall document the actual costs paid for all permits to be reimbursed by the Owner, and submit them collectively with an Application for Payment. No added amount for overhead and profit will be allowed to the Contractor on these costs, nor will any percentage be retained on these costs.
- 10.4 The Contractor will provide competent men in his employ to set lines and elevations.
- 10.5 The Contractor shall preserve or replace all existing Federal, State, City, County and private land monuments, unless they are within ten (10) feet of the construction. When these monuments are within the distance specified, the Contractor shall notify the Engineer at least two (2) weeks in advance of the proposed construction in order that the Engineer will have ample opportunity to reference these monuments for later replacement.
- 10.6 For trenches or excavations five feet or deeper, the Contractor shall obtain from the Division of Industrial Safety a permit authorizing such construction.

## **11. PROTECTION OF WORK, PROPERTY AND PERSONS**

- 11.1 The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby, all the Work and all materials or equipment to be incorporated

therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- 11.2 The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the Work may affect them. Contractor shall notify the Owners of adjacent properties within 7 days in advance of utility interruption, and notify the Owner ten (10) days in advance of utility interruptions. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the Contract Documents or to the acts or omissions of the Owner or the Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.
- 11.2.1 Contractor shall send proper notices, make necessary arrangements, perform other services required in care and maintenance of all public utilities and assume all responsibility concerning same. Notify proper utility if damage occurs. Observe all rules and regulations of the respective utilities in executing the Work.
- 11.2.2 Contractor shall carefully check areas where operations of the Contract are to be performed and observe any existing overhead wires, equipment and other obstructions. Any such work shall be moved, replaced or protected, as required, whether or not shown or specified.
- 11.2.3 Locations of existing underground lines shown on Drawings are based on information from best available sources, but are to be regarded as approximate only. The Contractor shall be responsible for all saw cutting, trenching, back filling, compaction, and patching of concrete and asphalt as required to perform his work. Attention is called the fact that there are underground utility lines. The Contractor shall coordinate all proposed trenching with the Facility. The Contractor shall use extreme caution and use X-Ray machine prior to trenching for his work. The Contractor shall be responsible for the proper and approved repair of any and all damages caused by his work.
- 11.2.4 Exercise all reasonable precautions to preserve and protect any existing underground improvements whether or not shown or specified. Active utilities shown on Drawings shall be adequately protected from damage and removed or relocated only as indicated or specified. Where active utilities are encountered but are not shown on Drawings, Engineer shall be advised; Work shall be adequately protected, supported, or relocated as directed by Engineer; Contract Sum will be adjusted for such additional work.
- 11.3 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Engineer or Owner, shall act to prevent threatened damage, injury or loss. He will give the Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved.
- 11.4 The Contractor shall at all times so conduct his work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work, and to insure the protection of persons and property. No road or street shall be closed to the public except with the written permission of the Engineer and proper governmental authority at least fourteen days before the actual road closure is made. Fire hydrants and their valves on or adjacent to the work shall be kept accessible to fire fighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks and private and public driveways, and the proper functioning of all gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.
- 11.5 Property acquired or Right of Way available for construction is shown on the Plans. The Contractor shall stay within such property or Right of Way or, at his own expense, obtain advance written permission of the

Owner to go beyond said lines with appropriate compensation or rehabilitation.

## **12. SUPERVISION BY CONTRACTOR**

- 12.1 The Contractor will supervise and direct the Work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the Work.
- 12.2 Owner and Engineer shall not supervise, direct, or have control over, or be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction or for the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performance of Work. Owner and Engineer shall not be responsible for Contractor's failure to perform or furnish the work in accordance with Contract Documents.

## **13. CHANGES IN THE WORK**

- 13.4.1 If the Owner, and its agents, suspend the work, the Contractor, and his subcontractors shall be paid such amount that can be documented and determined to be a fair and reasonable compensation of the Contractor's loss, when such stoppage(s) is a result of actions of those other than the Contractor or his subcontractors.
- 13.4.1.1 Compensation shall include all actual direct costs incurred in additional mobilization and demobilization operations, but limited to a maximum cost of a total of eight crew hours for mobilization and demobilization.
- 13.4.1.2 Rental rates for idle time of equipment will be in accordance with 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.
- 13.4.1.3 Compensation for idle time for labor will be the actual costs for "show-up time" incurred by the Contractor.
- 13.4.1.4 No markups for overhead and profit will be added in these costs.
- 13.4.1.5 No additional compensation will be made for loss of productivity on any item of work in the Contract.
- 13.4.2 In the event the Contractor is granted time extension(s) in accordance with the General Conditions for delays caused by acts of the Owner, its employees, those under it by Contract, and/or any other governmental agency and through no fault or act of his own or his subcontractors or suppliers, the Contractor and his subcontractor(s) shall only be reimbursed for the following additional field overhead costs as follows:
- 13.4.2.1 Staff salaries (taxable wages)
- Project Manager
  - Superintendent
  - Engineer(s)
  - Secretaries
  - Clerks
- Salaries will be determined from certified payrolls.
- 13.4.2.2 Labor burden for salary related expense such as fringes, insurance and taxes, will be 38% of the salaries in

the above paragraph.

13.4.2.3 Payment for field office expenses such as vehicles, trailers, power, water, phones, office supplies, toilets, etc. will be at a negotiated rate per calendar day, which shall include the General Contractor and all subcontractor expenses.

13.4.2.4 No payments will be made for home office overhead items such as salaries, travel, bonds, insurance, etc.

13.4.2.5 No markups for overhead and profit will be added to these costs.

#### **14. CHANGES IN CONTRACT PRICE**

14.1 Owner, without invalidating Contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, Contract sum being adjusted accordingly. All such work shall be executed under conditions of original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. All changes are subject to approval by the Owner and the Project Engineer.

In giving instructions, Engineer shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with purposes of building. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order from Owner, and no claim for addition to Contract sum shall be valid unless so ordered.

Value of such extra work, change, or deductions shall be determined at the discretion of Owner, and the method of providing additional cost for review shall be determined by the Owner based on the work involved and the need of the Owner and/or the Engineer to determine the costs are in order with prevailing construction standards in one or more of the following methods in the order of precedence listed below, or as designated above:

- (a) Unit prices previously approved, contained in Contractor's original bid and incorporated in the Contract Documents or fixed by subsequent agreement between Owner and Contractor. (Unit prices previously approved shall be used in all cases for similar units unless mutually agreed that they are for some reason not applicable.)
- (b) An agreed upon lump sum.
- (c) A time and expense basis, involving the actual necessary expenses, and other services necessary to complete the Work. In addition, there shall be added an amount to be agreed upon but not to exceed fifteen percent (15% see 14.1(d) below) of the actual necessary expense to cover the cost of general overhead, general superintendence, other expenses, and profit. In the event that items (a) and (b) above are not applicable, then this latter method (c) shall be used.

The following form shall be followed as applicable for additions and deductions to Contract:

- (1) Material (attach itemized quantity and unit cost plus sales tax)
- (2) Labor (attach itemized hours and rates)
- (3) Subtotal
- (4) Subcontractor's overhead and profit not to exceed 10% of items 1 and 2. Overhead and profit shall include the following: Public Liability and Property Damage Insurance, Worker's Compensation Insurance, Social Security and Unemployment Taxes, extended home and filed office overheads, Safety meetings, warranties, and all other additional overhead and extended costs Contractor may incur for the change.
- (5) Subtotal
- (6) General Contractor's Overhead and Profit (includes Supervision time) on work performed by Subcontractor's, not to exceed 5% of Item 5 should the General Contractor perform the work in question then they shall submit for profit and overhead for the item (total) of 15%.
- (7) Subtotal
- (8) Bond Premium, not to exceed 1% of Item 7.
- (9) Total

- (d) Markup by subcontractors, for their work, shall not exceed ten percent (10%) as per (c) above. General Contractor's markup on subcontractors' work shall not exceed five percent (5%).

If the Contractor should claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation obligates the Owner to pay additional compensation to the Contractor or to grant an extension of time for the completion of the Contract, (see Section 15 of the General Conditions and associated Supplementary General Conditions), or constitutes a waiver of any provision in the Contract, he shall notify the Owner, in writing, of such claim within ten (10) days from the date he has actual or constructive notice of the factual basis supporting the claim. The Contractor's failure to notify the Owner within such ten (10) day period shall be deemed a waiver and relinquishment of the claim against the Owner. If such notice be given within the specified time, the procedure for its considerations shall be as stated above in this article, or as noted elsewhere in the Contract Documents. Contractor shall have (10) days upon notice of claim to provide complete back-up for review of the Owner and the Engineer. Should the Contractor fail to show within this time frame justification to the Owner in a form acceptable to the Owner for the claim, as noted above and within all sections of the Contract Documents describing this procedure, the claim will become null and void.

- 14.2 In order to arrive at the mutually agreed upon lump sum referred to above, the Contractor shall provide the Engineer with a detailed breakdown for materials, equipment and labor, including an item for overhead and profit as defined above.
- 14.3 If the Contractor is directed to do the extra work on a time and expense basis, the Contractor shall keep an accurate daily record in a manner acceptable to the Engineer of all actual necessary expense pertaining to the extra work. The record will be signed by the Engineer and the Contractor daily, and one copy will be retained by the Engineer.
- 14.4 "Actual necessary expense" shall mean the sum of the following items, and all such costs shall mean actual costs whether incurred by the Contractor, a subcontractor, or others:
  - (a) Materials and Equipment. Materials and equipment furnished by the Contractor and necessarily used in the work shall include applicable taxes and discounts whether taken by the purchaser or not.
  - (b) Labor. The cost of labor shall include the actual wages paid, all workers' compensation premiums, State unemployment, Federal Social Security payments, other payments required by State or Federal law, and payments made on behalf of workers as required by collective bargaining agreements.
  - (c) Supervision. The actual cost of supervision shall include only the supervisor employed full-time supervising the extra Work, when authorized in writing by the Engineer.
  - (d) Construction Equipment. Equipment rental rates for the use of equipment required in the performance of the extra Work shall be one of the following: those listed in the latest State of California, Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates" or those mutually agreed upon by the Contractor and the Engineer. Rental rates shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs, maintenance, depreciation, storage, insurance and all other incidentals.
    - Individual pieces of equipment or small tools having a replacement value of \$25 or less shall be considered as expendable and no payment therefor shall be made.
    - The reasonable cost of moving equipment onto and off the jobsite shall be included, but equipment rental shall not be paid when the equipment is inoperative.
    - When equipment is used on the extra work for less than five (5) days, hourly rates shall be used, and less than thirty (30) minutes of operation shall be considered to be 1/2 hour of operation; when equipment is used on the extra work more than five (5) days, daily rates shall be used, and less than four (4) hours of operation shall be considered to be 1/2 day of operation.
  - (e) Professional Services. Professional services or advice if authorized in writing by the Engineer.
  - (f) Other Costs. Other costs if authorized in writing by the Engineer.

- 14.5 Contractor shall, when ordered in writing by the Owner, omit work and material to be furnished under the Contract, and the value of the omitted work and material will be deducted from the Contract price. The

value of omitted work and material will be a lump sum or unit price agreed upon in writing by the Contractor and the Owner.

Contractor shall provide the Engineer with a detailed breakdown for materials, equipment and labor, including an item for overhead and profit. This shall be accompanied by copies of the original quotations and other documentation from himself, subcontractors and vendors as necessary for the Engineer to substantiate the true value of the work omitted.

## **15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

- 15.1 Execution of Contract by Contractor shall constitute acknowledgement by Contractor that Contractor understands, has ascertained and agrees that the County will actually sustain damages in the amount fixed in Contract for each and every calendar day during which completion of Work required is delayed beyond expiration of time fixed for completion or extensions of time as have been allowed pursuant to provisions hereof. Contractor and the County agree that such damages shall be presumed to be the damages actually sustained by Lake County as defined below, and that because of the nature of the project, it would be impracticable or extremely difficult to fix the actual damages.
- 15.1.1 There shall be deducted from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing the then accrued liquidated damages.
- 15.1.2 Liquidated damages shall be considered not as a penalty but as agreed monetary damage sustained by County for loss of revenue and increased project administration expenses, including extra inspection, and architectural and engineering expenses, related to this Contract because Contractor failed to perform and complete Work within time fixed for completion or extensions of time and have been allowed pursuant to provisions hereof. Liquidated damages shall not be deemed to include within their scope additional damages arising from defective work, cost of completion of the Contract, cost of substitute space, or damages suffered by others or other forms of liability claimed against the County as a result of delay (e.g., delay or delay related claims of other contractors, subcontractors or tenants), and defense costs thereof, Contractor shall be responsible for the actual amount of any such damages.
- 15.1.3 Should the Contractor fall behind approved Progress schedule, County reserves right to deduct liquidated damages based on an estimated period of late completion. The County need not wait until Contract completion to withhold liquidated damages from Contractor's progress payments. Should money due or to become due to Contractor be insufficient to cover agreed liquidated damages, then the Contractor forthwith shall pay remainder to County.
- 15.1.4 In addition to the liquidated damages set forth in the Agreement, the contractor shall pay for the additional cost charged against the Work for services rendered by the Owner's Inspector and their agents, i.e., Engineer and their consultants, when the Work exceeds the Contract Time and authorized time extensions. The extra inspection cost shall be deducted from any money due or that may become due to the Contractor under the Contract.
- 15.1.5 If the liquidated damages and inspection costs hereinbefore specified exceed the unpaid balance, the Contractor shall pay the difference to the Owner.
- 15.2 Contractor will proceed with the Work at such rate of progress to insure full completion within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the completion of the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work.
- 15.3 If the Contractor shall fail to complete the Work within the Contract Time, or extension of time granted by the Owner, then the Contractor will pay to the Owner the specified amount for liquidated damages for each calendar day that the Contractor shall be in default after the time stipulated in the Contract Documents.

- 15.4 The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is due to the following, and the Contractor has promptly given written notice of such delay to the Owner or Engineer.
- 15.4.1 To any preference, priority or allocation order duly issued by the Owner.
- 15.5 Since time is of the essence, the Contractor shall commence work under this Contract on or before the date to be specified in the Notice to Proceed.

**TEMPERATURES**

**Normal**

**Extremes**

Month	Daily Max	Daily Min	Record Highest	Record Lowest	Precipitation Normal (in)
January	53.7	32.7	71	20	6.74
February	67.2	35.4	76	23	5.93
March	61.9	37.3	82	27	4.75
April	67.8	39.3	91	28	1.70
May	78.5	44.1	99	33	.85
June	84.8	49.9	103	37	.22
July	92.2	54.0	107	41	.05
August	91.9	52.9	108	44	.09
September	85.7	49.0	108	41	.48
October	74.9	43.3	94	31	1.48
November	60.0	36.6	83	24	4.30
December	53.5	32.8	76	23	4.81
Year					31.40

Source: NOAA, National Oceanic and Atmospheric Administration

15.10 NOTICE OF DELAY

- 15.10.1 Within 7 calendar days of the beginning of any delay Contractor shall notify Engineer, in writing, of all anticipated delays resulting from the delay event in question.
  - 15.10.1.1 Notice shall constitute application for extension of time only if notice requests extension and sets forth the impact of the delay on the critical path and Contractor's estimate of additional time required together with full recital of causes of unavoidable delays relied upon.
  - 15.10.1.2 After receipt of a request for a time extension, with verifiable documents and justifications included, Engineer will make decision thereon, and will advise Contractor in writing. No time extensions shall be considered without related documents and justifications necessary for Engineer to make determination.
  - 15.10.1.3 No time extensions shall be granted for delays for which Contractor fails to give timely notice and Contractor hereby waives any and all damages for delay for which timely notice is not given.

15.10.1.4 Any request for extension of time shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of said event. All claims and adjustments in the Contract Times (or milestones) shall be determined by Owner and Engineer. No claim for an adjustment in the Contract Times (or milestones) will be valid and such claim will be waived if not submitted in accordance with the requirements of this paragraph.

#### 15.11 NO DAMAGE FOR CONTRACTOR CAUSED DELAY

15.11.1 Contractor shall not be entitled to any compensation, including but no limited to extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays caused in whole or in part by Contractor's failure to perform its obligations under this Contract, or during periods of delay concurrently caused by Contractor and either the County or others. Contractor may be compensated for delays caused directly and solely by the County except that Contractor shall not be entitled to damages for delay to the Work caused by the following reasons:

15.11.1.1 The County's right to sequence Work in manner which would avoid disruption to the County's tenants and their contractors or other prime contractors and their respective subcontractors, exercised as a result of Contractor's failure to perform its cooperation and coordination responsibilities require by this Contract; the County's or any Inspector's enforcement of government act or regulation, or the provisions of the Contract Documents;

15.11.1.2 For changed site conditions that are beyond contemplation of parties, except that the County may approve direct costs associated with unknown conditions but not costs or damages which are result of such delays; and

15.11.1.3 Extensive request for clarifications to construction documents or modifications to Contract, provided such clarifications or modifications are processed by the County or its consultants in a reasonable time commensurate with provisions of Contract requirements.

#### 16. **CORRECTION OF WORK**

16.2 All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected Work within ten (10) days after receipt of written notice, the Owner may remove such Work and store the materials at the expense of the Contractor.

16.3 If, in the opinion of the Engineer, the defective Work is not of sufficient magnitude or importance to make the Work dangerous or undesirable, or if, in the opinion of the Engineer, the removal of such Work is impractical or will create conditions which are dangerous or undesirable, the Owner shall have the right and authority to retain such Work instead of requiring it to be removed and reconstructed, but will make such deductions therefor in the payment due or to become due to the Contractor as it may deem just and reasonable.

16.4 If, following installation of any equipment furnished hereunder, defects requiring correction by the Contractor are found, the Owner shall have the right to operate such unsatisfactory equipment and make reasonable use thereof until the equipment can be shut down for correction of defects without injury to the Owner.

#### 17. **SUBSURFACE CONDITIONS**

17.1 The Contractor shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the Owner by written notice of:

17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or,

17.1.2 Unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily

encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents.

- 17.2 The Owner shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the Work, an equitable adjustment shall be made and the Contract Documents shall be modified by a Change Order. Any Claim of the Contractor for adjustment hereunder shall not be allowed unless he has given the required written notice; provided that the Owner may, if he determines the facts so justify, consider and adjust any such Claims asserted before the date of final payment.
- 17.3 Contractor shall carefully examine the Drawings, read the Specifications and the forms of other Contract Documents and shall visit the site of the proposed Work, to fully inform himself as to all existing surface and subsurface conditions, weather and rainfall, soils, rock, water table variations, material availability and limitations that may affect the execution of the Work under the Contract and he shall include in the prices bid, the cost of all incidentals and appurtenances. The failure of Contractor to visit and acquaint himself with conditions at the construction site, shall in no respect relieve him from any obligation imposed by his bid or by the Contract.
- 17.4 The plans for work show the conditions as they are supposed or believed by the Engineer to exist, but it is neither intended nor to be inferred that the conditions as shown thereon constitute a representation by the Owner or its officers that such conditions are universally existent nor shall the Owner or any of its officers or representatives be liable for any loss sustained by the Contractor as a result of any variance between conditions as shown on the Plans and alternate conditions revealed during the progress of the Work, or otherwise.
- 17.4.1 As to above-ground conditions or as-built conditions shown or indicated in the Contract Documents, there is no warranty, expressed or implied, or any representation expressed or implied, that such information is correctly shown or indicated. This information is verifiable by independent investigation and Contractor is required to make such verification as a condition to bidding. In submitting its Bid, Contractor shall rely on the results of its independent investigation. In submitting its Bid, Contractor shall not rely on Owner supplied information regarding above-ground conditions or as-built conditions.
- 17.4.2 As to any subsurface condition shown or indicated in the Contract Documents, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials (e.g. size of pipe, etc.), actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated. Owner is not responsible for completeness of such information for bidding or construction; nor is Owner responsible in any way for any opinions, conclusions or opinions of Contractor drawn from such information; nor is the Owner responsible for subsurface conditions that are not specifically shown (for example, Owner is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown).
- 17.4.3 Conditions shown in Reports and Drawings Supplied for Informational Purposes: Reference is made to Geotechnical Report for identification of:
- 17.4.3.1 Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by Engineer in preparing the Contract Documents; and
- 17.4.3.2 Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site that have been utilized by Engineer in preparing the Contract Documents.
- 17.4.3.3 This report and additional associated drawings are not Contract Documents. Contractor may not in any manner rely on the information in this report, and subject to the foregoing, Contractor must make its own independent investigation of all conditions affecting the Work and shall not rely on information provided by Owner.

17.5 The Owner assumes no responsibility for any representations made by any of its officers or agents during or prior to the execution of this Contract, unless (1) such representations are expressly stated in the Contract, and (2) the Contract expressly provides that the responsibility therefor is assumed by the Owner.

**18. SUSPENSION OF WORK, TERMINATION AND DELAY**

18.1 The Owner may suspend the Work or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the Contractor, by written notice to the Contractor and the Engineer which notice shall fix the date on which Work shall be resumed. The Contractor will resume that Work on the date so fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension.

18.2 If the Contractor is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to subcontractors or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the Work or if he disregards the authority of the Engineer, or he otherwise violates any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his surety a minimum of ten (10) days from delivery of a written notice, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Engineer and incorporated in a Change Order.

18.3 Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.

18.4 After ten (10) days from delivery of a written notice to the Contractor and the Engineer, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Contract. In such case, the Contractor shall be paid for all Work executed and any expense sustained plus reasonable profit.

18.5 If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days by the Owner or under an order of Court or other public authority, or the Engineer fails to act on any request for payment within thirty (30) days after it is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the Engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of a written notice to the Owner and the Engineer, terminate the Contract and recover from the Owner payment for all Work executed and all expenses sustained.

In addition and in lieu of terminating the Contract, if the Engineer has failed to act on a request for payment or if the Owner has failed to make any payment as aforesaid, the Contractor may, upon ten (10) days written notice to the Owner and the Engineer, stop the Work until he has been paid all amounts then due, in which event and upon resumption of the Work, Change Orders shall be issued for adjusting the Contract Price or extending the Contract Time or both to compensate for the costs and delays attributable to the stoppage of the Work.

- 18.6 If the performance of all or any portion of the Work is suspended, delayed, or interrupted as a result of a failure of the Owner or Engineer to act within the time specified in the Contract Documents, or if no time is specified, within a reasonable time, an adjustment in the Contract Price or an extension of the Contract Time, or both, shall be made by Change Order to compensate the Contractor for the costs and delays necessarily caused by the failure of the Owner or Engineer.
- 18.7 If the Contractor intends to file a claim for additional compensation for a delay caused by the Owner or Engineer at a particular time, he shall file a Notice of Claim with the Owner within 7 days of the beginning of the occurrence. The Notice of Claim shall be in duplicate, in writing, and shall state the circumstances and the reasons for the Claim, but need not state the amount. No Claim for additional compensation will be considered unless a Notice of Claim has been filed with the Owner within the time and in the matter stated above.
- 18.8 If the Contractor is delayed in the progress of the work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor and other than by any act or neglect of the Owner or the Engineer, the Contractor shall, within 48 hours of the start of the occurrence, give notice to the Owner of the cause of the potential delay and an estimate of the possible time extension involved. Within 7 days after the cause of the delay has been remedied, the Contractor shall give notice to the Owner of any actual time extension requested as a result of the aforementioned occurrence.
- 18.9 No extension of time will be considered for time lost due to weather conditions normal to the area. Unusual weather conditions, if determined by the Engineer to be of a severity that could not be predicted, may be considered as cause for an extension of Contract completion time.
- 18.10 Delays in delivery of equipment or material purchased by the Contractor or his subcontractors shall not be considered as a just cause for delay. The Contractor shall be fully responsible for the timely ordering, scheduling, expediting delivery, and installation of all equipment and materials.
- 18.11 Within a reasonable period after the Contractor submits to the Owner a written request for an extension of time, the Engineer will present his written opinion to the Owner as to whether an extension of time is justified and, if so, his recommendation as to the number of days for time extension. The Owner will make the final decision on all requests for extension of time.
- 18.12 In no event shall the Contractor be entitled under this Contract to collect or recover any damages, loss, or expense incurred by any delay other than as caused by the Owner or Engineer.

## **19. PAYMENTS TO CONTRACTOR**

- 19.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), the Contractor will submit to the Engineer a partial payment estimate filled out and signed by the Contractor covering the Work performed during the period covered by the partial payment estimate and supported by such data as the Engineer may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or in a bonded warehouse, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the Owner, as will establish the Owner's title to the material and equipment and protect his interest therein, including applicable insurance, the Contractor shall show compliance with Section 33 requirements. The Engineer will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the Owner, or return the partial payment estimate to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The Owner will, within thirty (30) days of presentation to him of an approved partial payment estimate, pay the Contractor a progress payment on the basis of the approved partial payment estimate. The Owner shall retain five percent (5%) of the amount of each payment until final completion and acceptance of all work covered by the Contract Documents. On completion and acceptance of a part of the Work

on which the price is stated separately in the Contract Documents, payment may be made in full, including retained percentages, less authorized deduction.

- 19.1.1 "For any monies earned by the Contractor and withheld by the Owner to ensure the performance of the Contract, the Contractor may, at his request and expense, substitute securities equivalent to the amount withheld in the form and manner and subject to the conditions provided in Part 5 (commencing with Section 22300), Division 2, of the Public Contract Code of the State of California."
- 19.1.2 "Substitution of Securities for Withheld Amounts": Pursuant to Part 5 (commencing with Section 22300), Division 2, of the Public Contract Code of the State of California, securities may be substituted for any monies withheld by a public agency to ensure performance under a Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a State or Federally chartered bank as the escrow agent, who shall pay such monies to the Contractor upon satisfactory completion of the Contract.
- 19.1.3 Securities eligible for substitution under this Section shall include those listed in Section 16430 of the Government Code of the State of California, or bank, or savings and loan certificate of deposit.
- 19.1.4 The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.
- 19.1.5 Any escrow agreement entered into pursuant to this Section shall contain as a minimum, the following provisions:
- (a) The amount of securities to be deposited;
  - (b) The terms and conditions of conversion to cash in case of the default of the Contractor; and,
  - (c) The termination of the escrow upon completion of the Contract.
- 19.2 The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably stored either at or near the site.
- 19.3 Prior to Substantial Completion, the Owner, with the approval of the Engineer and with the concurrence of the Contractor, may use any completed or substantially completed portions of the Work.
- 19.4 The Owner shall have the right to enter the premises for the purpose of doing work not covered by the Contract Documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work except such as may be caused by agents or employees of the Owner.
- 19.5 Upon completion of all the Work under this Contract, the Contractor shall notify the Engineer, in writing, and shall request final payment. If the Work has been completed to the intent of the Contract Documents, the Engineer will recommend acceptance of the completed work and submit a final estimate of the amount due the Contractor under this Contract. Within ten (10) days following Owner's acceptance of the Work, the Owner will file a Notice of Completion with the County Recorder's Office. Thirty-five (35) days after the filing of the Notice of Completion, providing that a Release of Liens or Claims has been received from the Contractor, the Owner will pay to the Contractor all monies due him, less authorized deductions, under the provision of these Contract Documents. Within 15 days of receipt of the Final Payment, Contractor shall cause each of its major suppliers and Subcontractors to provide to Owner an unconditional waiver and release as set forth in Exhibit
- If any lien or claim remains unsatisfied after all payments to the Contractor are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such a lien or claim, including all costs and reasonable attorneys' fees.
- 19.6 The Contractor will indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of

machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the Work. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so, the Owner may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor, his Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a payment made under the Contract Documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

- 19.7 If the Owner fails to make payment thirty (30) days after approval by the Engineer, in addition to other remedies available to the Contractor, there shall be added to each such payment, interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the Contractor.
- 19.8 For work to be done for a lump sum price, the Contractor shall submit a price breakdown to the Engineer immediately after award of the Contract. The price breakdown as agreed upon between the Contractor and Engineer shall be used for preparing future estimates for partial payments to the Contractor, and shall list the major items of the Work and a price for each item. Overhead, other general costs, and profit shall be prorated to each item so that the total of the prices for all items equals the lump sum price. The price breakdown shall be subject to the approval of the Engineer, and the Contractor may be required to verify the prices for any or all items.
- 19.9 Payroll certification forms provided by the Contractor, and fully executed, shall be filed with the Owner at the time of the submission of each claim for a progress payment and also when the claim for final payment is submitted. Wage report forms shall be completed and submitted as required by the applicable Federal agency.

## **20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE**

- 20.1 The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this Work and for every act and neglect of the Owner and others relating to or arising out of this Work. Any payment, however, final or otherwise, shall not release the Contractor or his sureties from obligations under the Contract Documents or the Performance Bond and Payment Bonds.

## **21. INSURANCE**

- 21.1 CONTRACTOR shall not commence work under this Agreement until he has obtained all the insurance required herein, certificates of insurance have been submitted to COUNTY and said insurance has been approved by COUNTY. The certificates of insurance shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty days (30) prior written notice has been given to COUNTY.
- 21.2 CONTRACTOR shall not allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been obtained.
- 21.3 Any failure of CONTRACTOR to maintain the insurance required by this section, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Agreement.
- 21.4 Certificates evidencing the issuance of the following insurance shall be filed with the COUNTY within ten (10) days after the date of execution of this Agreement by CONTRACTOR:

- a. Compensation Insurance CONTRACTOR shall procure and maintain, at CONTRACTOR'S own expense, during the term hereof, Workers' Compensation Insurance and Employer's Liability Insurance as required by the State of California, for all employees to be engaged in work. In case any such work is sublet, CONTRACTOR shall require subcontractor similarly to provide Employer's Liability and Workers' Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by CONTRACTOR's Workers' Compensation Insurance. Employer's Liability Insurance shall be in an amount not less than \$1,000,000 per occurrence
- b. Commercial General Liability CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense during the term hereof, upon himself and his employees at all times during the course of this Agreement, Commercial General Liability Insurance for bodily injury, personal injury and property damage, in an amount of not less than One Million dollars (\$1,000,000) combined single-limit coverage per occurrence including but not limited to endorsements for the following coverages: premises-operations, products and completed operations, blanket contractual, and independent contractor's liability.
- c. Automobile Liability Insurance CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage on owned, hired, leased and non-owned vehicles used in connection with CONTRACTOR's business in an amount of not less than One Million dollars (\$1,000,000) combined single-limit coverage per occurrence.
- d. Builder's Risk Insurance The Contractor shall secure, if applicable, "All Risk" type Builder's Risk Insurance for Work to be performed. Unless specifically authorized by the Owner, the amount of such insurance shall not be less than the Contract Price totaled in the Bid. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, earth movement, localized flooding, theft, machinery damage, and smoke during the Contract Time, and until the Work is accepted by the Owner. The policy shall name as the insured the Contractor, the Engineer, and the Owner.

Such insurance shall exclude coverage for damages which have been proximately caused by "acts of God", in excess of five percent (5%) of the Contract amount. Such insurance shall not exclude coverage for damages caused by earthquake of a magnitude less than that defined in said Section 4151 as an "act of God", or loss caused by the results of faulty workmanship. Such insurance shall provide for losses to be paid the Contractor and the Owner, as their interests may appear. Such insurance may have a deductible clause not to exceed \$1,000 except that the deductible on earthquake may be in accordance with the Underwriter's requirements provided that it does not exceed two percent (2%) of the amount of risk at the time of loss. All Risk insurance need not be provided for buried pipe.

Insurance exclusions shall also include any tools owned by mechanics, or any item owned or rented by the Contractor or subcontractor, the capital value of which is not included in the Contract Sum.

The Builder's Risk policy shall be endorsed to add General or Prime Contractor and all subcontractors as an additional names insured, as their interest may appear, and to waive the carrier's right of recovery under subrogation against Engineer, General or Prime Contractor and all subcontractors whose interest are insured under such policy.

If a claim results from any construction activity, the responsibly General or Prime Contractor shall pay the deductible amount. All Builder's Risk losses will be adjusted with and payable to Owner. Owner shall not be responsible for loss or damage to and will not obtain and/or maintain in force insurance on temporary structures, construction equipment, tools or personal effects, owned, rented to, or in the care, custody and control of General or Prime Contractor or any subcontractor.

In the event of loss or damage not covered by the Builder's Risk policy, the cost of the repair and/or replacement of such loss or damage will be at the CONTRACTOR's expense.

- 21.5 The Contractor shall, if demanded by the Owner, deliver to the Owner all such policy or policies of insurance and the receipts for payment of premiums thereon; and should the Contractor neglect to

obtain and maintain in force any such insurance or deliver such policy or policies and receipts to the Owner, then it shall be lawful for the Owner to obtain and maintain such insurance, and the Contractor hereby appoints the Owner his true and lawful attorney to do all things necessary for this purpose. All money expended by the Owner for insurance premiums under the provisions of this Article shall be charged to the Contractor.

21.6 Subcontractors: CONTRACTOR shall include all subcontractors as insureds under the aforesaid policies or shall furnish separate certificates and endorsements for each subcontractor to COUNTY for review and approval. All coverages for subcontractors shall be subject to all of the requirements hereinabove and contain the additional insured endorsement required by CONTRACTOR hereinafter.

## 21.7 Other Insurance Provisions

- a. The Commercial General Liability and automobile policies are to contain, or be endorsed to contain, the following provisions:
  - 1.) The COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONTRACTOR shall not commence work under this Contract until he has had delivered to COUNTY the Additional Insured Endorsements required herein.
  - 2.) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
  - 3.) For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
- b. The following provisions shall apply to all of the insurance coverages hereinabove:
  - 1.) Any deductibles or self-insured retentions must be declared to and approved by COUNTY. At the option of COUNTY, either: CONTRACTOR shall reduce or eliminate such deductibles or self-insurance retentions; or CONTRACTOR shall provide a financial guarantee satisfactory to COUNTY guaranteeing payment of losses and related investigations, claim administration and defense expenses.
  - 2.) Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A.VII.
  - 3.) 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 COUNTY from taking other actions as is available to it under any other provision of the Agreement or law. Failure of COUNTY 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.

## 22. CONTRACT SECURITY

22.1 The Contractor shall within ten (10) days after the receipt of the Notice of Award furnish the Owner with a Performance Bond and a Payment Bond in penal sums equal to the amount of the Contract price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the Contract Documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the Work provided by the Contract Documents. Such Bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State of California and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. Said Bonds shall be in the forms set forth in the Contract Documents, each made payable to the Owner. The expense of these Bonds shall be borne by the Contractor. If at any time a surety on any such Bond is declared a bankrupt, or loses its right to do business in the State of California, or is removed from the list of Surety Companies accepted on Federal Bonds, Contractor shall within ten (10) days after notice from the Owner to do so, substitute an acceptable Bond (or Bonds) in such form and sum and signed by such other surety or sureties as may be

satisfactory to the Owner. The premiums on such Bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable Bond to the Owner.

## **23. ASSIGNMENTS**

23.1 The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same without the prior written consent of the Owner, except that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned by the Contractor to a bank, trust company, or other financial institution without such approval; written notice of any such transfer shall be furnished promptly to the Owner. Any attempt at assignment of rights under this Contract except for those specifically consented to by both parties or as stated above shall be void.

## **24. INDEMNIFICATION**

24.2 In any and all claims against the Owner or the Engineer, or any of their agents or employees, by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may not be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefits acts.

24.3 The obligation of the Contractor under this paragraph shall not extend to the liability of the Engineer, his agents or employees arising out of the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or Specifications.

24.4 If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

## **25. SEPARATE CONTRACTS**

25.1 The Owner reserves the right to let other Contracts in connection with this Project. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the Work of any other Contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such Work that render it unsuitable for such proper execution and results.

25.2 The Owner may perform additional Work related to the Project by himself, or he may let other Contracts containing provisions similar to these. The Contractor will afford the other Contractors who are parties to such Contracts (or the Owner, if he is performing the additional Work himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work and shall properly connect and coordinate his Work with theirs.

25.3 If the performance of additional Work by other Contractors or the Owner is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to the Contractor prior to starting any such additional Work. If the Contractor believes that the performance of such additional Work by the Owner or others involves him in additional expense or entitles him to an extension of the Contract Time, he may make a claim therefor as provided in Sections 14 and 15.

## **26. SUBCONTRACTING**

26.1 The Contractor may utilize the services of specialty subcontractors on those parts of the Work which, under

normal contracting practices, are performed by specialty Subcontractors.

- 26.2 The Contractor shall not award Work to subcontract(s), in excess of fifty percent (50%) of the Contract Price, without prior written approval of the Owner.
- 26.3 The Contractor shall be fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- 26.4 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the Work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.
- 26.5 Nothing contained in the Contract shall create any contractual relation between any subcontractor and the Owner.
- 26.6 The Contractor shall list on his Bid Proposal all subcontractors performing work or labor in an amount in excess of one-half of one percent (1/2 of 1%) of the total amount of Contractor's proposal. Listing of subcontractors is mandatory under Sections 4100-4113 of the California Public Contract Code.
- 26.7 Pursuant to the provisions in Section 1777.1 of the Labor Code, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a subcontractor on a public works project. This list of debarred contractors is available from the Department of Industrial Relations web site at: [http://www.dir.ca.gov/dir/Labor\\_law/DLSE/Debar.html](http://www.dir.ca.gov/dir/Labor_law/DLSE/Debar.html).

26.8 **PROMPT PROGRESS PAYMENTS TO SUBCONTRACTORS**

Attention is directed to the provisions in Sections 10262 and 10262.5 of the Public Contract Code and Section 7108.5 of the Business and Professions Code concerning prompt payment to subcontractors.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from County of Lake. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County of Lake.

26.9 **PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTOR**

The prime contractor agrees further to release retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County of Lake.

The Contractor shall return all moneys withheld in retention from the subcontractor as stated above, even if the other contract work is not completed and has not been accepted in conformance with Section 48 "Final Inspection", of these General Conditions. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or noncompliance by a subcontractor.

27. **ENGINEER'S AUTHORITY**

- 27.1 The Engineer shall act as the Owner's representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and Work performed. He shall interpret the intent of the Contract Documents in a fair and unbiased manner. The Engineer will make visits to the site and determine if the Work is proceeding in accordance with the Contract Documents.

27.2 The Contractor will be held strictly to the intent of the Contract Documents in regard to the quality of materials, workmanship and execution of the Work. Inspections may be made at the factory or fabrication plant of the source of material supply.

27.3 The Engineer will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

27.4 The Engineer shall promptly make decisions relative to interpretation of the Contract Documents.

## **28. LAND AND RIGHTS OF WAY**

28.1 Prior to issuance of Notice to Proceed, the Owner shall obtain all land and rights of way necessary for carrying out and for the completion of the Work to be performed pursuant to the Contract Documents, unless otherwise mutually agreed.

28.2 The Owner shall provide to the Contractor information which delineates and describes the lands owned and rights of way acquired.

28.3 The Contractor shall provide at his own expense and without liability to the Owner any additional land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials.

## **29. GUARANTY**

## **30. TAXES**

30.1 The Contractor will pay all sales, consumer, use and other similar taxes required by the law of the place where the Work is performed.

## **31. QUANTITIES OF ESTIMATE**

31.1 Wherever the estimated quantities of Work to be done and materials to be furnished under this Contract are shown in any of the documents including the Proposal, they are given for use in comparing bids, and the right is especially reserved, except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the OWNER to complete the Work contemplated by this Contract, and such increase or diminution shall in no way vitiate this Contract, nor shall any such increase or diminution give cause for claims, liability for damage, or adjustment to Contract item bid price.

## **32. VERIFICATION AND WARRANTY**

## **33. DOCUMENTS TO BE KEPT ON THE JOB SITE**

33.1 The Contractor shall keep one copy of the Contract Documents on the job site, in good order, available to the Engineer, his representatives and representatives of all agencies having jurisdiction over the Work.

33.2 The Contractor shall maintain on the job site, and make available to the Engineer on request, one current full-size marked-up set of the design drawings which accurately indicate all variations in the completed work that differ from the design information shown on the Plans. Said Plans shall show actual locations and elevations of all buried and concealed Work including piping, conduit, valves, stub outs and the like. Elevations shall be referenced to first floor finished elevation as datum. Locating dimensions shall be referenced to permanently fixed, accessible, and readily identifiable portions of building or site appurtenances by intersecting coordinate dimensions parallel to and at right angles to building lines.

33.3 Contractor shall provide and keep an up-to-date and complete record set of shop drawings. These prints

shall be corrected daily and show every change from the approved shop drawings. This set of drawings shall be kept on the job site and shall be used only as a record set. This shall not be construed as authorization for the Contractor to make changes in the contract documents without written authorization. Contractor shall provide proof that the documents are being updated as noted above prior to issuing each payment request. Contractor's payment shall be contingent upon verification of documentation of as-built conditions.

**34. ADDITIONAL CONTRACT DOCUMENTS**

34.1 The Engineer will furnish to the Contractor, on request and free of charge, not more than 5 copies of the Contract Documents and 5 sets of full-size Plans. Additional copies of Contract Documents or Plans may be obtained on request by paying the actual cost of reproducing the Contract Documents or Plans.

**35. NO PERSONAL LIABILITY OF PUBLIC OFFICIALS**

35.1 In carrying out any of the provisions hereof in exercising any authority granted by the Contract, there will be no personal liability upon any public official.

**36. RECEPTION OF ENGINEER'S DIRECTIONS**

36.1 The Superintendent, or other duly authorized representative of the Contractor, shall represent the Contractor in all matters given to him by the Engineer. Such directions of major importance will be confirmed in writing. Any directions will be so confirmed in each case on written request from the Contractor.

**37. EMPLOYEES**

37.1 The Contractor shall employ only competent subcontractors or skillful persons to do the work, and whenever any subcontractor or person shall appear to be incompetent or to act in a disorderly or improper manner, such person shall be removed from the Work and not again employed under this Contract. The Contractor shall not make any substitution for any subcontractor, person or entity previously selected unless the substitution is acceptable to the Owner.

**38. REQUIREMENTS OF CALIFORNIA LAW FOR PUBLIC CONTRACTS**

**38.1 GENERAL**

When the Contract Documents concern public works of the State or any county, municipality, or political subdivision created by its laws, the applicable statutes of the State of California shall apply including, but not limited to, the California Labor Code, Chapter I, Public Works. This contract shall also be subject to the provisions of the Labor Compliance Program (if applicable).

**38.2 USE OF APPRENTICES ON PUBLIC WORKS PROJECTS**

Attention is directed to the provisions in Sections 1777.5 (Chapter 1411, Statutes of 1968) and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him.

Section 1777.5, as amended, requires the Contractor or subcontractor employing tradesmen in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval.

The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in Section 1777.5, in no case shall the ratio be less than one hour of apprentices work for every five hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

The joint apprenticeship committee shall have the discretion to grant a certificate, subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (a) Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
- (b) The number of apprentices in training in such area exceeds a ratio of 1 to 5.
- (c) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide bases, or on a local basis.
- (d) Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

A contractor to whom the contract is awarded, or any subcontractor under him or her, who, in performing any of the work under the contract, employs journeyman or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Section 227.

The responsibility of compliance with this section for all apprenticeable occupations is with the prime contractor.

The Contractor and any subcontractor under him shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

The provisions of Section 1777.5 shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contract involves less than thirty thousand dollars (\$30,000) or twenty (20) working days.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards at its branch office.

### 38.3 LABOR DISCRIMINATION

Add the following subsection:

- 38.3.1 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.
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.

#### 38.4 HOURS OF LABOR

Eight hours' labor constitutes a legal day's work. The Contractor shall forfeit, as penalty to the Owner, \$25 for each worker employed in the execution of the Contract, by him or by any subcontractor under him, for each calendar day during which any worker is required or permitted to labor more than 8 hours in violation of the provisions of the Labor Code and, in particular, Section 1810 to Section 1817 thereof, inclusive.

#### 38.5 PREVAILING WAGE

The Contractor shall, as a penalty to the Owner, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rates for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her. The amount of forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the contractor in meeting his or her prevailing wage obligations, or a contractor's willful failure 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 has knowledge of his or her obligations under this part. 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.

The contractor shall pay each worker not less than prevailing wages on all public works projects, including maintenance work, exceeding \$1,000 in cost, in accordance with Section 1771 of the Labor Code. The contractor shall also pay travel and subsistence payments to all workers needed to execute the contract, in accordance with Section 1773.8 of the Labor Code.

The Owner will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wages set forth in the Contract Documents. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his Proposal, and will not under any circumstances be considered as a basis of a claim against the Owner on the Contract.

### 39. **SAFETY**

- 39.1 The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U. S. Department of Labor (OSHA), the California Occupational Safety and Health Act, and all other applicable Federal, State, County, and local laws, ordinances, codes, the requirements set forth below, and any regulations that may be detailed in other parts of these Documents. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth herein.
- 39.2 The Contractor shall appoint for the duration of this Contract, a qualified supervisory employee to develop and/or supervise a Contractor's job safety program that will effectively implement the safety provisions of the above agencies.
- 39.3 The duty of the Engineer to conduct construction review of the Contractor's performance is not intended to include a review or approval of the adequacy of the Contractor's safety supervisor, the safety program, or any safety measures taken in, on, or near the construction site.

- 39.4 The Contractor, as a part of his safety program, shall maintain at his office or other well-known place at the job site, safety equipment applicable to the Work as prescribed by the aforementioned authorities, all articles necessary for giving first aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the job site.
- 39.5 If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Engineer and the Owner. In addition, the Contractor must promptly report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, the performance of the Work whether on, or adjacent to, the site, giving full details and statements of witnesses.
- 39.6 If any claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.
- 39.7 When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and the Contractor encounters materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, if the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe, and shall immediately cease work in the affected area and report the condition to the Engineer in writing.

In accordance with Section 25914.1 of the Health and Safety Code, all such removal of asbestos or hazardous substances including any exploratory work to identify and determine the extent of such asbestos or hazardous substance will be performed by separate contract.

If delay of work in the area delays the current controlling operation, the delay will be considered a right of way delay and the Contractor will be compensated for such delay as provided in Section 8-1.09, "Right of Way Delays", of the Standard Specifications.

#### **40. BEGINNING OF THE WORK**

- 40.1 Before Work shall be started and materials ordered, the Contractor shall meet and consult with the Owner and/or Engineer relative to materials, equipment, right-of-way, schedules and all arrangements for prosecuting the Work.

#### **41. SCHEDULES AND PROGRESS REPORTS**

- 41.1 Prior to submittal of first partial payment request, the Contractor shall furnish the Engineer for his review, a schedule or schedules of expected progress of the Work under the Contract, showing approximately the dates on which each part or division of the Work is expected to be started and finished. The progress schedules shall be submitted regularly and shall cover a time period satisfactory to the Engineer. The Contractor shall also forward to the Engineer, with the request for progress payment each month, a summary report of the progress of the various parts of the Work under the Contract in the shops and in the field, stating the existing status, rate of progress, estimated time of completion, and cause of delay, if any. If the work is behind the submitted schedule, the Contractor shall submit in writing a plan acceptable to the Owner and Engineer for bringing the work up to schedule.

#### **42. CLAIMS**

- 42.1 In any case where the Contractor deems additional compensation is due him for Work or materials not clearly covered in the Contract or by a Change Order, the Contractor shall provide written notice to the

Engineer of such case at least 48 hours before he intends to begin the Work in question. If such notification is not given, then the Contractor hereby agrees to waive the claim for such extra compensation.

If the Engineer concurs that additional compensation is due the Contractor, a change will be issued as provided in Section 14.1. If not, the Contractor shall keep a record of the cost of the work in question, in accordance with the provisions of Section 14.1(c). Such notice by the Contractor, and the fact that the Engineer has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim. Claims for additional compensation shall be made in itemized detail and submitted, in writing, to the Owner and Engineer within 10 days following completion of that portion of the work for which the Contractor bases his claim. In case the claim is found to be just, it shall be allowed and paid for under a Change Order subsequently issued for the purpose.

42.2 Claims shall be litigated in a court of competent jurisdiction.

42.3 The Director of Public Works will make the final determination of any claims which remain in dispute after completion of claim review by the Engineer's authorized representative. A Claim Review Board, appointed by the Director of Public Works, will review such claims and make a written recommendation. The Contractor may meet with the Claims Review Board to make a presentation in support of such claims with the Engineer's authorized representative present.

#### **43. CLEANING UP**

43.1 The Contractor shall at all time, at his own expense, keep property on which work is in progress and the adjacent property free from accumulations of waste material or rubbish caused by employees or by the work and shall maintain material stockpiles in a neat, safe and orderly manner. Upon completion of the construction, the Contractor shall, at his own expense, remove all temporary structures, rubbish, and waste materials resulting from his operation. In the event that the Contractor does not properly clean up promptly, the Owner may separately contract to do so and withhold the cost from the Contractor.

#### **44. NO WAIVER OF RIGHTS**

44.1 Neither the inspection by the Owner, through the Engineer or any of his employees, nor any order by the OWNER for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the Owner or Engineer, nor any extension of time, nor any possession taken by the Owner or its employees, shall operate as a waiver of any provision of this Contract, or any power herein reserved to the Owner, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

#### **45. ACCESS BY STATE AND LOCAL GOVERNMENT OFFICIALS**

45.1 During construction, Contractor shall supervise, inspect and direct work competently and efficiently, devoting such attention thereto and applying such personal skills and expertise as may be required and necessary to perform the Work in accordance with the Contract Documents. The Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.

45.2 Owner shall at their option, provide an Inspector and assistant Inspectors, if necessary, who shall act under the direction of the Engineer and the Owner as prescribed by law. Contractor in no way is relieved of any responsibility by the activities of Inspector.

45.3 Work shall be performed under the general observation and administration of Engineer. Contractor shall immediately comply with orders and instructions given in accordance with terms of Contract by Engineer, or by any authorized assistant, inspector or other representative of Engineer acting within scope of duties entrusted, but nothing herein contained shall be taken to relieve Contractor of obligations or liabilities under Contract.

- 45.3.1 Engineer will provide administration of Contract and observation of the Work as hereinafter described.
- 45.3.2 Engineer will have authority to act on behalf of Owner only to extent provided in Contract Documents.
- 45.3.3 Engineer will visit site at intervals as agreed in the Owner / Engineer agreement. However, Engineer will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of Work. On basis of on-site observations, Engineer will keep Owner informed of progress of Work, and will endeavor to guard Owner against defects and deficiencies in Work of Contractor.
- 45.3.4 Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.
- 45.3.5 Engineer will not be responsible for or have control or charge over acts or omissions of Contractor, subcontractors, or any of their agents or employees, or any other persons performing Work.
- 45.3.6 Engineer will review Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with design concept of Work and with information given in Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay.
- 45.3.7 Engineer will conduct inspections to recommend dates of Substantial Completions and Final Acceptance, will receive and forward to Owner for their review, written warranties and related documents required by Contract and assembled by Contractor.
- 45.3.8 Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings and Specifications or otherwise) as Engineer may determine necessary, which shall be consistent with the intent of and reasonable inferable from the Contract Documents. Such written clarifications and interpretations will be binding on the Contractor, unless Owner in its discretion directs otherwise. If Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, the Contractor may make a written claim therefore as provided herein.
- 45.3.9 Based on the observations, Engineer may disapprove or reject Work which Engineer believes to be defective, or that Engineer believes will not produce a complete Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer with consent of Owner, will also have authority to require special inspection or testing of Work, whether or not the work is fabricated, installed or completed.

#### **46. FIRE PREVENTION AND PROTECTION**

- 46.1 The Contractor shall perform all Work in a fire-safe manner. He shall supply and maintain, on the site, adequate fire fighting equipment capable of extinguishing incipient fires. The Contractor shall comply with applicable Federal, local and State fire prevention regulations and where the regulations do not cover, with applicable parts of the National Fire Prevention Standard for "Safeguarding Building Construction Operations", (NFPA No. 241).

#### **47. STORAGE AND PROTECTION OF MATERIALS**

- 47.1 Materials shall be so stored as to ensure the preservation of their quality and fitness for the Work. When considered necessary, they shall be placed on wooden platforms or other hard, clean surfaces, and not on the ground, and they shall be placed under cover. Stored materials shall be located so as to facilitate prompt inspection. Private property shall not be used for storage purposes without the written permission of the Owner or lessee.

- 47.2 Electrical equipment, devices, and motors shall be placed in dry and warm storage as approved by the Engineer.
- 47.3 All equipment and materials which are not to be painted (such as aluminum and stainless steel) and all factory finished or coated equipment and materials which are not to be painted, that are installed prior to completion of adjacent work, shall be completely covered and protected.

**48. FINAL INSPECTION**

- 48.1 Upon completion of all the Work under this Contract, and before the request for final payment is made, Contractor shall notify the Engineer in writing, and request a Final Inspection of the Work. This request shall include Contractor's certification that the Contract Documents have been reviewed, that the Project has been inspected for compliance and completed in accordance with the Contract Documents, that Work has been tested and is operational and the Project is completed, and ready for final inspection. The Contractor shall provide to the Engineer copies of Contractor's pre-final Inspection list of items that the Contractor completed prior to requesting the Final Inspection.

When the Work is deemed acceptable under the Contract Documents and the Contract fully performed, the Engineer will promptly record a Notice of Completion. Thirty-Five (35) days after the filing of said Notice of Completion the Engineer shall issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The final Certificate for Payment signed by the Engineer will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment have been fulfilled.

**49. POSTING OF WAGE RATES**

- 49.1 Attention is directed to Section 1735 of the Labor Code of the State of California. No discrimination shall be made in the employment of persons upon public works because of race, color, religion, ancestry, sex, or national origin. Every Contractor and Subcontractor for public works violating this Section is subject to all penalties imposed thereof.

**49.2 APPRENTICES:**

- 49.2.1 The Contractor and all subcontractors shall comply with the provision of Section 1777.5 of the California Labor Code regarding employment of apprentices and contributions of apprenticeship program.

**49.3 WAGE RATES:**

- 49.3.1 Pursuant to the provisions of Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages for holiday and overtime work for each craft classification or type of worker needed to execute the Work contemplated under this Contract, as ascertained by the Owner, shall be paid by the Contractor and all subcontractors doing or contracting to do any part of said Work. Copies of said schedule of wage rates are available to any interested party on request. The Contractor shall post a copy of the prevailing wage rates of per diem wages at the job site as determined by the County of Lake in a prominent place where it can be easily seen by the workers.

- 49.3.2 Employer payments other than those itemized in said schedule of wage rates, as defined in Section 1773.1 of the Labor Code, shall be paid in accordance with the terms of the collective bargaining agreement applicable to the type or classification of the worker or mechanic employed on the Work.
- 49.3.3 All wages paid, including payment for travel and subsistence payments to workers, shall comply with requirements of Section 1773.8 of the Labor Code.
- 49.3.4 Pursuant to Section 1777.5 of the Labor Code, each apprentice shall be paid in accordance with the terms of the collective bargaining agreement applicable to the trade or craft at which he is employed.
- 49.3.5 The Contractor shall forfeit as a penalty to the Owner the sum of twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rate for such work or craft in which such worker is employed for any work done under the Contract by him or by any subcontractor under him. In addition, the difference between the stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor. The Contractor and each subcontractor shall keep an accurate record showing the name, occupation, and actual per diem wages paid to each worker employed on the Work contemplated by this Agreement, which record shall be kept open at all reasonable hours to the inspection of the Owner, and to the Division of Labor Law Enforcement. Said Owner shall have, at his election, all the remedies provided by Section 1775 of the Labor Code for the recovery of said penalty.
- 49.3.6 Claims and disputes pertaining to labor classifications shall be decided by the Owner unless local law provides otherwise. The Contractor shall diligently proceed with the Work pending settlement of any dispute which otherwise might delay completion.
- 49.3.7 The wages set forth are the minimum that may be paid by the Contractor. Nothing contained in the Contract Documents shall be construed as preventing the Contractor from paying more than the minimum rate.

## **50. OVERTIME WORK**

- 50.1 Overtime and shift work may be established as a regular procedure by the Contractor and with the written permission of the Engineer. Such permission may be revoked at any time. No work other than overtime and shift work established as a regular procedure shall be done between the hours of 6:00 p.m. and 7:00 a.m., nor on Saturdays, Sundays or legal holidays, except such work as is necessary for the proper care and protection of the work already performed or except in case of an emergency.
- 50.2 All costs for overtime inspection, including those occurring as a result of overtime and shift work established as a regular procedure, shall be paid for by the Contractor. Overtime inspection shall include inspection required during holidays, Saturdays, Sundays, and any weekday between the hours of 6:00 p.m. and 7:00 a.m. Such costs will include, but will not necessarily be limited to, engineering, inspection, general supervision and other expenses which are directly chargeable to the overtime work. All such charges shall be deducted by the Owner from payments due the Contractor.

\* \* \* END OF GENERAL CONDITIONS \* \* \*

## Exhibit D

### TECHNICAL SPECIFICATIONS AND REQUIREMENTS

#### 1. SITE ACCESS

Contractor shall conform to all County rules and requirements for accessing sites. The County or the applicable Authority Having Jurisdiction may regulate road usage, road closures, number of vehicles, access points, etc. Site visits shall be approved, and proper check-in requirements must be followed. Contractor shall provide signage and/or electronic notification of possible operational impacts upon County request. Unless otherwise determined by County, Contractor shall be responsible for providing bathroom and storage facilities for all workers on-site, and shall be responsible for procuring, installing, securing, and removing temporary security fencing and scaffolding.

#### 2. PROJECT MANAGEMENT

##### 2.1 Project Manager

Contractor shall assign a Project Manager from their firm upon execution of the Agreement and receipt of Notice to Proceed. The Project Manager shall ensure that all contract, schedule, and reporting requirements of the Project are met and shall be the primary point of contact for the County.

##### 2.2 Project Schedule

A Project Schedule is to be prepared and submitted to the County within 10 days of Agreement execution. The County will review and approve the Project Schedule prior to the initiation of work. Updates shall be submitted every other week, though the County may allow less frequent updates at their discretion. The submittal shall be a Critical Path Method (CPM) schedule describing all Project activities including design, equipment procurement, construction, and commissioning. In particular, Contractor shall include County review of submittals on the Critical Path. The schedule shall also reflect the requirement that construction activities must be coordinated to minimize impacts on normal operations at each site, including ongoing construction activities.

Sufficient information shall be shown on the Project Schedule to enable proper control and monitoring of the Work. The Project Schedule shall show the intended time for starting and completing each activity; the duration of each activity; submittal and approval times; design; delivery of materials, equipment and software; all testing; and other significant items related to the progress of the Work. The Project Schedule shall include a CPM network diagram of sufficient detail to show how Mandatory Milestones are intended to be met. If a schedule submitted by Contractor includes changes affecting the achievement of Mandatory Milestones, Contractor should clearly identify and justify those changes.

Contractor is encouraged to phase the Work in a way that supports efficient and effective delivery of design and build services. The following Mandatory Milestones shall be reflected in the schedule and where applicable, represents the dates upon which each milestone is to be achieved for all sites in this Agreement.

#### **Mandatory Milestones**

## Exhibit D

Mandatory Milestone	Date
50% Schematic Design submittal	
90% Design Development submittal	
100% Construction Documents submittal for permitting	
Approved Construction Documents	
Notice to Proceed	
Mobilization	
Substantial Completion	
Final Completion	

### 2.3 Submittals

Contractor shall provide the following submittals as part of the performance of the Work. The cost of developing and providing submittals shall be included in the Project price.

#### Agreement Submittals

Submittal	Submittal Date	Exhibit D.1 Section
<b>I. System Design</b>		<b>TBD</b>
a. System Design Documentation	At each design milestone	TBD
b. Warranties	At Construction Documents milestone	TBD
c. Testing Plan	At Construction Documents milestone	TBD
d. Power production modeling	At Construction Documents milestone	TBD
<b>II. Procurements and Construction</b>		<b>TBD</b>
a. Safety Plan	30 days before commencement of construction	TBD
b. As-built Documentation	After completion of Proving Period	TBD
<b>III. Testing</b>		<b>TBD</b>
a. Acceptance Test Results	After Acceptance Test	TBD
b. Startup Test Results	After Startup Test	TBD
c. Monitoring Data (Proving Period)	Continually throughout Proving Period	TBD
d. Proving Period Report	30 days after System Startup	TBD
<b>IV. Training</b>		<b>TBD</b>
a. Training Materials	30 days before Training Session	TBD
b. Monitoring Manual	30 days before Training Session	TBD
c. Operations & Maintenance Manual	30 days before Training Session	TBD

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### 2.4 Solar and Storage Incentives

Where applicable, Contractor shall submit applications for all available energy incentives or, should the County already have submitted such applications, assume responsibility for all future requirements (agreements, submittals, etc.) related to these programs. This includes actions necessary to ensure compliance with all interconnection agreements and related documents for County participation and utilization of the benefits of each applicable program. Contractor shall attend all site verification visits conducted by the applicable public utility or Governmental Authority and shall assist the County in satisfying the requirements of the incentive program. Contractor shall be responsible for providing updated documentation to incentive program administrators throughout the project, as required by rules of the relevant incentive programs.

### 2.5 Interconnection

Contractor shall be responsible for preparing, submitting, and procuring interconnection application through appropriate utility and department. Contractor shall accept responsibility for payment for utility interconnection studies and/or project management that are anticipated and required. All anticipated utility work (e.g. transformer installation, meter addition) shall be the responsibility of the Contractor. At project completion, Contractor shall confirm Permission To Operate with the utility, and shall verify most financially-beneficial rate schedule and billing for the County.

Contractor must comply with all interconnection requirements. Systems installed as part of this project will be connected under a Net Energy Metering Aggregation (NEMA) Agreement, unless specified otherwise by County or its agents. Contractor shall be responsible for ensuring the system design qualifies for a NEMA agreement, as applicable.

## 3. SYSTEM DESIGN

### 3.1 Design Review Process/ Phases

The County will review and approve design documentation based on the requirements in this RFP and as detailed in Section 3.3 of this document. The County may request additional documents as needed. Prior to the first design submission, the Contractor and County shall agree upon precise organization and format of the design submittals. The County will review all submittals, provide written comments, and conduct Design Review Meetings for each stage of the process. Contractor shall provide additional detail, as required, at each successive stage of the Design Review. Contractor shall not order equipment and materials until Schematic Design submittals have been approved. Contractor shall not begin construction until Construction Documents have been approved and all required permits have been obtained. The County will formally approve, in writing, each phase of the design and is the sole arbiter of whether each phase of the design has been completed. The Contractor shall not enter a subsequent design phase without the approval of the County.

Contractor is responsible for providing designs approved by the appropriate professional engineers

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registered in the State of California. Costs for engineering reviews and approvals shall be borne by the Contractor. System designs must consider County aesthetic issues and not conflict with any current County operations.

### 3.2 Contractors' License Classification

The County requires that Respondents possess, at the time of submission of a Proposal, at the time of award of the Agreement and at all time during construction activities, a General Engineering Contractor License (A), General Building Contractor License (B), Electrical Contractor License (C-10), or Solar Contractor License (C-46). It shall be acceptable for a Respondent that does not possess a C-10 or C-46 License to list a Subcontractor with a C-10 or C-46 License.

### 3.3 Design Submittals

#### 3.3.1 Plan Set

Contractor shall prepare a comprehensive submittal package for each phase of the Work that will be reviewed and approved by the County. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design, as applicable:

- Site Layout Drawings, with distances from roof edges and existing buildings and equipment
- Underground Utilities
- Construction Specifications (trenching, mounting, etc.)
- Equipment Layout Drawings
- Electrical Single-Line and Three-Line Diagrams
- Module Stringing Diagrams
- Electric Wire and Conduit Schedule
- Electrical Warning Labels & Placards Plans
- Lighting Plan (for shade structures)
- Architectural Drawings, including compliance with Americans with Disabilities Act (ADA)
- Structural/Mechanical Drawings, including roof penetration details
- Geotechnical and/or Surveyor Drawings and Studies
- Manufacturer's Cut Sheets with Equipment Specifications
- Data Acquisition System (DAS) Specifications, Cut Sheets, and Data Specifications

Contractor shall include adequate time for County review and approval of submittals, as well as re-submittals and re-reviews. Minimum County review time shall be ten (10) business days from the date of receipt of each submittal package during each phase of the Design Review.

#### 3.3.2 Production Modeling

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Production modeling of the PV systems shall be performed using HelioScope, System Advisor Model (SAM), PVSYST, or equivalent modeling software using TMY3 weather data for the location closest to the site. The simulations shall accurately simulate energy production for proposed system layouts, sizes, and orientation. It is critical that PV production models are accurate with all methodology and assumptions described. The County or its agents will independently verify production models are accurate to the designed systems and utilize simulation results for economic evaluations. Contractor shall be responsible for updating the production models each time sufficient changes are made to the proposed system designs that will impact production.

Contractor shall avoid excessive shading on modules to the extent possible. Where shading losses are encountered, Contractor shall perform a shading analysis justifying the basis for their design and explaining why shading does not create an adverse performance and/or economic impact.

### 3.4 Permits and approvals

Construction Documents must be reviewed and approved by all authorities having jurisdiction (AHJs) over the work, which may include, but are not limited to: the County, the city in which the work is being done, and the utility. Contractor shall be responsible for obtaining all approvals and shall account for permitting and inspection requirements in their system designs, project pricing, and schedule. Contractor shall attend all site verification visits conducted by the applicable public utility or Governmental Authority, including, but not limited to, any special inspections for drilling, trenching, rebar, concrete, welding, and roof attachment work, according to AHJ requirements. The County will not grant Contractor relief based on Contractor's incomplete or incorrect understanding of permitting and approval requirements.

### 3.5 Technical Requirements

#### 3.5.1 General Considerations

All documentation and components furnished by Contractor shall be developed, designed, and/or fabricated using high quality design, materials, and workmanship meeting the requirements of the County and all applicable industry codes and standards. The installations shall comply with at least, but not limited to, the latest approved versions of the International Building Code (IBC), National Electrical Code (NEC), Utility Interconnection Requirements, California Building Standards Commission Codes, and all other federal, state, and local jurisdictions having authority.

#### 3.5.2 Electrical Design Standards

The design, products, and installation shall comply with at least, but not limited to, the following electrical industry standards, wherever applicable:

- National Electric Code (NEC)
- Illumination Engineering Society of North America (IESNA) Lighting Standards
- Institute of Electrical and Electronics Engineers (IEEE) Standards

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- National Electrical Manufacturers Association (NEMA)
- Underwriters Laboratories, Inc. (UL)
- National Fire Protection Association (NFPA)
- California Public Utility Commission (CPUC) and Utility Requirements
- American National Standards Institute (ANSI)
- Occupational Health and Safety Administration (OSHA)
- International Code Council (ICC) Codes
- California Building Standards Commission (BSC) Codes

### 3.5.3 Modules

In addition to the above, the PV modules proposed by Contractor shall comply with at least, but not limited to, the following:

- IEEE 1262 “Recommended Practice for Qualifications of Photovoltaic Modules”.
- System modules shall be UL1703 listed and CEC listed.
- Modules shall be new, undamaged, fully warranted without defect.
- If PV modules using hazardous materials are to be provided, then the environmental impact of the hazardous material usage must be disclosed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life.

### 3.5.4 Battery Cells

In addition to complying with applicable standards listed under 3.5.2, battery cells proposed by Contractor shall comply with appropriate fire safety standards including, but not limited to, the following:

- NFPA 855
- UL 1642 Standard for Lithium Batteries (Cells)
- UL 9540 Standard for Energy Storage Systems and Equipment

### 3.5.5 Inverters

In addition to the above, inverters proposed by Contractor must comply with at least, but not limited to the following:

- Inverters shall be suitable for grid interconnection and shall be compliant with all Utility interconnection requirements, including those requiring rapid shut-off capabilities.
- IEEE 929-2000 – “Recommended Practice for Utility Interface of Photovoltaic Systems”.
- Inverters shall be UL 1741 and IEEE 1547 compliant.
- Inverters shall be CEC-listed with an efficiency of 95.5% or higher.
- Inverters must automatically reset and resume normal operation after a power limiting operation.

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- Inverters shall be sized to provide maximum power point tracking for voltage and current range expected from PV array for temperatures and solar insolation conditions expected for Project conditions.
- Enclosures shall be rated NEMA 3R when the inverter is located outdoors. For outdoor installations in corrosive environments, NEMA 4X series 300 stainless steel enclosures must be used.
- Inverter selection shall consider anticipated noise levels produced and minimize interference with County activities.

### 3.5.6 Electrical Balance of System Components

- Each proposed PV system shall include, at a minimum, one fused DC disconnect and one fused AC disconnect for safety and maintenance concerns.
- String combiner boxes shall be arc-fault-detecting, load-break, disconnecting types, such that opening the combiner boxes shall break the circuit between combiner box feeders and inverters.
- All wiring materials and methods must adhere to industry-standard best practices, and all inter-module connections must require the use of a specialized tool for disconnecting.

### 3.5.7 Mounting Systems

The mounting systems shall be designed and installed such that the PV modules may be fixed or tracking with reliable components proven in similar projects, and shall be designed to resist dead load, live load, corrosion, UV degradation, snow loads, wind loads, and seismic loads appropriate to the geographic area over the expected 25-year lifetime. Contractor shall conduct an analysis, and submit evidence thereof, including calculations, of each structure affected by the performance of the scope described herein, and all attachments and amendments. The analysis shall demonstrate that existing structures are not compromised or adversely impacted by the installation of PV, equipment, or other activity related to this scope. Mounting systems must also meet the following requirements at a minimum:

- All structural components, including array structures, shall be designed in a manner commensurate with attaining a minimum 25-year design life. Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals and to withstanding significant snow loads.
- Thermal loads caused by fluctuations of component and ambient temperatures shall be accounted for in the design and selection of mounting systems such that neither the mounting system nor the surface on which it is mounted shall degrade or be damaged over time.
- Each PV module mounting system must be certified by the module manufacturer as (1) an acceptable mounting system that shall not void the module warranty, and (2) that it conforms to the module manufacturer's mounting parameters.
- For unframed modules, bolted and similar connections shall be non-corrosive and include locking devices designed to prevent twisting over the 25-year design life of the PV system.
- Final coating and paint colors shall be reviewed and approved by the County during Design Review.
- Painting or other coatings must not interfere with the grounding and bonding of the array.

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### 3.5.8 Corrosion Control

In addition to the above, Corrosion Control proposed by Contractor must comply with at least, but not limited to the following requirements:

- Fasteners and hardware throughout system shall be stainless steel or material of equivalent corrosion resistance
- Racking components shall be anodized aluminum, hot-dipped galvanized steel, or material of equivalent corrosion resistance
- Unprotected steel not to be used in any components
- Each PV system and associated components must be designed and selected to withstand the environmental conditions of the site (e.g., snow, temperature extremes, winds, rain, flooding, etc.) to which they will be exposed.

### 3.5.9 Roofing Requirements

The installation of PV modules, inverters and other equipment shall provide adequate room for access and maintenance of existing equipment on the building roofs. A minimum of three feet of clearance will be provided between PV equipment and existing mechanical equipment and other equipment mounted on the roof. Clearance guidelines of the local fire marshal shall be followed. The installation of solar systems will be reviewed for code compliance and adherence to the California *State Fire Marshal Solar Photovoltaic Installation Guideline*. The PV equipment shall not be installed in a way that obstructs airflow into or out of building systems or equipment.

Proposed roof top mounted systems may be ballasted or penetrating systems and must meet or exceed the following requirements:

- Systems shall not exceed the ability of the existing structure to support the entire solar system and withstand increased wind uplift and seismic loads. The capability of the existing structure to support proposed solar systems shall be verified by Contractor prior to design approval.
- Roof penetrations, if part of the mounting solution, shall be kept to a minimum.
- Contractor shall perform all work so that existing roof warranties shall not be voided, reduced, or otherwise negatively impacted. As part of the design submittals, Contractor shall include signed certificates from the roofing manufacturer stating:
  - The roofing contractor is certified installer of Complete Roofing System.
  - The manufacturer's Technical Representative is qualified and authorized to approve project.
  - Project Plans and specs meet the requirements of the warranty of the Complete Roofing System for the specified period.
  - Existing warranty incorporates the new roofing work and flashing work.
- No work shall compromise roof drainage, cause damming or standing water or cause excessive soil build-up.

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- All materials and/or sealants must be chemically compatible.
- All penetrations shall be waterproofed.
- County shall approve in writing the detail(s) for the sealing of any roof penetrations, as part of system design review and approval. Approval must be made prior to Contractor proceeding with work. The County will also make available the manufacturer for the existing roof in consultation with Contractor as part of the design process.
- Contractor is responsible for remediating any damage to roofing material during installation of solar systems.

### 3.5.10 Shade Structure Requirements

Contractor will be responsible for incorporating the following elements in the design and construction of the System:

- Minimum height: all shade structures shall be designed to have a minimum clear height of ten (10) feet, unless specified in a Site's Specification Sheet to be taller to accommodate larger vehicles at the site.
- All shade structures shall be installed with a fascia surrounding the exposed edge of the structure's purlins.
- Shade structures located in parking lots shall have concrete bollards installed around support posts. The bollards shall extend up to a minimum elevation of 36" above finished grade. This requirement may be waived at the County's sole discretion.
- Shade structure columns, beams, and fascia shall be painted to match site colors or to a color of the County's approval.
- Compliance with Americans with Disabilities Act (ADA) requirements, including those for equal coverage, path-of-travel, striping, and signage.

### 3.5.11 Ancillary Equipment Enclosures

Contractor will be responsible for incorporating the following elements in the design and construction of the System:

- Location: all ancillary equipment shall be located in a manner that minimizes its impact to normal County operations and minimizes the visual impacts to the site.

### 3.5.12 Placards and Signage

- Placards and signs shall correspond with requirements in the National Electric Code and the interconnecting utility in terms of appearance, wording, and placement.
- Permanent labels shall be affixed to all electrical enclosures, with nomenclature matching that found in As-Built Electrical Documents.

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- Height clearance signage must be provided for structures with anticipated vehicle or human traffic underneath.

### 3.5.13 Infrastructure for Ground Mount Systems

Contractor will be responsible for incorporating the following elements in the design and construction of the Systems:

- Fencing: the site shall be surrounded by a fence to prevent unauthorized personnel from gaining access the site. The fence shall be an eight (8) foot high chain link fence with vinyl privacy slats, unless otherwise stated or agreed to by the County.
- Gates shall be installed to enable site access for trucks.
- A pathway a minimum of ten (10) feet wide passable by a maintenance truck shall be provided within the array fence to allow for access to all equipment enclosed within the fence area.
- Access to water for maintenance (module cleaning) purposes, as determined adequate by Contractor and approved by the County.
- Access to low voltage (120V) AC power to power maintenance equipment and miscellaneous equipment.
- Contractor shall install and ensure activation of sufficient security cameras on site to monitor array area, connected to the site's security system, in collaboration with the County, unless requirement is waived by the County.
- Contractor will be responsible for installing an acceptable surface cover material under and around the modules and throughout the site that provides appropriate weed control, erosion and dust management. Contractor shall be responsible for ongoing weed mitigation of the site to reduce impacts of shading on modules.
- Contractor will be responsible for creating an access road to any ground mount system for maintenance and fire access purposes. The access road shall be passable under all weather conditions.

### 3.5.14 Wiring and Cabling Runs

- Contractor shall install all AC conductors in conduit.
- Direct burial wire will not be acceptable. Conduit buried underground shall be suitable for the application and compliant with all applicable codes. PVC shall be constructed of a virgin homopolymer PVC compound and be manufactured according to NEMA and UL specifications. All PVC conduit feeders shall contain a copper grounding conductor sized per NEC requirements and continuity shall be maintained throughout conduit runs and pullboxes. Minimum conduit size shall be  $\frac{3}{4}$ ". A tracing/caution tape must be installed in the trench over all buried conduit.
- Conduit installed using horizontal directional boring (HDB), shall include tracer tape or traceable conduit. The minimum depth of the conduit shall be per NEC. The Contractor is responsible for demonstrating that all conduits installed utilizing horizontal boring meets the minimum depth requirement and is solely responsible for any remediation costs and schedule impacts if the

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specification is not met. The HDB contractor must provide documentation of final depth and routes of all conduit installed in horizontal bores.

- Conduit installed on building roofs shall be installed in a manner to reduce visibility. Any conduit penetrations through roof surfaces shall not be made within one (1) foot of the roof edge to reduce visibility. If conduit is installed on the exterior face of any building, it shall be painted to match the existing building color. In all cases, the visible impact of conduit runs shall be minimized and the design and placement of conduit shall be reviewed and approved by the County as part of Design Review.
- All exposed conduit runs over 100-feet in length or passing over building connection points shall have expansion joints to allow for thermal expansion and building shift.
- Contractor shall install and secure the exposed string cable homeruns along the beams or structure where any combiner box is installed.
- All exposed string wiring must be installed above the lower surface of the racking members. Wire loops under framing members are not acceptable.
- Acceptable wire loss in DC circuits is < 1.5% and acceptable wire loss in AC circuits is < 1.5% as well.
  - All cable terminations, excluding module-to-module and module-to-cable harness connections, shall be permanently labeled.
  - All electrical connections and terminations shall be torqued according to manufacturer specifications and marked/sealed at appropriate torque point.

### 3.5.15 Grounding and Bonding

- Module ground wiring splices shall be made with irreversible crimp connectors.
- All exposed ground wiring must be routed above the lower surface of any structural framing.

### 3.5.16 Shade Structure Lighting

- Installation of shade structure PV systems in all locations shall include the installation of new high-efficiency lighting. Installation of shade structure PV systems shall include the removal of existing security light poles, foundations, and fixtures that are no longer effective.
- New lighting shall be LED.
- New parking lot fixtures shall be installed to provide parking lot illumination compliant with IESNA requirements or recommendations for illumination and safety.
- Minimum horizontal illuminance of one (1) foot-candle shall be maintained at ground level with a uniformity ratio (maximum to minimum) of 15:1.
- The new lighting is required to illuminate the entire parking area and adjacent pedestrian walkways affected by the removal of existing lights, not just the area under the PV modules.
- A photometric illumination plot must be submitted for each parking lot showing all existing lighting and proposed new canopy lighting.

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- Submit California Title 24 Outdoor Lighting calculations with all lighting drawings and show evidence of compliance.
- Photocell controls shall be used in conjunction with a lighting control system for all exterior lighting and energize lighting when ambient lighting levels fall below two (2) foot-candles measured horizontally at ground level. Lighting shall also be required to operate manually without regards to photocell input. Replacement parking lot lighting shall be served from an existing parking lot lighting circuit and any existing circuits and existing control function shall be maintained, or if replaced, done so at the approval of the County.

### 3.5.17 Monitoring System, DAS, and Reporting

Contractor shall design, build, activate and ensure proper functioning of Data Acquisition Systems (DAS) that enable the County to track the performance of the PV Systems as well as environmental conditions through an online web-enabled graphical user interface and information displays. Contractor shall provide equipment to connect the DAS via existing hardline, Wi-Fi network, or cellular data network at all locations. The means of data connection will be determined during design.

The DAS(s) shall provide access to at least the following data:

- Instantaneous AC system output (kW)
- PV System production (kWh) over pre-defined intervals that may be user configured
- In-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information
- System availability
- Site Load information. Available load data for the meter the system is connected to shall be collected by the solar monitoring solution as part of the DAS.

Environmental data (temperatures and irradiance) shall be collected via an individual weather station installed at the site

Data collected by the DAS shall be presented in an online web interface, accessible from any computer through the Internet with appropriate security (e.g., password-controlled access). The user interface shall allow visualization of the data at least in the following increments: 15 minutes, hour, day, week, month, and year. The interface shall access data recorded in a server that may be stored on-site or remotely with unfettered access by the County for the life of the Project. The online interface shall enable users to export all available data in Excel or ASCII comma-separated format for further analysis and data shall be downloadable in at least 15-minute intervals for daily, weekly, monthly and annual production.

The Monitoring system shall enable County staff to diagnose potential problems and perform remediating action. The monitoring system shall provide alerts when the system is not functioning within acceptable operating parameters. These parameters shall be defined during the design phase of the Project and specified in the DAS design document. At a minimum, County shall have the ability to compare irradiance

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to simultaneous power production measurements through linear regression analysis.

Additionally, Contractor shall make available, at no additional cost, the following reports for a term of 5 years after Final Completion of the project:

- Monthly Production report shall be available online to the County personnel.
- System performance data shall be made available electronically to the County in a format and at a frequency to be determined during the Design Review process.
- Additional reports shall be made available to the County to assist the County in reconciling system output with utility bills and the production guarantee, as determined in the Design Review process.

A Monitoring Manual shall be provided to the County in printed or on-line form that describes how to use the monitoring system, including the export of data and the creation of custom reports.

### 3.5.18 FAA Requirements

Contractor shall be responsible to submit the appropriate FAA Form 7460-1, along with any other required forms and documentation, for all proposed PV systems within the approach or takeoff paths or on the property of airports as defined by the Code of Federal Regulations Title 14 Part 77.9.

## 3.6 Warranties

Contractor shall provide a comprehensive ten (10) year warranty on all system components against defects in materials and workmanship under normal application, installation, and use and service conditions.

Additionally, the following minimum warranties are required:

- PV Modules: The PV modules are to be warranted against degradation of power output of greater than 10% of the original minimum rated power in the first ten (10) years and greater than 20% in the first twenty (25) years of operation.
- Inverters: Inverters shall carry a minimum 10-year warranty.
- Battery Cells: The battery cells, or cell configurations, used in this project shall carry a minimum of 10-year warranty.
- Meters: At minimum, meters shall have a five (5) year warranty. For meters integrated in inverters, the meter warranty period must match the inverter.
- Mounting system: Minimum fifteen (15) year warranty, covering at least structural integrity and corrosion.
- Balance of system components: The remainder of system components shall carry manufacturer warranties conforming to industry standards.

All warranties must be documented and be fully transferable to the County.

All work performed by Contractor must not render void, violate, or otherwise jeopardize any preexisting

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County facility or building warranties or the warranties of system components.

### 4. PROCUREMENT/CONSTRUCTION

#### 3.7 TREE REMOVAL

Any trees that are in the footprint of systems to be installed by the Contractor shall be removed by the Contractor at their expense, subject to the approval of the County. A tree shall be considered to be in the footprint of a system if its canopy would extend over any part of the system, including structural components or modules. The County will remove or prune, at its discretion, trees planted outside of the work area that shade PV systems (at present time or in the foreseeable future), provided the Contractor identifies these trees during the design process. The Contractor shall be responsible for any required tree remediation efforts resulting from tree removal that is deemed the Contractor's responsibility.

#### 3.8 LINE LOCATION

Contractor will be responsible for locating, identifying and protecting existing underground utilities conduits, piping, substructures, etc. and ensuring that no damage is inflicted upon existing infrastructure. In addition to USA Dig and utility line-locating, a private line-locator must be used for any project requiring underground work.

#### 3.9 QUALITY CONTROL

To ensure safety and quality of the installation, Contractor shall:

- Implement policies and procedures to ensure proper oversight of construction work, verification of adherence to construction documents and contractual requirements, and rapid identification and mitigation of issues and risks.
- Utilize best practice methods for communicating progress, performing work according to the approved Project schedule, and completing the Project on-time.
- Keep the Site clean and orderly throughout the duration of construction. All trash and rubbish shall be disposed of off-site by licensed waste disposal companies and in accordance with applicable Law.
- Fully comply with all applicable notification, safety and Work rules (including County safety standards) when working on or near County facilities.
- Provide Special Inspection for drilling, trenching, rebar, concrete, welding, and roof attachment work, according to AHJ requirements.
- Provide all temporary road and warning signs, flagmen or equipment as required to safely execute the Work. Street sweeping services shall also be provided as required to keep any dirt, soil, mud, etc. off of roads. Comply with all state and local storm water pollution prevention (SWPP) ordinances.

The County may, at its sole discretion, retain a qualified person or firm to be responsible for quality control

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and quality assurance of the Project Work (the "QA/QC Director"). The QA/QC Director shall be responsible, among other things, for developing procedures for testing materials, the oversight of materials testing, inspecting field assembled equipment (such as quality control of welding procedures and welding testing), verifying QA/QC of materials used in the manufacture of equipment and verifying that all equipment and materials delivered to the Site meet the specifications of the COUNTY's Engineer, as such Engineer is designated in the County's General Conditions which are set forth herein. The QA/QC Director shall report to Engineer and the CONTRACTOR on a weekly basis, or more frequently as needed. The role and specific responsibilities of QA/QC Director with respect to the Project shall be more particularly set forth in the agreement between COUNTY and QA/QC Director.

### 3.10 MECHANICAL COMPLETION

"Mechanical Completion" shall occur when, except for minor items of the Project Work that would not affect the performance or operation of the Facility, (a) all materials and equipment for the Facility have been installed substantially in accordance with the Final Plans; and (b) all equipment and equipment systems required to be installed by CONTRACTOR have been installed and initially tested (excluding Acceptance Testing); and (c) all the equipment and systems can be operated in a safe and prudent manner and have been installed in a manner that does not void any Subcontractor equipment or system warranties; and (d) the Facility is ready to commence Acceptance Testing, and operations; and (e) a Punch List of the uncompleted items is established by CONTRACTOR and mutually agreed upon by the Parties, provided that if CONTRACTOR and COUNTY disagree as to whether a particular item shall appear on the Punch List, the COUNTY's QA/QC Director shall promptly decide the dispute; and (g) all Project Work, other than Punch List items and Acceptance Testing and any other Project Work sequenced after Mechanical Completion, has been completed; and (h) the QA/QC Director certifies each of the foregoing to the satisfaction of the COUNTY.

### 3.11 REMOVAL AND REMEDIATION

Contractor shall remove all construction spoils, abandoned footings, utilities, construction equipment and other byproducts of construction. All disturbed areas including landscaping, asphalt, and concrete shall be remediated to be in equal or better condition than found. Parking lots shall be re-stripped if affected by construction operations.

The site shall be left clean and free of debris or dirt that has accumulated as a result of construction operations.

## 5. TESTING AND COMMISSIONING

Following completion of construction, Contractor shall provide the following services related to startup and performance testing of the PV systems:

- Acceptance Testing
- Proving Period

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A detailed Testing Plan covering each of the phases above shall be submitted and approved by the County prior to substantial completion of construction. A detailed description of each phase is provided below.

### 3.12 ACCEPTANCE TESTING

Contractor shall perform a complete acceptance test for each PV System. The acceptance test procedures include component tests as well as other standard tests, inspections, safety and quality checks. All testing and commissioning shall be conducted in accordance with the manufacturer's specifications.

The section of the Testing Plan that covers Acceptance Testing shall be equivalent or superior to the CEC (California Energy Commission) "Guide to Photovoltaic (PV) System Design and Installation", Section 4 and shall cover at least the following:

- Detailed list of all items to be inspected and tests to be conducted.
- Acceptance Criteria: For each test phase, specifically indicate what is considered an acceptable test result.

The Acceptance Testing section of the Testing Plan shall include (but not be limited to) the following tests:

- String-level voltage (open circuit) and amperage (under load) testing for all PV strings. Amperage testing shall be performed concurrently with irradiance testing.
- Inverter testing for all inverters. The inverters shall be commissioned on-site by a qualified technician and shall confirm that the inverter can be operated locally per specification and that automatic operations such as wake-up and sleep routines, power tracking and fault detection responses occur as specified. Performance testing shall be performed concurrently with irradiance testing.
- Testing of all sensors of the DAS.
- Testing of the Data Presentation interface of the DAS.

After Contractor conducts all Acceptance Testing based on the Testing Plan approved by the County prior to substantial completion, Contractor shall submit a detailed Acceptance Test Report to the County for review.

The Acceptance Test Report shall document the results of the tests conducted following the Testing Plan and include additional information such as the date and time each test was performed. It shall also refer to any problem and deficiencies found during testing. If there was troubleshooting done, the Report shall describe the troubleshooting methods and strategy. Contractor shall be responsible for providing the labor and equipment necessary to troubleshoot the System.

### 3.13 COMMERCIAL OPERATION

"Commercial Operation" shall be deemed to have occurred as of the first point in time after (i) Mechanical Completion of the Facility has occurred; and (ii) satisfaction of CONTRACTOR's Acceptance Test related obligations; and (iii) when the Facility is used and useful for the purpose of delivering electric energy (other than electric energy delivered during Facility Startup and Acceptance Testing). If the

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COUNTY disputes that Commercial Operation has occurred, it shall provide written notice to that effect to CONTRACTOR, specifying the basis for disputing Commercial Operation and the Parties in dispute shall thereafter utilize the dispute resolution procedures in Section 46 of this Agreement to resolve the dispute. Failure of the COUNTY to provide such written notice within ten (10) Business Days after receipt of notice of Commercial Operation shall constitute waiver of the COUNTY's right to dispute that Commercial Operation has occurred.

### 3.14 PROVING PERIOD (30 DAYS)

Upon completion of Acceptance Testing and System Startup, and approval by the County, Contractor shall monitor the system during a thirty (30) day Proving Period and submit a report for County review and approval prior to final acceptance by the County. This includes monitoring system output and ensuring the correct functioning of system components over this time. The values for the following data shall be acquired every fifteen (15) minutes over thirty (30) days:

- AC system output (kW)
- PV system production (kWh)
- In-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information
- System availability

Contractor shall utilize calibrated test instruments and the DAS and monitoring system to collect the test data described above, which shall be made available to the County for access throughout the Proving Period. Contractor shall determine through analysis of data from the Proving Period whether the PV system delivers the expected production as determined by the final approved design (i.e., Construction Documents). Actual production shall be compared against expected production using actual weather data and other system inputs (such as module cell temperature factor, module mismatch, inverter efficiency, and wiring losses) for calculating expected production. The production figures for all meters, whether existing or installed by or on behalf of the IOU or by or on behalf of the Respondent, shall be correlated during this test to verify their accuracy in measuring system production.

All data monitoring and reports required in Section 3.5.16 shall be fully functional and available to the County at the commencement of the Proving Period. Data and reporting requirements are included in the testing scope of the Proving Period and deficiencies in these areas (including missing data, inaccurate reports, and other issues that make validation of system performance inconclusive) shall be grounds for denying approval of the Proving Period Report.

If the PV system does not perform to design specifications, Contractor shall perform diagnostic testing. Deficiencies shall be identified with proposed corrective actions submitted to the County, and the Proving Period test repeated. Contractor shall be responsible for providing the labor and equipment necessary to troubleshoot the system. The Proving Period Report shall be submitted after the successful completion of this phase and submitted to the County for review and approval. The report shall contain, but not be limited to, the following information; calculations shall be provided in Excel format with formulas visible

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to allow for peer review:

- System description
- Test period
- Test results
- Anomalies identified during test
- Corrective action performed
- Actual measured performance
- Calculations detailing expected performance under TMY conditions

### 3.15 PUNCH LIST

A list of the uncompleted items for the Project shall be established by CONTRACTOR prior to Mechanical Completion (the "Punch List"). The Punch List may be amended from time to time, upon written Agreement of the Parties, prior to Final Completion. The Punch List shall include all deliverables through Final Completion. The "Punch List Holdback Amount" shall be two times the aggregate of the value of the Punch List items agreed to by the Parties, or determined by the Independent Testing Engineer, if the Parties cannot agree. The Punch List Holdback Amount shall be withheld from payments due upon Mechanical Completion and the agreed value of each Punch List item shall be paid to CONTRACTOR upon completion of the Punch List item and any remaining Punch List Holdback Amount shall be paid to CONTRACTOR upon completion of all Punch List items.

### 3.16 CLOSE-OUT DOCUMENTATION REQUIREMENTS

Close-Out documents prepared by Contractor must include at minimum, but not limited to, the following items:

- Final As-Built Drawing Set with accurate string diagram, provided in (2) hard copy sets and an electronic copy in both DWG and PDF format (or as desired by County).
- Megger test Results
- Module flash-test results with serial numbers
- Component warranties, with dates and serial numbers
- Signed inspections cards from AHJ and required Special Inspections
- Interconnection agreements and Permission To Operate
- Owner's Manual

### 3.17 TRAINING

The Contractor shall provide two (2) hours of on-site training for County personnel in all aspects of operation, routine maintenance, and safety of the PV systems, DAS, and monitoring solution. At a minimum, training topics shall include the following:

- PV and battery storage (as applicable) system safety, including shut-down procedures

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- PV module maintenance and troubleshooting
- Inverter overview and maintenance procedures
- Calibration and adjustment procedures for the inverters and tracking systems (if any)
- DAS and monitoring solution, including standard and custom reporting

The on-site portion of the training program shall be scheduled to take place at the jobsite at a time agreeable to both the County and Contractor.

### 3.18 FINAL COMPLETION

“Final Completion” occurs after Commercial Operation has occurred and any remaining Punch List items have been finished and Commissioning of the Facility has been successfully completed. CONTRACTOR will notify COUNTY when it considers that Final Completion has occurred. If the COUNTY disputes that Final Completion has occurred, it shall provide written notice to that effect to CONTRACTOR specifying the basis for disputing Final Completion and the Parties in dispute shall thereafter use the dispute resolution procedures in Section 46 of this Agreement to resolve the dispute. Failure of the COUNTY to provide such written notice within 10 Business Days after the initial notice from CONTRACTOR shall constitute waiver of the COUNTY’s rights to dispute that Final Completion has occurred.

## 6. OPERATIONS AND MAINTENANCE

Contractor shall provide Operations and Maintenance services for ten (10) years. Contractor shall perform all necessary preventive and corrective maintenance, which includes routine maintenance adjustments, replacements, and electrical panel/transformer/ inverter cleaning (interior and exterior) with supporting documentation delivered to the County after the Work has been performed. Maintenance by Contractor shall ensure that all warranties, particularly inverter warranties, are preserved. Contractor shall determine the frequency and timing of panel wash-downs based on system monitoring data, as described below. Environmental sensors such as pyranometers shall be tested and recalibrated at least once every three (3) years. Corrective maintenance shall be provided for up to 200 work-hours over the ten-year term.

For any maintenance visits, Contractor shall give 3-day advance notification to County, and no on-site visits shall be performed without approval of the County, except in case of emergency.

Contractor shall perform the following maintenance services, at a minimum, as described in the following sections:

### 3.19 PREVENTIVE MAINTENANCE

Preventive Maintenance shall be performed at least annually and include:

- System testing (voltage/ampereage) at inverter and string levels
- System visual inspection to include but not be limited to the list below. All discovered issues should be resolved as needed.

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- Inspect for stolen, broken or damaged PV modules, record damage and location. Report to the County and wait for the County to authorize a course of action.
- Inspect PV wiring for loose connections and wire condition.
- Inspect for wires in contact with the structure or hanging loose from racking.
- Check mechanical attachment of the PV modules to the racking.
- Check attachment of racking components to each other and the structure.
- Verify proper system grounding is in place from panels to the inverter.
- Check conduits and raceways for proper anchorage to structures.
- Inspect all metallic parts for corrosion.
- Check combiner boxes for proper fuse sizes and continuity.
- Inspect all wiring connections for signs of poor contact at terminals (burning, discoloration).
- Inspect disconnects for proper operation.
- Survey entire jobsite for debris or obstructions.
- Inspect fasteners for proper torque and corrosion.
- Inspect inverter pad for cracking or settling.
- Inspect electrical hardware for proper warning and rating labeling.
- Inspect alignment of arrays and racking to identify settling foundations or loose attachments.
- Inspect operation of tracking hinges, pivots, motors and actuators if present.
- Check for proper operation and reporting of monitoring hardware.
- Inspect sealed electrical components for condensation buildup.
- Inspect wiring and hardware for signs of damage from vandalism or animal damage.
- Routine system maintenance to include correction of loose electrical connections, ground connections, replacement of defective modules found during testing, other minor maintenance repair work.
- Module cleaning, at a frequency to be determined by the ongoing monitoring of the system such that effect on production is no more than 5%, but not less often than twice a year.
- Routine DAS maintenance to include sensor calibration and data integrity check.

### 3.20 TROUBLESHOOTING, INSPECTION AND ADDITIONAL REPAIRS

- Dispatch of field service resources within two business days of notification (via automated or manual means) for repairs as necessary to maintain system performance.
- Any corrective action required to restore the system to fully operational status shall be completed within 24 hours of the service resources arriving on-site.
- Major system repairs, not to include mid-voltage switchgear or transformers.

### 3.21 CUSTOMER SERVICE SUPPORT

- Support telephone line made available to County staff to answer questions or report issues.

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- Support line shall be staffed during operational hours from 8 am – 6 pm California Standard Time. During times outside of this operational period, an urgent call shall be able to be routed to a supervisor for immediate action.

### 3.22 MAJOR COMPONENT MAINTENANCE AND REPAIR

- Inverter repair and component replacement and refurbishment as required in the event of inverter failure.
- Inverter inspection and regular servicing as required under inverter manufacturer's warranty specifications. Those include but are not limited to the following annually:
  - Check appearance/cleanliness of the cabinet, ventilation system and all exposed surfaces.
  - Inspect, clean/replace air filter elements
  - Check for corrosion on all terminals, cables and enclosure.
  - Check all fuses.
  - Perform a complete visual inspection of all internally mounted equipment including subassemblies, wiring harnesses, contactors, power supplies and all major components.
  - Check condition of all the AC and DC surge suppressors.
  - Torque terminals and all fasteners in electrical power connections.
  - Check the operation of all safety devices (E-stop, door switches).
  - Record all operating voltages and current readings via the front display panel.
  - Record all inspections completed.
  - Inform inverter manufacturer of all deficiencies identified.
- Oversee inverter manufacturer performance of In-Warranty replacement of failed inverter components.
- Customer advocacy with vendors.

### 3.23 OTHER SYSTEM SERVICES

- O&M Manuals – Contractor shall provide three (3) copies of O&M Manuals. Updated editions of O&M Manuals shall be sent electronically to the County as they become available.
- Management of long-term service and warranty agreements, ongoing.
- Contractor shall log all maintenance calls and document all maintenance activities. These activities shall be presented in a report, which is to be submitted to the County upon request.